DESIGN-BUILD
PROCEDURES MANUAL

SEPTEMBER 2005
(Limited Revisions December 2011)

VOLUME III OF V

EXHIBIT III – DIVISION 2 – CONTRACT DOCUMENT TEMPLATES:

Part 01 – Design-Build Agreement
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Part 03 – Design Requirements
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Part 06 – DB Utility Requirements
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Part 09 – Standard Specifications, Construction & Materials
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EXHIBIT III – DIVISION 3 – REFERENCE DOCUMENTS
(Project Name)
DESIGN-BUILD PROJECT

PIN ____________

DB CONTRACT DOCUMENTS

PART 1
AGREEMENT

[Consult with the Office of Legal Affairs when preparing the Agreement.]
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DESIGN-BUILD (DB) AGREEMENT

Contract No. ______________________

County __________________________

THIS DB AGREEMENT, entered into this ___ day of ____________, 20___, by THE PEOPLE OF THE STATE OF NEW YORK, hereinafter referred to as the “State,” acting by and through the New York State Department of Transportation, pursuant to the New York State Highway Law, and

☐ A corporation organized and existing under the laws of the State of ____________, or
☐ A partnership, consisting of ______________________________________________, or
☐ A Limited Liability Company (LLC), consisting of ____________________________, or
☐ A joint venture, consisting of ______________________________________________, or
☐ An individual conducting business as _________________________________________,

the location of whose principal office is

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

ARTICLE 1. COMPENSATION.

Article 1.1. Contract Price. As full compensation for the Work, the State will pay the Design-Builder a lump sum of $___________ plus an amount not to exceed the following:

$___________ for Unit Price Work, if any; and
$___________ for Force Account Work, if any.

The total Contract Price for this Contract shall not exceed $_______________________.


The Pricing Information from the Price Proposal is contained in Part 10 of the Contract Documents.


Article 1.2. Executory Clause. In accordance with Section 41 of the New York State Finance Law, this Contract shall be deemed executory only to the extent of money available to the State for the performance of the terms hereof and no liability on account thereof shall be incurred by the State beyond moneys available for the purpose thereof.
ARTICLE 2. CONTRACT TIME

Article 2.1. Notice To Proceed. The Design-Builder agrees that it will begin the Work herein embraced upon receipt of the Notice To Proceed (NTP), unless the consent of the State, in writing, is given to begin at a later date, and that it will prosecute the same so that it shall be entirely completed and performed on or before the Substantial Completion Date shown in Article 2.2. See Part 2, DB Sections 101-3 for definitions of NTP and Substantial Completion Date and 108-02 for more information on NTP.

Article 2.2. Substantial Completion. This Project’s Substantial Completion Date is _______. See Part 2, DB Sections 101-3 for the definition of Substantial Completion and 109[S or L]-11.2 for more information on Substantial Completion.

No extension beyond the Substantial Completion Date fixed by the terms of this Contract shall be effective unless in writing signed by the State. See Part 2, DB Section 108-7.2 for more information regarding time extensions. Any extension shall be for such time and terms and conditions as shall be fixed by the State, which may include the assessment of liquidated damages and a charge for engineering and inspection expenses actually incurred upon the Work, including engineering and inspection expenses incurred upon the Work by railroad companies on Contracts for grade crossing elimination. See Part 2, DB Sections 108-6 and 108-7.1 for information on liquidated damages and engineering and inspection expenses and Part 5, Special Provision 108C for a schedule of liquidated damages.

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

Article 2.3. Final Acceptance. This Project’s Final Acceptance date shall be no later than ____________.

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

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

See Part 2, DB Sections 101-3 for definitions of Final Acceptance and Warranty and 109[S or L]-11.3 for additional information on Final Acceptance.

ARTICLE 3. WORK TO BE DONE. The Design-Builder shall furnish all the Materials, appliances, tools, and labor of every kind required, and construct and complete in the most substantial and skillful manner, the design, construction, improvement, or reconstruction of the Project on or before the dates defined above in Article 2 and as specifically identified and shown in Appendix I to this Agreement and elsewhere in the Contract Documents.
ARTICLE 4. LICENSING. Any professional services regulated by Articles 145, 147, and 148 of the New York State Education Law to be performed under this Contract shall be performed by a professional licensed in accordance with such articles.

ARTICLE 5. DOCUMENTS FORMING THE CONTRACT. The Contract shall include and incorporate the executed Agreement (Part 1), the DB Section 100 (Part 2), the Design Criteria (Part 3), the Performance Specifications (Part 4), the DB Special Provisions (Part 5), the DB Utility Requirements (Part 6), the RFP Plans (Part 7), the engineering data (Part 8), the Standard Specifications (Part 9), and the Design-Builder’s Proposal (Part 10), including all addenda or appendices thereto, and all provisions required by law to be inserted in the Contract, whether actually inserted or not. In the event of a conflict between the terms of the Contract Documents, this Agreement shall control, unless this Contract is a Federal-aid contract, in which instance the federal clauses (Part 1, Agreement Appendix II) shall have precedence over all other Contract Documents, including this Agreement. See Part 2, DB Sections 101-3, for a definition of Federal-aid and DB Section 102-2 for the order of precedence of the Contract Documents.

ARTICLE 6. MINORITY-OWNED BUSINESS ENTERPRISE AND WOMEN-OWNED BUSINESS ENTERPRISE GOALS AND DISADVANTAGED BUSINESS ENTERPRISE GOALS

Article 6.1. Minority-owned and Women-owned Business Enterprise Goals. If this Contract falls within the definition of a “State Contract,” as found in Section 310, subdivision 13, of the New York State Executive Law, an MBE/WBE utilization goal must be set for this Contract. The MBE/WBE utilization goal for this Contract is _____%. The Design-Builder must submit an MBE/WBE utilization plan and make good faith efforts to comply with that plan during the course of this Contract. See Part 2, DB Section 101-3 for definitions of MBE and WBE and DB Section 102-8 for more information on the MBE/WBE program.

Article 6.2. Disadvantaged Business Enterprise Goal. If this Contract is a Federal-aid contract, a DBE goal must be set pursuant to 49 CFR 26. The DBE goal for this Contract for design is ___% and for construction is ____%. The Design-Builder must make a good faith effort to meet this goal. See Part 2, DB Section 101-3 for a definition of DBE and DB Section 102-9 for more information on the DBE program.

ARTICLE 7. EXAMINATION OF DOCUMENTS AND SITE. The Design-Builder agrees that before submitting its Proposal it carefully examined the Contract Documents together with the Site of the proposed Work and its surrounding territory and is informed regarding all of the conditions affecting the Work to be done and labor and Materials to be furnished for the completion of this Contract, including the existence of poles, wires, pipes, and other facilities and structures of municipal and other public service corporations on, over, or under the Site, except latent conditions that meet the requirements of Part 2, DB Sections 109[S or L]-15 and 109-16, and that its information was secured by personal and other investigation and research. See Part 2, DB Section 101-3 for definitions of Material and Site.

ARTICLE 8. ALTERATIONS AND OMISSIONS. The Work identified in the Contract Documents shall be performed in accordance with the true intent and meaning of the Contract Documents without any further expense of any nature whatsoever to the State other than the consideration named in this Contract.

The State reserves the right, at any time during the progress of the Work, to alter the scope of Work, or omit any portion of the Work as it may deem reasonably necessary for the public interest, making allowances for additions and deductions with compensation made in accordance with the Contract Documents for the altered or omitted Work, without constituting grounds for any claim by the Design-
New York State Department of Transportation

Builder for allowance for damages or for loss of anticipated profits, or for any variations between the approximate quantities and the quantities of the Work as done.

ARTICLE 9. PERIODIC PAYMENTS. As the Work progresses in accordance with this Contract and in a manner that is satisfactory to the State, the State hereby agrees to make payments to the Design-Builder for Work completed, based upon the Design-Builder’s Proposal attached hereto and made a part hereof, as follows:

1) The Design-Builder shall once in each month, and on such day as may be fixed by the Design-Builder and the State, make a progress report of Work done and of Material which has actually been put in place in accordance with the terms and conditions of the Contract during the preceding month, and compute the value thereof in accordance with Part 2 DB Section 109[S or L] of this Contract.

2) The State will pay to the Design-Builder the monies due as provided in subdivision 7 of Section 38 of the New York State Highway Law.

See Part 2, DB Sections 108-1.3 and 109[S or L]-5 regarding monthly progress reports and payment on this Contract, respectively.

Timeliness of payment and any interest to be paid to the Design-Builder for late payment shall be governed by Article XI-A of the New York State Finance Law to the extent required by that law.

ARTICLE 10. NO PERIODIC PAYMENT ON DESIGN-BUILDER’S NON-COMPLIANCE. It is further agreed that so long as the Design-Builder does not comply with any lawful or proper direction concerning the Work or Material given by the Commissioner of Transportation, or his/her representative, the Design-Builder shall not be entitled to have any interim payment made for the Price Center under which the non-complying Work falls, nor shall any interim payment be rendered for that Price Center on account of Work done or Material furnished until such lawful or proper direction aforesaid has been fully and satisfactorily complied with. See Part 2, DB Sections 101-3.136 for a definition of Price Center and 109[S or L]-5.1.4 regarding non-compliant Work.

ARTICLE 11. FINAL PAYMENT. After the Final Acceptance of the Work, the Department’s Project Manager shall prepare a final agreement of the Work performed and the Materials placed and shall compute the value of such Work and Materials under and according to the terms of this Contract. This final agreement shall be certified as to its correctness by the Department’s Project Manager. Upon approval of such final agreement by the Regional Director, it shall be submitted to the Commissioner for final approval. The right, however, is hereby reserved to the Commissioner to reject the whole or any portion of the final agreement, should the said certificate of the Department’s Project Manager be found or known to be inconsistent with the terms of this Contract or otherwise improperly given. All monthly progress reports upon which interim payments were made shall be subject to correction in the final certificate or final agreement. See DB Section Part 2, DB Sections 109[S or L]-12 for more information on final agreements and payment.

ARTICLE 12. RIGHT TO SUSPEND WORK AND CANCEL CONTRACT. It is further mutually agreed that if at any time during the prosecution of the Work the Commissioner of Transportation shall determine that the Work is not being performed according to the Contract or for the best interest of the State, the Commissioner may proceed in any of the following ways:

1) Temporarily suspend the execution of the Work by the Design-Builder, and the Commissioner of Transportation may then proceed with the Work under his/her own
direction in such manner as will accord with the Contract Documents and be for the best interests of the State; or

2) Terminate the Design-Builder’s Contract while it is in progress, and thereupon proceed with the Work by a new contract negotiated or publicly advertised, by the use of his/her own forces, by calling upon the Surety to complete the Work in accordance with the Contract Documents, or by a combination of any such methods; or

3) Cancel the Contract and re-advertise as provided in Section 38 of the New York State Highway Law; or

4) Complete the Work under the State’s direction in such a manner as will accord with the Contract Documents and be for the interests of the State.

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

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

See Part 2, DB Section 101-3 for a definition of Surety, DB Section 105-6 regarding termination, and DB Section 109[S or L]-15.2 regarding suspensions of Work ordered by the Department’s Project Manager.

ARTICLE 13. DETERMINATION AS TO VARIANCES. In any case of any ambiguity in the Contract Documents or between any of the various Parts of the Contract Documents, the matter must be immediately submitted to the Commissioner, who shall adjust the same, and his/her decision in relation thereto shall be final and conclusive upon the parties.

See Part 2, DB Section 102-3 regarding order of precedence of the Contract Documents.

ARTICLE 14. SUCCESSORS AND ASSIGNS. This Contract shall bind the successors, assigns, and representatives of the parties hereto.

ARTICLE 15. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the New York State Finance Law, this Contract may not be assigned by the Design-Builder, or its right, title, or interest therein assigned, transferred, conveyed, sublet, or disposed of without the previous consent, in writing, of the State. Any attempts to assign the Contract without the State’s written consent are null and void. The Design-Builder may, however, assign its right to receive payment without the State’s prior written consent unless this Contract concerns certificates of participation pursuant to Article 5-A of the New York State Finance Law.

ARTICLE 16. PROJECT ORGANIZATION.

Article 16.1. State’s Project Organization. See Part 2, DB Section 105-1 and Part 5, Special Provision 105 for specific information regarding the State’s Project organization.

The following information is the contact information for the Department’s Project Manager. The Department’s Project Manager will serve as the main point of contact for the Design-Builder. All notices should be sent to the Department’s Project Manager at the following address, unless stated otherwise in Part 2, DB Section 107-28:

Project

PIN

5

Agreement

[Insert date]

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

Name: ____________________________
Address: __________________________
Telephone number: __________________
Fax number: ________________________

ARTICLE 17. INSURANCE

ARTICLE 17.1. INSURANCE PROGRAM.

The Design-Builder shall procure and maintain at its own expense and without expense to the State, until Final Acceptance by the State of the Work, the following coverages for the insurance identified below, provided by insurance companies authorized to do such business in the State covering all operations under the Contract whether performed by the Design-Builder or its Subcontractors. See Part 1, Article 2.3 for the Final Acceptance date for this Contract.

Before commencing the Work, the Design-Builder shall furnish to the Department’s Project Manager a certificate or certificates of insurance in a form satisfactory to the Department’s Project Manager showing that it has complied with this Section, which certificate or certificates shall provide that the policies shall not be changed or canceled, or provisions therein changed, until 30 days written notice has been given to the Department’s Project Manager. All policies supplied under the provisions of this Section shall be endorsed to provide for the above 30 day written notice of cancellation or change provisions.

A) Professional Liability Insurance

The Design-Builder shall provide professional liability coverage with limits of $___ million per claim and $___ million in the aggregate during the period starting on the date of Notice to Proceed (NTP) and ending on the Final Acceptance date, with a three year extended reporting period with respect to events which occurred but were not reported during the term of the policy. The policy shall protect against any negligent act, error, or omission arising out of the professional services that includes coverage for acts by others for whom the Design-Builder is legally responsible. The policy shall apply to the activities of all design, engineering, and construction management professionals assigned to the Project.

B) Commercial General Liability Insurance

The Design-Builder shall provide commercial general liability coverage (for bodily injury, property damage, personal injury, and advertising injury) during the period starting on the date of the NTP and ending on the Final Acceptance date, specifically including coverage for contractual liability, premises operations, independent contractors, products and completed operations, broad form property damage,
and hazards commonly referred to as “XCU,” with limits of not less than $___ per occurrence and $___ annual aggregate, except that a $___ annual aggregate will apply to products and completed operations. Products/completed operations coverage will remain in effect for 36 to 60 months after the Final Acceptance date. Such limits of liability as stated shall apply “collectively” and not “separately” for the Design-Builder and all Subcontractors on the Project.

The Design-Builder shall secure insurance service office commercial general liability coverage covering its own Employees who will be engaged in the Work at the Site.

The Design-Builder shall require those of its Subcontractors who will be engaged in Work at the Site and those who are not normally engaged at the Site and whose compensation is not part of the field payroll to carry commercial general liability insurance in the amounts that the Design-Builder shall deem appropriate.

C) Umbrella/Excess Liability Insurance

The Design-Builder shall supply umbrella excess coverage for its excess coverage for commercial general liability, employer’s liability, and railroad protective liability (if applicable) policies, with limits of not less than $___ per occurrence, with annual aggregates of $___ separately for a general aggregate and products/completed operations aggregate. Such limits of liability as stated shall apply “collectively” and not “separately” for the Design-Builder and Subcontractors on the Project.

D) Environmental Liability Insurance

The Design-Builder shall provide environmental liability insurance in the amount of $___ million per claim and $___ million aggregate limit during the period starting on the date of issuance of the NTP to design the improvements and ending on the date of Final Acceptance, with a three year extended reporting period with respect to events which occurred but were not reported during the term of the policy. The policy shall cover professional errors and omissions related to environmental remediation Work performed by, and environmental losses resulting from, the Design-Builder or its Subcontractors and any Persons for whom the Design-Builder is legally or contractually responsible.

E) Property Insurance

The Design-Builder shall provide builder’s risk (or, all risk) insurance with limits of $___ million per claim and $___ million in the aggregate protecting the interests of the Design-Builder and the Department against physical loss or damage during the course of construction during the period starting on the date of issuance of the NTP and ending on Final Acceptance. The Design-Builder shall not be responsible for loss, damage to, or obtaining and/or maintaining in force insurance on construction Equipment, tools, or personal effects owned; rented to; or in the care, custody, or control of any of its Subcontractors furnishing labor, supplies, Materials, and/or Equipment to the Project. Such insurance shall only carry exclusions satisfactory to the Department.

F) Public Liability Insurance

The Design-Builder shall maintain public liability insurance limits for general liability (for bodily injury, property damage, personal injury, and advertising injury) of $___ million per occurrence and in the aggregate.

G) Other Design-Builder Insurance
The Design-Builder shall secure automobile liability insurance for its own vehicles with a liability limit of $___ million per accident combined single limit.

The Design-Builder shall purchase railroad protective liability insurance (either by endorsement to the commercial general liability insurance in SP 107-1.3 or by a separate policy), if applicable. Railroad protective liability insurance will be purchased and maintained in connection with all Work across, under, or adjacent to railroad tracks, tunnels, crossings, or ROW in the name of any railroad(s) in connection with all Work across, under, or adjacent to railroad tracks or ROW, with limits of not less than $___ per person and $___ per occurrence for damage arising out of bodily injury or death, and railroad protective property damage limits of not less than $___ for damage to or destruction of property, including the loss of use thereof, (including coverage for direct and accidental loss of or damage to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, bridges, or buildings) in any one occurrence, and not less than $___ in the aggregate applying separately to each annual period. Railroad protective liability insurance will be maintained during the period starting on the date of commencement of any Work.

H) Subcontractor Coverages

The Design-Builder shall require all its Subcontractors, vendors, and Material Suppliers to provide and maintain insurance coverages, including automobile liability with required limits of $___ million per claim $___ million aggregate, unless unavailable to the Subcontractor, vendor, or Material Supplier.

Article 17.2. Workers’ Compensation. In accordance with Section 142 of the New York State Finance Law, this Contract shall be void and of no force and effect unless the Design-Builder provides coverage for the benefit of, and keeps covered during the life of this Contract, such Employees as are required to be covered by the provisions of the New York State Workers’ Compensation Law.

The Design-Builder must obtain a policy covering the obligations of the Design-Builder in accordance with the provisions of the New York State Workers’ Compensation Law and New York State Finance Law, covering all operations under the Contract, whether performed by the Design-Builder or its Subcontractors. The Design-Builder shall include employer’s liability in its workers’ compensation insurance.

If the Design-Builder does not comply with the New York State Workers’ Compensation Law or the New York State Finance Law, the Department shall suspend this Contract, provide notice of default to the Design-Builder, and await a cure. If the Design-Builder fails to cure the default, this Contract may be terminated by the Department effective immediately.

For more information regarding insurance requirements, see Part 2, DB Section 107-25.

ARTICLE 18. LIQUIDATED DAMAGES.

Time is an essential element of the Contract, and it is important that the Work be pursued vigorously to completion. The public is subject to detriment and inconvenience when full use of infrastructure cannot be made because of an incomplete Project.

If the Design-Builder fails to achieve Substantial Completion for the Project by the date specified in Part 1, Article 2.2, the Design-Builder agrees to a liquidated damages charge in accordance with the following scale:
The table above needs to be completed on a per project basis, after appropriate schedules and damage scales have been determined for the individual project.

The Design-Builder agrees that the Department may withhold additional payments under the Contract or attach the Design-Builder’s performance bond to cover the liquidated damages set forth above. Liquidated damages shall continue until notice of satisfactory completion and Final Acceptance has been made in Part 2, DB Section 100, DB Sections 109L-11.3 or 109S-11.2. When Final Acceptance has been duly made by the Department’s Project Manager, the liquidated damages shall cease.

ARTICLE 19. LABOR PROVISIONS. The Design-Builder specifically agrees to the following as it pertains to laborers, workmen, or mechanics as required by the New York State Labor Law, Articles 8 and 9, as amended:

1) No laborer, Worker, or mechanic, in the employ of the Design-Builder, a Subcontractor, or other Person doing or contracting to do the whole or any part of the Work contemplated by this Contract shall be permitted or required to work more than eight hours in any one Calendar Day or more than five Days in any one week, except in the emergencies set forth in the New York State Labor Law.

2) The wages paid for a legal day’s work shall be not less than the prevailing rate of wages as defined by law.

3) The minimum hourly rate of wages to be paid shall not be less than that stated in the Specifications, and any re-determination of the prevailing rate of wages after the Contract is approved shall be deemed to be incorporated herein by reference as of the effective date of re-determination and shall form a part of these Contract Documents.

The New York State Labor Law provides that the Contract may be forfeited, and no sum paid for any Work done thereunder, on a second conviction for willfully paying less than the following:

1) The stipulated wage scale as provided in the New York State Labor Law, Section 220, subdivision 3, as amended; or

2) The stipulated minimum hourly wage scale as provided in the New York State Labor Law, Section 220-d, as amended.

The Design-Builder specifically agrees to the following, as required by the provisions of the New York State Labor Law, Sections 200-e and 239, as amended:

1) In hiring of Employees for the performance of the Work under this Contract or any subcontract hereunder, or for the manufacture, sale, or distribution of Materials, Equipment, or supplies hereunder, no Design-Builder, Subcontractor, or any Person acting on behalf of such Design-Builder or Subcontractor shall by reason of race, creed, color, sex, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the Work to which the employment relates.

2) No Design-Builder, Subcontractor, or any Person on its behalf shall, in any manner, discriminate against or intimidate any Employee hired for the
performance of the Work under this Contract on account of race, creed, color, sex, or national origin.

3) There may be deducted from the amount payable to the Design-Builder by the State under this Contract a penalty of $50.00 for each person for each Calendar Day during which such person was discriminated against or intimidated in violation of the provisions of this Contract.

4) This Contract may be canceled or terminated by the State and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this Section of the Contract.

5) The aforesaid provisions of this Section shall be limited to operations performed within the territorial limits of the State of New York.

See Part 2, DB Section 101-3 for definitions of Calendar Day, Day, Employee, Equipment, Person, Subcontractor, and Worker.

ARTICLE 20. NON-DISCRIMINATION CLAUSES. In accordance with Section 312 of the New York State Executive Law, if this Contract is A) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, Equipment, Materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the State; or B) a written agreement in excess of $100,000.00 whereby the State is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon; or C) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon for such project, then during the performance of this Contract, the Design-Builder agrees as follows:

1) The Design-Builder will not discriminate against any Employee or applicant for employment because of race, creed, color, sex, national origin, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay, or other forms of compensation.

2) If directed to do so by the State Commissioner of Human Rights, the Design-Builder will send to each labor union or representative of Workers with which the Design-Builder has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commissioner of Human Rights, advising such labor union or representative of the Design-Builder’s agreement under clauses (1) through (7) of these Non-discrimination Clauses. If the Design-Builder was directed to do so by the New York State Department of Transportation as part of the Proposal for this Contract, the Design-Builder shall request such labor union or representative to furnish a written statement that such labor union or representative will not discriminate because of race, creed, color, sex, national origin, age, disability, or marital status, and that such labor union or representative will cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these Non-discrimination Clauses, and that it consents and agrees that recruitment, employment, and the terms and conditions of employment under this Contract shall be in accordance with the purposes and provisions of these Non-discrimination Clauses. If such labor union or representative
fails or refuses to comply with such a request that it furnish such a statement, the Design-Build shall promptly notify the State Commissioner of Human Rights of such failure or refusal.

3) If directed to do so by the Commissioner of Human Rights, the Design-Build shall promptly notify the State Commissioner of Human Rights of such failure or refusal.

4) The Design-Build will state, in all solicitations or advertisements for Employees placed by or on behalf of the Design-Build, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability, or marital status.

5) The Design-Build will comply with all applicable federal, State, and local civil rights and human rights laws with reference to equal employment opportunities and the provision of services, including the provisions of Sections 290 through 301 of the New York State Executive Law and the New York State Civil Rights Law; will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these Non-discrimination Clauses and the abovementioned sections of the New York State Executive Law; and will permit access to the Design-Build’s books, records, and accounts by the State Commissioner of Human Rights for the purposes of investigation to ascertain compliance with these Non-discrimination Clauses and the abovementioned sections of the New York State Executive Law and the New York State Civil Rights Law.

6) This Contract may be forthwith canceled, terminated, or suspended, in whole or in part, by the New York State Department of Transportation upon the basis of a finding made by the State Commissioner of Human Rights that the Design-Build has not complied with these Non-discrimination Clauses, and the Design-Build may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State, until the Design-Build satisfies the State Commissioner of Human Rights that the Design-Build has established and is carrying out a program in conformity with the provisions of these Non-discrimination Clauses. Such findings shall be made by the State Commissioner of Human Rights after conciliation efforts by the Commissioner of Human Rights have failed to achieve compliance with these Non-discrimination Clauses, and after a verified complaint has been filed with the Commissioner of Human Rights, notice thereof has been given to the Design-Build, and an opportunity has been afforded the Design-Build to be heard publicly in accordance with the New York State Executive Law. Such sanctions may be imposed and remedies invoked independently of, or in addition to, sanctions and remedies otherwise provided by law.

7) The Design-Build will include the provisions of these Non-discrimination Clauses (1) through (6) in every subcontract or purchase order over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning, or design of real property and improvements thereon, except where the Work is for the beneficial use of the Design-Build, in such a manner that such provisions will be binding upon each Subcontractor or vendor as to operations to be performed within the State of New York.

8) Work, goods, or services unrelated to this Contract; or
9) Employment outside New York State; or

10) Banking services, insurance policies, or the sale of securities.

The State shall consider compliance by the Design-Builder or one of its Subcontractors with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this Article. The State shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the State shall waive the applicability of Section 312 of the New York State Executive Law to the extent of such duplication or conflict. The Design-Builder will comply with all duly promulgated and lawful rules and regulations of the New York State Governor’s Office of Minority and Women’s Business Development pertaining hereto.

The Design-Builder will take such action in enforcing such provisions of such subcontract or purchase order as the State Commissioner of Human Rights or the New York State Department of Transportation may direct, including sanctions or remedies for non-compliance. If the Design-Builder becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the State Commissioner of Human Rights or the New York State Department of Transportation, the Design-Builder shall promptly so notify the New York State office of the Attorney General, requesting the Attorney General to intervene and protect the interests of the State of New York.

ARTICLE 22. NON-COLLUSION. In accordance with Section 139-d of the New York State Finance Law, by submission of a Proposal, each Proposer and each person signing on behalf of any Proposer certified, and in the case of a joint Proposal, each party thereto certified, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief the following are true:

1) The prices in the Proposal had been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices with any other Proposer or with any competitor;

2) Unless otherwise required by law, the prices which were quoted in the Proposal were not knowingly disclosed by the Proposer prior to Award of the Contract, directly or indirectly, to any other Proposer, or to any competitor; and

3) No attempt was made by the Proposer to induce any other person, partnership, or corporation to submit or not to submit a Proposal for the purpose of restricting competition.

A Proposal was not considered for Award where (A), (B), and (C) above have not been complied with, provided, however, that if in any case the Proposer could not make the foregoing certification, the Proposer so stated and furnished with the Proposal a signed statement which sets forth in detail the reasons why. Where (A), (B), and (C) above have not been complied with, the Proposal was not considered for Award, nor was any Award made, unless the Commissioner, or his/her designee, determined that such disclosure was not made for the purpose of restricting competition. The fact that a Proposer has published price lists, rates, or tariffs covering items being procured; has informed prospective customers of proposed or pending publication of new or revised price lists for such items; or has sold the same items to other customers at the same prices being proposed does not constitute, without more, a disclosure within the meaning of this Article.

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

ARTICLE 23. INTERNATIONAL BOYCOTTS. In accordance with Section 220-f of the New York State Labor Law and Section 139-h of the New York State Finance Law and the regulations of the New York State Comptroller promulgated thereunder, if this Contract exceeds $5,000.00, the Design-Builder agrees to the following as a material condition of this Contract:

1) That neither the Design-Builder nor any Affiliate has participated, is participating, or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the Export Administration Act of 1979, as amended, or the regulations of the United States (US) Department of Commerce promulgated thereunder; and

2) That if the Design-Builder or any Affiliate has been convicted or subjected to a final determination by the US Department of Commerce or any other appropriate agency of the US of a violation of the Export Administration Act of 1969, as amended, or the Export Administration Act of 1979, as amended, or the regulations of the US Department of Commerce promulgated thereunder, the Design-Builder shall notify the New York State Comptroller of such conviction or determination in the manner prescribed by the Comptroller’s regulations (2 NYCRR 105.4).

See Part 2, DB Section 101-3 for a definition of Affiliate.

ARTICLE 24. SPECIFIC GROUNDS FOR DISQUALIFICATION FROM CONTRACTING WITH THE STATE OR FOR CANCELLATION OF THIS CONTRACT. The Design-Builder hereby agrees to the provisions of Sections 139-a and 139-b of the New York State Finance Law, which require that upon the refusal of a person, when called before a grand jury; head of a State department, temporary State commission, or other State agency; or the organized crime task force in the New York State Department of Law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the State; any political subdivision thereof; a public authority; or any public department, agency, or official of the State, of any political subdivision thereof, of any public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, the following actions may occur:

1) Such person, and any firm, partnership, or corporation of which he/she is a member, partner, director, or officer shall be disqualified from thereafter selling to or submitting bids or proposals to, receiving awards from, or entering into any contracts with the State through any public department, agency, or official thereof, for goods, work, or services, for a period of five years after such refusal; and

2) Any and all contracts made with the State or any public department, agency, or official thereof, since the effective date of the law by such person and by any firm, partnership, or corporation of which he/she is a member, partner, director, or officer may be canceled or terminated by the State without incurring any penalty or damages on account of such cancellation or termination, but any moneys owing by the State for goods delivered or work done prior to the cancellation or termination shall be paid.
ARTICLE 25. INDEPENDENT CONTRACTOR. The relationship of the Design-Builder to the State is that of an independent contractor, and said Design-Builder, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistently with such status, that it will neither hold itself out as nor claim to be an officer or employee of the State by reason hereof, and that it will not, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the State, including, but not limited to, workers’ compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

ARTICLE 26. COMPTROLLER’S APPROVAL. In accordance with Section 112 of the New York State Finance Law, if this Contract exceeds $10,000.00; if this is an amendment for any amount to the Contract which, as so amended, exceeds said statutory amount; or if, by this Contract, the State agrees to give something other than money, it shall not be valid, effective, or binding upon the State until it has been approved by the New York State Comptroller and filed in his/her office.

ARTICLE 27. SET-OFF RIGHTS. The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State’s option to withhold, for the purposes of set-off, any moneys due to the Design-Builder under this Contract up to any amounts due and owing to the State with regard to this Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices, including, in cases of set-off pursuant to an audit, the finalization of such audit to the appropriate State agency, its representatives, or the New York State Comptroller.

ARTICLE 28. RECORDS. The Design-Builder shall establish and maintain complete and accurate books, records, documents, accounts, and other evidence directly pertinent to performance under this Contract (hereinafter, collectively called the “Records”). The Records must be kept for a minimum of six years or three years after payment, whichever is later. The New York State Comptroller, the New York State Attorney General, and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Design-Builder within the State or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing, and copying. The State shall take all reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the New York State Public Officers Law (the “Statute”), provided the following:

1) The Design-Builder shall timely inform the appropriate State official, in writing, that said records should not be disclosed; and
2) Said records shall be sufficiently identified; and
3) Designation of said Records as exempt under the Statute is reasonable.

Nothing contained herein shall diminish, or in any way adversely affect, the State’s right to discovery in any pending or future litigation.

ARTICLE 29. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION

Article 29.1. Federal Employer Identification Number and/or Federal Social Security Number. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee’s identification number, i.e., the seller’s or lessor’s identification number. The number is either the payee’s federal
employer identification number or federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

**Article 29.2. Privacy Notification.** The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the New York State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses, and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by the Contract. The information is maintained in the New York State Central Accounting System by the Director of State Accounts, Office of the State Comptroller, AESOB, Albany, New York 12236.

**ARTICLE 30. GOVERNING LAW.** This Contract shall be governed by the laws of the State of New York, except where the federal supremacy clause requires otherwise.

**ARTICLE 31. NO ARBITRATION.** Disputes involving this Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized).

**ARTICLE 32. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules (CPLR), the Design-Builder hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Design-Builder’s actual receipt of process or upon the State’s receipt of the return thereof by the US Postal Service as refused or undeliverable. The Design-Builder must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. The Design-Builder will have 30 Calendar Days after service hereunder is complete in which to respond.

**ARTICLE 33. FEDERAL CLAUSES.** If this Contract is a Federal-aid contract, please refer to Appendix II to this Agreement for the required federal clauses. See also Part 2, DB Sections 102-2 and 107-04 regarding the precedence of the federal clause to the rest of the Contract Documents.

**ARTICLE 34. SELF PERFORMANCE.**

*For Federal-aid projects, under the Federal Highway Administration’s Design-Build regulations, there is no required minimum percentage for Design-Builder self-performance. However, the federal contract provisions required in Federal-aid contracts still require a minimum of 30% Design-Builder self-performance.*

*For state funded projects, there is no minimum Design-Builder self performance percentage, so, on a project-by-project basis, insert the percentage of the Contract Work the Design-Builder will be expected to perform itself. Also, add other Specialty Items to the list.*

On Federal-aid projects, this Article 34 will supercede Appendix II Article 8.0.
The Design-Builder shall perform with its own organization Contract Work amounting to not less than ___ percent of the original total Contract Price, except that any items designated by the State as Specialty Items may be performed by subcontract and the amount of any such Specialty Items so performed may be deducted from the original Contract Price before computing the amount of Work required to be performed by the Design-Builder with its own organization. The Design-Builder’s own organization shall be construed to include only Workers employed and paid directly by the Design-Builder and Equipment owned or rented by it, with or without operators. The Design-Builder’s own organization does not include employees or Equipment of a Subcontractor, assignee, or agent of the Design-Builder and/or its Principal Participants. The Contract amount upon which the ___ percent requirement is computed includes the cost of Materials and manufactured products which are to be purchased or produced by the Design-Builder under the Contract provisions.

See Part 2, DB Section 108-8 for more information on subcontracting and assigning the Contract.

The following are considered Specialty Items for purposes of determining the self performance percentage for this Project:

1) Design;
2) Engineering (including survey and geotechnical investigations, among others); and
3) Design and construction QC.

IN WITNESS WHEREOF, this Contract has been executed by the State, acting by and through the Commissioner of Transportation, and the Design-Builder or its appointed representative, which has executed this Contract on the day and year first written above.

New York State Department of Transportation

-------------------------------------------

Title

-------------------------------------------

Date

Office of the Attorney General

-------------------------------------------

Date

Design-Builder

-------------------------------------------

Title

-------------------------------------------

Date

Office of the Comptroller

-------------------------------------------

Date

(This contract is not to be executed or become effective until it shall first be approved by the State Comptroller and filed in his/her office.)
(Acknowledgment by individual Design-Builder)

STATE OF NEW YORK

COUNTY OF ____________

ss.: ____________

On this ____________ day of ____________, 200__, before me personally came and appeared ____________ to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he/she executed the same.

____________________________________
Notary Public County

(Acknowledgment by co-partnership Design-Builder)

STATE OF NEW YORK

COUNTY OF ____________

ss.: ____________

On this ____________ day of ____________, 200__, before me personally came and appeared ____________ to me known to be the person who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of ____________, consisting of himself/herself and ____________ ____________, and that he/she executed the foregoing instrument in the firm name of ____________, and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of ____________, for the uses and purposes mentioned therein.

____________________________________
Notary Public

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

STATE OF NEW YORK

COUNTY OF ____________

ss.: ____________

On this ____________ day of ____________, 200__, before me personally came and appeared ____________ to me known to be the person who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the LLC of ____________, and that he/she executed the foregoing instrument in the LLC’s name of ____________, and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said LLC of ____________, for the uses and purposes mentioned therein.

____________________________________
Notary Public
(Acknowledgment by Design-Builder, if a corporation)

STATE OF NEW YORK  
COUNTY OF ___________  

} ss.:  

On this ______________ day of __________________, 200___, before me personally came ____________ to me known, who being duly sworn, did depose and say that he/she resides in ______________ that he/she is the ______________ of the ______________, the corporation described in and which executed the foregoing instrument and that he/she signed his/her name thereto by order of the board of directors of said corporation.

____________________________________  
Notary Public

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

STATE OF NEW YORK  
COUNTY OF ___________  

} ss.:  

On this ______________ day of __________________, 200___, before me personally came ____________ to me known, who being duly sworn, did depose and say that he/she resides in ______________ that he/she is the ______________ of the ______________, the joint venture described in and which executed the foregoing instrument, and that he/she signed his/her name thereto by Power of Attorney granted by that joint venture.

____________________________________  
Notary Public
(Project Name)
DESIGN-BUILD PROJECT

PIN _____________

DB CONTRACT DOCUMENTS
PART 1- AGREEMENT

APPENDIX I
PROJECT SCOPE
NEW YORK STATE DEPARTMENT OF TRANSPORTATION

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APPENDIX I
PROJECT SCOPE

1.0 INTRODUCTION

This Appendix I to the Agreement provides a summary description of the physical components of the Project that the Design-Builder shall design, construct, and/or install. This Appendix I does not include contractual and/or procedural requirements included in the Contract. The contractual and procedural requirements are contained in other Contract Documents.

The Design-Builder shall not rely solely on the description contained in this Part 1 – Agreement Appendix I to identify all Project components to be designed, constructed, and/or installed. The Design-Builder shall determine the full scope of the Project through thorough examination of the Contract Documents and the Project Site or as may be reasonably inferred from such examination.

The Design-Builder shall design, furnish, construct, and/or install all components of the Project meeting the requirements of the Contract Documents, except where the Department will furnish and/or install the items as listed in Section 6.0.

2.0 PROJECT CONFIGURATION

The Project shall include the major components listed in this Part 1 – Agreement, Appendix I.

2.1 Project Limits

The Project is approximately ___ meters long. The Project termini are as follows:

A) Beginning of Project (BOP) – ________; and
B) End of Project (EOP) – ________.

In general, there are ___ m of Right-of-Way (ROW) available throughout the Project. The lateral limits of the Project are shown on the ROW Plans in Contract Documents Part 7.

2.2 Project-Wide Requirements

[Describe any Project-wide scope requirements the Design-Builder should be aware of.]

2.3 Project Sections

The Project is divided into ______ Sections as described Table 2-1. The Sections will be used for Project administrative and payment purposes and are not meant to constrain the Design-Builder’s design or construction schedule or approach except as otherwise specified in the Contract, such as Department-designated Progress Check Points and Work limitations contained in the Contract Documents.

When preparing the Baseline Progress Schedule, identifying Price Centers, and preparing the Contract Periodic Payment Schedule and related documents, the Design-Builder may make minor adjustments to the Section limits defined herein to more accurately represent its plans to design and construct the Project, subject to the Department’s Project Manager’s Consultation and Written Comment. Once Work is started, the Design-Builder may not make adjustments to the Section limits.
TABLE 2-1
PROJECT SECTION DESIGNATION AND LIMITS

<table>
<thead>
<tr>
<th>Section Designator</th>
<th>Beginning Point</th>
<th>Ending Point</th>
</tr>
</thead>
</table>

2.3.1 Section A
2.3.2 Section B
2.3.3 Section C

3.0 PROPOSED IMPROVEMENTS

The Scope of the Project will include, but not be limited to, the following:

A) ________;
B) ________;
C) ________; and
D) ________.

4.0 BASIC PROJECT CONFIGURATION

4.1 Basic Project Configuration

The Basic Project Configuration shall consist of the following:

[Revise this list as necessary based on the requirements of the Project.]

A) The horizontal and vertical alignments;
B) Number of intersections/overpasses/underpasses;
C) Number, location, and type of interchanges;
D) Number and type of signalized intersections;
E) Number of lanes;
F) The general location of the limits of the Project;
G) The minimum vertical clearances;
H) The ROW limits; and
I) ____________________.

4.2 Standard for Determining Materiality of Change in Basic Project Configuration

A) Any horizontal alignment shift of more than ___ m and/or any change in vertical alignment of more than ___ m of the roadway from the existing roadway elevations shown on the Basic Project Configuration Plan;
B) A change in the termini of the Project (either or both) by more than ___ m longitudinally;
C) Any change in the Project ROW limits depicted;
D) A change in minimum vertical clearances by ___ m or more; and/or
E) Any change in (A) through (D) requiring a change in the environmental documents included in the Reference Documents of the RFP.

4.3 Accuracy of Utility Information and Preliminary Design

A Utility that is designated as Quality Level A or B shall be considered accurately indicated to the extent following:

A) The facility’s actual horizontal location is within the following:
   1) ___ m for underground Utilities; and
   2) ___ m for overhead Utilities of the approximate horizontal centerline location of the Utility indicated in the Contract Documents; or
B) The facility’s actual vertical location is within ___ cm of any point or feature where an elevation for such point or feature is shown in the Contract Documents. If no elevation is shown, there is no limitation on vertical location.

The facility’s actual size shall be deemed to be inaccurately indicated due to a size differential exceeding a five percent limit and the type of Material does not differ materially than that indicated in the Contract Documents.

5.0 OPTIONS

5.1 Option 1, Schedule of Values

The Design-Builder shall include a Schedule of Values for the major items or components of Work in accordance with Instructions to Proposers, Appendix B, that the Department may elect to include, wholly or in part, in Contract Documents Part 10.

5.2 Alternate Proposals

5.2.1 Option 2, Alternate Pavement Design

[This is simply one possible option. The Department should determine if it, or any other option is desirable to be included and provide a description of the scope here.]

The Design-Builder may include an alternate pavement design as a “best value” alternative to the 20-year pavement design, including cross-sections and explanation and justification for the alternate design. The presentation of an alternate design is optional and not mandatory. If the Design-Builder proposes an alternate pavement design and it is accepted by the Department, it may be incorporated into the Contract either prior to Contract execution in Part 10 or by Order-on-Contract following Contract execution.

5.2.2 Option 3, ________

6.0 DEPARTMENT-PROVIDED MATERIAL OR EQUIPMENT

[The Department should determine if it will provide any Material or Equipment and modify this wording accordingly.]

The Department will not be providing any Material or Equipment for Design-Builder’s use.
This page is intentionally left blank.
(Project Name)
DESIGN-BUILD PROJECT

PIN _____________

DB CONTRACT DOCUMENTS
PART 1 - AGREEMENT

APPENDIX II

FEDERAL CONTRACT PROVISIONS

(Project Name)
DESIGN-BUILD PROJECT

PIN __________

DB CONTRACT DOCUMENTS
PART 2
DB SECTION 101

ABBREVIATIONS, SYMBOLS, AND TERMS AND DEFINITIONS

(This DB Section 101’s abbreviations and terms should be updated on a project-by-project basis. The abbreviations and terms currently contained in this sample document are representative of abbreviations and terms common to NYSDOT and DB projects.)
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<thead>
<tr>
<th>Section</th>
<th>General Changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>DB 101-1</td>
<td>Minor revisions to abbreviations due to Agency/Office name changes</td>
</tr>
</tbody>
</table>
New York State Department of Transportation

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DB SECTION 101
ABBREVIATIONS, SYMBOLS, AND TERMS AND DEFINITIONS

Wherever in these Plans, Specifications, or other Contract Documents the following terms, abbreviations, or symbols are used, the intent and meaning shall be interpreted as follows in this Section 101.

DB 101-1 ABBREVIATIONS

Wherever the following abbreviations are used in these Contract Documents, they are to be construed the same as the respective expressions represented. Some of these abbreviations may be acronyms and may appear without periods.

A.A.N American Association of Nurserymen
A.A.R. Association of American Railroads
A.A.S.H.T.O American Association of State Highway and Transportation Officials
A.G.C Associated General Contractors of America
A.I.A. American Institute of Architects
AISC American Institute of Steel Construction
A.I.S.I. American Iron and Steel Institute
A.N.S.I. American National Standards Institute, Inc.
A.O.A.C. Association of Official Agricultural Chemists
A.R.A. American Railway Association
A.R.E.A. American Railway Engineering Association
A.R.T.B.A American Road and Transportation Builders Association
A.S.C.E. American Society of Civil Engineers
A.S.L.A. American Society of Landscape Architects
A.S.M.E. American Society of Mechanical Engineers
A.S.T.M. American Society for Testing and Materials
A.W.P.A. American Wood-Preservers Association
A.W.S. American Welding Society
A.W.W.A. American Water Works Association
BAFO Best and Final Offer
CCE Construction Compliance Engineer
CCM Construction Compliance Monitor
CD-ROM Compact Disc – Read Only Memory
CERCLA Comprehensive Environmental Response, Compensation and Liability Act
CFR Code of Federal Regulations
CPM Critical Path Method
CRU Contract Review Unit
CSL Contract Submittal List
DB Design-Build
DBA Decibels, A-scale
DBE Disadvantaged Business Enterprise
DCE Design Compliance Engineer
D.C.E.D. Deputy Chief Engineer for Design
D.C.E.S. Deputy Chief Engineer for Structures Design and Construction
D.C.E.T.S. Deputy Chief Engineer for Technical Services
DCM Design Compliance Monitor
DONSI Determination of No Significant Impact
New York State Department of Transportation

DRB Disputes Review Board
E.E.I. Electrical Engineering Institute
EIS Environmental Impact Statement
EMT Emergency Medical Technician
EPA Environmental Protection Agency
ESDC Empire State Development Corporation
FAR Federal Acquisition Regulations
FHWA Federal Highway Administration
FONS Finding Of No Significant Impact
F.S.S. Federal Specifications and Standards, General Services Administration
IA Independent Assurance
ISO International Standards Organization
ISTEA Inter-modal Surface Transportation Efficiency Act of 1991
ITP Instructions to Proposers
ITS Intelligent Transportation System
LLC Limited Liability Company
LOI Letter of Interest
MAP Manual of Administrative Practices
MBE Minority-owned Business Enterprise
MPO Metropolitan Planning Organization
MPT Maintenance and Protection of Traffic
MSDS Material Safety Data Sheet
M.U.R.K. Manual on Uniform Record Keeping
N/A Not Applicable
NCR Non-Conformance Report
N.E.M.A. National Electrical Manufacturers Association
NEPA National Environmental Policy Act
NHS National Highway System
NPDES National Pollutant Discharge Elimination System
NTP Notice to Proceed
NYCRR Official Compilation of Codes, Rules and Regulations of the State of New York
NYSDOL New York State Department of Labor
NYSUCP New York State Unified Certification Program
OCR Office of Civil Rights
OOC Order on Contract
OQA Owner’s Quality Assurance
OSHA Occupational Safety and Health Administration, United State Department of Labor
PC Price Center
P.C.C.M. New York State Prestressed Concrete Construction Manual
PCP Progress Check Point
PCV Price Center Value
PE Preliminary Engineering
PPS-C Contract Periodic Payment Schedule
PPS-P Proposal Periodic Payment Schedule
PS Performance Specification
QA Quality Assurance
QC Quality Control
QCM Quality Control Manager
RFP Request for Proposals

_________ Project
PIN ___________
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>RFQ</td>
<td>Request for Qualifications</td>
</tr>
<tr>
<td>RLOI</td>
<td>Request for Letter of Interest</td>
</tr>
<tr>
<td>ROD</td>
<td>Record of Decision</td>
</tr>
<tr>
<td>ROW</td>
<td>Right Of Way</td>
</tr>
<tr>
<td>R.M.E.</td>
<td>Regional Materials Engineer</td>
</tr>
<tr>
<td>S.A.E.</td>
<td>Society of Automotive Engineers</td>
</tr>
<tr>
<td>SBA</td>
<td>Small Business Administration</td>
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<tr>
<td>S.C.M.</td>
<td>New York State Steel Construction Manual</td>
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<tr>
<td>SEP-14</td>
<td>Special Experimental Project 14</td>
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<td>SHPO</td>
<td>State Historic Preservation Office</td>
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<tr>
<td>SI</td>
<td>International System</td>
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<tr>
<td>SOQ</td>
<td>Statement of Qualifications</td>
</tr>
<tr>
<td>SP</td>
<td>Special Provision</td>
</tr>
<tr>
<td>SPDES</td>
<td>State Pollutant Discharge Elimination System</td>
</tr>
<tr>
<td>S.P.N.</td>
<td>Standardized Plant Names adopted by The American Joint Committee on Horticultural Nomenclature</td>
</tr>
<tr>
<td>S.S.P.C.</td>
<td>Steel Structures Painting Council</td>
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<tr>
<td>STAA</td>
<td>Surface Transportation Assistance Act of 1982</td>
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<tr>
<td>STURAA</td>
<td>Surface Transportation and Uniform Relocation Assistance Act of 1987</td>
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<td>TBD</td>
<td>To Be Determined</td>
</tr>
<tr>
<td>TEA-21</td>
<td>Transportation Equity Act for the 21st Century</td>
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<td>United States</td>
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<tr>
<td>USC</td>
<td>United States Code</td>
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</tr>
<tr>
<td>UST</td>
<td>Underground Storage Tank</td>
</tr>
<tr>
<td>VE</td>
<td>Value Engineering</td>
</tr>
<tr>
<td>VECP</td>
<td>Value Engineering Change Proposal</td>
</tr>
<tr>
<td>WBE</td>
<td>Women-owned Business Enterprise</td>
</tr>
<tr>
<td>WBS</td>
<td>Work Breakdown Structure</td>
</tr>
</tbody>
</table>
DB 101-2 SYMBOLS

Some of the symbols for units of measurement used in the Contract Documents are defined as shown in Table 101-A. The symbols for other units of measurement used in the Contract Documents are as defined in A.S.T.M. (American Society for Testing and Materials) Designation E-380, or in the various specifications and tests referenced in the Contract Documents.

TABLE 101-A - SYMBOLS

<table>
<thead>
<tr>
<th>As used in the Contract Documents</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>ft</td>
<td>feet</td>
</tr>
<tr>
<td>in</td>
<td>inches</td>
</tr>
<tr>
<td>mm</td>
<td>millimeter</td>
</tr>
<tr>
<td>m</td>
<td>meter</td>
</tr>
<tr>
<td>km</td>
<td>kilometer</td>
</tr>
<tr>
<td>km/h</td>
<td>kilometer per hour</td>
</tr>
<tr>
<td>mm²</td>
<td>square millimeter</td>
</tr>
<tr>
<td>m²</td>
<td>square meter</td>
</tr>
<tr>
<td>ha</td>
<td>hectare (10 000 m²)</td>
</tr>
<tr>
<td>km²</td>
<td>square kilometer</td>
</tr>
<tr>
<td>mm³</td>
<td>cubic millimeter</td>
</tr>
<tr>
<td>m³</td>
<td>cubic meter</td>
</tr>
<tr>
<td>L</td>
<td>liter</td>
</tr>
<tr>
<td>g</td>
<td>gram</td>
</tr>
<tr>
<td>kg</td>
<td>kilogram</td>
</tr>
<tr>
<td>t</td>
<td>metric ton (1 000 kg)</td>
</tr>
<tr>
<td>Pa</td>
<td>Pascal</td>
</tr>
<tr>
<td>kPa</td>
<td>kilopascal</td>
</tr>
<tr>
<td>MPa</td>
<td>megapascal</td>
</tr>
<tr>
<td>N</td>
<td>Newton</td>
</tr>
<tr>
<td>m³/s</td>
<td>cubic meter per second</td>
</tr>
<tr>
<td>kg/m³</td>
<td>kilogram per cubic meter</td>
</tr>
<tr>
<td>°C</td>
<td>degree Celsius</td>
</tr>
</tbody>
</table>

DB 101-3 TERMS AND DEFINITIONS

When the following terms are used in the Plans, Specifications, other Contract Documents, and Department correspondence, the intent and meaning shall be interpreted as follows:

Acceptance - A determination by the Federal Highway Administration (FHWA.) regarding compliance with applicable Governmental Rules.

Acceptance Program - All factors that comprise the Department’s determination of the quality of the product as specified in the Contract Documents. These factors include Verification Sampling and Testing and Department Oversight and auditing of the Design-Builder’s activities and may include the Design-Builder’s Quality Control (QC).
Act of God - An unusual, sudden, and unexpected manifestation of the forces of nature, the effect of which could not have been prevented by reasonable human foresight, pains, and care.

Addenda - Supplemental additions, deletions, and modifications to the provisions of the Request for Proposals (RFP), including the Standard Specifications, after the Advertisement date of the RFP.

Administrative Plans - Those Plans that contain general project or plan information such as cover sheets, index sheets, and similar non-technical information.

Advertisement - A public announcement inviting prospective Proposers to obtain a Request for Qualifications (RFQ) or RFP and submit a Statement of Qualifications (SOQ) or a Proposal, as applicable.

Affiliate - Any Person which directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the following:
   A) The Design-Build; or
   B) Any Principal Participant.

An Affiliate may also be any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially or of record, by the following:
   1) The Design-Build;
   2) Any Principal Participant; or
   3) Any Affiliate of the Design-Build under part (A) of this definition.

For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, by family relationship, or otherwise.

Alternate Proposal - A Proposal submitted with the base Proposal that supplements, but does not substitute for, the base Proposal that responds to the RFP requirements. An Alternate proposal shall not conflict with criteria contained in the environmental documents (ROD, FONSI, or categorical exclusion, as appropriate for the Project). An Alternate proposal may provide alternate solutions (affecting both quality and price) relating to, but not limited to, the Design-Build’s capability, resources, management tools, and design, construction and technical innovation, that are almost always, but not necessarily, outside of the requirements of the RFP, except for the environmental criteria.

Amendment - A formal alteration by addition, deletion, or modification of the terms of the executed Contract.

Approval - The Department’s written statement indicating that the subject Work complies with Contract requirements. Approvals will only be given for those submittals, activities, or Work specifically identified for “Approval” or “approval” in the Contract Documents. See also DB Section 105-15.

Approved List - The list of Materials, Equipment, Manufacturers, fabricators, or Material Suppliers approved by the Materials Bureau under a particular Specification. The Approved Lists are published periodically and are available from the Materials Bureau.

Artificial Activity - An activity that is not encompassed within the meaning of the definition of Work.
As-Built Plans - Final Plans reflecting the Work as actually performed under the Contract.

Award - The decision of the Department to accept a responsive Proposal from a responsible Proposer that provides the best value to the Department for the Work identified in the RFP, subject to the execution and approval of a satisfactory Contract, provision of Labor and Material and Performance Bonds to secure the payment and performance thereof, provision of such insurance as is required under the Contract, and the satisfaction of such other conditions as may be specified or otherwise required by law.

Baseline Progress Schedule - The time-scaled, cost-loaded, and resource-loaded Critical Path network, updated from time to time in accordance with the Contract and depicting the Price Centers and subordinate activities and their respective prices (distributed over time), durations, sequences, and interrelationships that represent the Design-Builder’s Work plans; the Design-Builder’s Work Breakdown Structure (WBS) for designing, constructing, and completing the Project; and the Contract Price, distributed over the period of the Contract.

Basic Project Configuration - The salient characteristics of the Project as defined and/or illustrated in the RFP, including any permitted deviations thereto contained in the Design-Builder’s Proposal. Basic Project Configuration elements may include the following:

A) The horizontal and vertical alignments;
B) Number of intersections/overpasses/underpasses;
C) Number, location and type of interchanges;
D) Number and type of signalized intersections;
E) Number of lanes;
F) The general location of the limits of the Project;
G) The minimum vertical clearances; and
H) The Right of Way (ROW) limits.

Basic Project Configuration Plan - The Plan designated as such in the Contract Documents that depicts the Basic Project Configuration within the limits specified in the Contract. In general, the Basic Project Configuration Plan describes fundamental elements of the Project that must be included as part of the final design and construction.

Basis of Payment - The terms under which the Design-Builder is paid for Work.

Bridge - The term Bridge shall apply to any structure, whether single or multiple span construction, with a clear span in excess of 6 096 mm when measurement is made horizontally along the center line of Roadway from face to face of abutments or sidewalls immediately below the copings or fillets; or, if there are no copings or fillets, at 152 mm below the bridge seats or immediately under the top slab, in the case of frame structures. In the case of arches, the span shall be measured from spring line to spring line. All measurements shall include the widths of intervening piers or division walls, as well as the width of copings or fillets.

Calendar Day - Every Day shown on the calendar, beginning at 12:00 a.m. Eastern time.

Chief Engineer - The Chief Engineer of the New York State Department of Transportation.
City - A subdivision of the State of New York that may be used to designate or identify the location of the proposed Work.

Commissioner - The Commissioner of the New York State Department of Transportation.

Composite Items - Items that consist of rock and non-rock components and are limited to unclassified excavation and trench excavation.

Comptroller - The head of the Office of the State Comptroller.

Construction Compliance Engineer - The Department’s representative with primary responsibility for monitoring and/or auditing the Design-Builder’s construction and environmental field activities for compliance with the Contract’s requirements.

Construction Compliance Monitor - A representative of the Construction Compliance Engineer (CCE), with responsibility for monitoring and/or auditing the Design-Builder’s construction activities for compliance with the Contract’s requirements.

Construction Subcontractor - A Subcontractor (or Affiliate) retained by the Design-Builder that is involved in the actual construction of the Project.

Construction Zone - The area from the first traffic control sign announcing that roadwork is being performed ahead to the last sign announcing the end of the roadwork.

Constructor - A Principal Participant or Subcontractor (or Affiliate) retained by the Design-Builder that is involved in the actual construction of the Project.

Consultation and Written Comment - The Department’s reviews, observations, and/or inspections based solely on information submitted by the Design-Builder (not based on any independent investigation or inquiry by the Department) and the Department’s written responses resulting from such Department actions. See also DB Section 105-15.

Contract - The written agreement between the Department and the Design-Builder setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the Work, the furnishing of labor and Materials, and the Basis of Payment. The Contract includes the Contract Documents identified in the RFP, the Design-Builder’s Proposal Information, the Design-Builder’s Price Proposal (with the exception of the Proposal Bond), the Notice To Proceed (NTP), and any Supplemental Agreements, Amendments, and Orders on Contract that are required to complete the design and construction of the Work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

Contract Documents - The Contract Documents shall include the Agreement, DB Section 100, Design Criteria, Performance Specifications, Standard DB Special Provision to the Standard Specifications, DB Utility requirements, RFP Plans, engineering data, New York State Department of Transportation Standard Specifications (construction and Materials), the Design-Builder’s Proposal Information, the Design-Builder’s Price Proposal (with the exception of the Proposal Bond), any Addenda to the Specifications, and all provisions required by law to be inserted in the Contract whether actually inserted or not. Whenever separate publications and the New York State Department of Transportation’s Standard Specifications are referenced in the Contract Documents, it is understood to mean the publication and Specifications, as amended, which are current on the date of Advertisement, unless otherwise noted.
New York State Department of Transportation

Contract Item - A specifically described unit of Work for which a price is provided in the Contract.

Contract Price - The total amount paid for the Work to be performed under the Contract, as it may be adjusted from time to time to account for Orders on Contract.

Contract Time - The time specified in the Contract and/or RFP for completion of the Contract. This time may be defined as a specified fixed date, a given number of Work Days, a given number of Calendar Days, or a combination of the above. The Contract Time may be amended by mutual written agreement to include authorized extensions of time, as the performance of the Contract requires.

Cost - All expenditures, including design costs, wholly and necessarily incurred, whether on or off the Site, with respect to the Work and overhead, finance, and other charges properly allocable thereto. Cost does not include any allowance for profit.

County - A subdivision of the State of New York that will be used to designate or identify the location of the proposed Work.

Critical Path - Each path shown on the Baseline Progress Schedule for which there is zero float.

Cultural Resource - Any prehistoric or historic period artifact, site, building, structure, material remain, or traditional use area resulting from, or associated with, human cultural activity. Historically important cultural resources are those eligible for inclusion on the National Register of Historic Places.

Culvert - The term Culvert shall apply to any structure, whether of single or multiple span construction, with an interior width of 6 096 mm or less when measurement is made horizontally along the center line of roadway from face to face of abutments or sidewalls immediately below the copings or fillets, or, if there are no copings or fillets, at points 152 mm below the bridge seats or immediately under the top slab in the case of frame structures. In the case of arches, the span shall be measured from spring line to spring line. All measurements shall include the widths of intervening piers or division walls, as well as the widths of copings or fillets.

Day - A Calendar Day, unless otherwise defined or modified.

Definitive Design - The point in the design process at which the design concepts are defined and the Basic Project Configuration is finalized.

Department - The New York State Department of Transportation, including staff and managers who have been delegated certain contractual and technical authority by the Commissioner. The Department maintains a Web site at www.dot.state.ny.us.

Department-Directed Changes - Any changes in the Work as described in the Contract (including changes in the standards applicable to the Work) that the Department has directed the Design-Builder to perform as described in the Contract.

Departmental Geotechnical Engineer - The Regional Geotechnical Engineer or his/her authorized representative, or a Geotechnical Engineer of the Geotechnical Engineering Bureau acting at the request of the Regional Geotechnical Engineer.

Departmental Engineering Geologist - An Engineering Geologist of the Geotechnical Engineering Bureau authorized by the Director of Geotechnical Engineering Bureau to perform the duties required under these Specifications.
Department's Project Manager - The engineer representing the Department and having direct supervision of the administration and execution of the Contract under the direction of the Regional Director.

Design Acceptance - Written confirmation by the Department after submittal and review of the As-Built Plans that the design conforms to the Contract Documents and reflects the As-Built conditions. Required as part of Final Acceptance.

Design-Build - The Project’s delivery methodology under which the Department contracts with a single entity that has responsibility for the design and construction of the Project under a single contract with the Department.

Design-Build Team - See, Design-Build.

Design-Build - The Person selected pursuant to the RFP which enters into the Contract with the Department to design and construct the Project (also referred to as the “Design-Build Team”).

Design-Build’s Project Manager - The Design-Build’s on-site designated representative and single point of contact for all aspects of the Work.

Design Compliance Engineer - The Department’s representative with primary responsibility for monitoring and/or auditing the Design-Build’s design and engineering activities for compliance with the Contract’s requirements.

Design Compliance Monitor - A representative of the Design Compliance Engineer (DCE), with responsibility for monitoring and/or auditing the Design-Build’s design activities for compliance with the Contract’s requirements.

Design Documents - Maps, Design Plans, Project Specifications, reports, calculations, records, submittals, and other specified documents prepared by the Design-Build and/or Designer in the course of performing Project engineering and design Work.

Design Plan - The Plan prepared by the Designer during the design development to represent the Project.

Design Requirements - Those Specifications contained the Contract that specify the minimum acceptable technical standards and define the limits within which the design of the Project shall be developed and conducted.

Design Review - A comprehensive and systematic examination of the design as specified in the Contract to verify that it is in conformance with the requirements of the Contract, as performed by the Design-Build for all stages of the design except As-Built Plans, which is performed by the Department. During all stages of the design, except As-Built Plans, the Department will contribute to the review through Oversight including participation, auditing and spot-checking.

Design Unit - A distinct portion of the Project of which the design is performed as a contiguous, integrated unit.

Designer - A Principal Participant, specialized Subcontractor, or in-house designer that leads the team furnishing or performing the design of the Project.
Differing Site Condition - Subsurface or latent physical conditions that are encountered at the Site and differ materially from the conditions indicated in the Contract. Also, unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the type of Work provided for in the Contract, provided in all cases that the Design-Builder had no actual or constructive knowledge of such conditions as of the Proposal Due Date.

Directive Plans - Those Plans that depict required elements and components of the Project within specifically defined parameters. The Design-Builder has limited or no latitude to adjust components or details shown on Directive Plans. Examples of Directive Plans include the following:

A) Basic Project Configuration Plans that depict the Basic Project Configuration within the limits defined in the Contract;
B) Standard Plans;
C) Final Department Plans; and
D) Right of Way Plans.


Discussions - Written or oral exchanges that take place after the establishment of the Competitive Range with the intent of allowing the Proposer to revise its Proposal.

Dispute - A matter of Contract performance or Contract compensation, including granting of extensions of time, in which there is or may be disagreement between the Design-Builder and the Department and which may involve adjustment of Contract Items or the addition of new items to the Contract, extension of time for performance, and/or adjustments in compensation necessitated by the resolution of such disagreement.

Employee - Any person working on the Project and who is under the direction or control of, or receives compensation from, the Design-Builder or any Subcontractor.

Environmental Approvals - The Governmental Approvals contained or referenced in the environmental provisions of the Contract.

Environmental Resource - The physical and biological components of the human and natural environment.

Equipment - All apparatus, machinery, tools, and equipment, together with the necessary supplies for their upkeep and maintenance, necessary for the proper construction and acceptable completion of the Work.

Erosion Control - Erosion control is any action taken or item used as part of the Project, or as a separate action, to minimize the destructive effects of wind and water on surface soil. The use and placement of berms and dams, fiber mats, grasses, sod, mulches, slope drains, sediment basins, and drainage systems may be temporary and used only during construction or permanent and installed for the anticipated life of the facility.

Escrowed Proposal Documents - Pricing data assembled by the Design Builder, placed in escrow, which supports and explains the basis of the Price Proposal. The Escrowed Proposal Documents are used during
Project execution for negotiation of Orders on Contract and resolution of disputes and claims and other purposes set forth in the Contract.

**Fabricator** - An individual, partnership, firm, Limited Liability Company (LLC), corporation, or joint venture with which the Design-Builder subcontracts to assemble, construct, or otherwise substantially alter Material or supplies into assemblies, components, or finished items for inclusion into the Work prior to resale.

**Federal-aid** - Joint cooperative construction or reconstruction of the National Highway System (NHS) and the Dwight D. Eisenhower National System of Interstate and Defense Highways (Interstate) and bridges, grade crossing elimination work, or other work performed with monies contributed to the State by the federal government under Title 23 of the USC and amendments thereto.

**Federal-aid Project** - An identification applied to Federal-aid work for the purpose of the records of the FHWA.

**Final Acceptance** - The acceptance of the Work by the Commissioner upon the completion of the Work as defined in the Contract and through Oversight and Design Acceptance of that Work by the Department.

**Final Agreement** - The agreement between the New York State Department of Transportation and the Design-Builder, stating the net increase or decrease of the cost of Work completed from the total cost of Work authorized under the Contract. The Final Agreement includes the Final Estimate as an attachment.

**Final Department Plans** - Those RFP Plans included in the Contract Documents that are 100% complete and approved by the Department and ready for construction

**Final Estimate** - A listing of the final amount and cost of each Contract Item, the total cost of the Contract Work as authorized by the last Order on Contract, the total cost of the Work completed by the Design-Builder, and any deductions from the amount to be paid to the Design-Builder.

**Fixed Quantity Item** - An item of Work where payment is restricted to the quantity stated in the Pricing Information. A Fixed Quantity Item is an item of Work that does not require measurement(s) to establish the actual quantity.

**Float** - The difference between early completion times and late completion times for activities as shown on the Baseline Progress Schedule and including any float contained within an activity as well as any period containing an Artificial Activity.

**Force Account** - The Basis of Payment for the directed performance of design and/or construction Work, with payment based on the actual cost of labor, Equipment, and Materials, and including various constant activities.

**Foreign Contractor** - In the case of an individual, a person who is not a resident of the State; in the case of a partnership, one having one or more partners who is not a resident of the State; and in the case of a corporation, one not organized under the laws of the State.

**Geotechnical Engineering Bureau** - The Department’s Geotechnical Engineering Bureau has the responsibility for providing all Geotechnical Engineering Services as part of the Department’s Quality Assurance (QA) responsibilities.
Governmental Approval - Any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, registration, or ruling required by or with any Governmental Person in order to design and construct the Project.

Governmental Person - Any federal, state, local, or foreign government; any political subdivision; or any governmental, quasi-governmental, judicial, public, or statutory instrumentality, administrative agency, authority, body, or entity other than the Department.

Governmental Rule - Any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement, other governmental restriction, or any similar form of decision of, determination by, interpretation of, or administration of any of the foregoing by any Governmental Person, which is applicable to the Work or the Project, whether now or hereafter in effect.

Hazardous Materials - The term Hazardous Materials shall mean any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 United States Code (USC) 9601, et seq.; the Hazardous Materials Transportation Act, 49 USC 5101, et seq.; the Resource Conservation and Recovery Act, 42 USC 6901, et seq.; the Toxic Substances Control Act, 15 USC 2601, et seq.; the Clean Water Act of 1977, 33 USC 1251, et seq.; the Clean Air Act, 42 USC 7401, et seq.; and the New York State Environmental Conservation Law, or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material.

Highway - The whole strip of land bounded by the ROW lines.

Holidays - Holidays will be observed as follows, unless otherwise provided by the New York State Executive Law:

A) New Year’s Day;
B) Martin Luther King Jr.’s Birthday;
C) Presidents’ Day;
D) Memorial Day;
E) Independence Day (Fourth of July);
F) Labor Day;
G) Columbus Day;
H) Veterans’ Day;
I) Thanksgiving Day; and
J) Christmas Day.

If any Holiday above falls on a Saturday or Sunday, the previous Friday or following Monday, respectively, shall be considered a Holiday.

Incentive/Disincentive - Predetermined adjustment to the total contract amount for each day or portion thereof that the work is completed ahead of or behind a specific milestone, phase or contract completion date.
**Incremental Costs** - Those costs, if any, which the Design-Builder incurs as a result of a particular circumstance which the Design-Builder would not have incurred but for the circumstance. In determining such costs, one would determine the total cost which the Design-Builder would have incurred had the circumstance not occurred, and subtract such amount from the costs actually incurred. The difference is the “increment.” For example, if the Design-Builder originally had to relocate three water lines, and a fourth water line is discovered in the same area which can be relocated by the same crew, subject to the provision of the Contract, the Incremental Costs would be the costs of keeping the crew working the additional time to relocate the fourth water line, and would not include any portion of the expense of moving the crew to the Site in the first place.

**Independent Assurance** - Activities that are an unbiased and independent evaluation of all the sampling and testing procedures, Equipment calibration, and qualifications of personnel (Design-Builder’s or Department’s) used in the Acceptance Program, including the Design-Builder’s QC. The Independent Assurance (IA) agent for the Project will be the Department’s Geotechnical Engineering or Materials Bureau.

**Indicative Plans** - Those Plans that represent the nature and type of Work to be designed and constructed as part of the Project and reflect items for which the Department has no particular view on the specific configuration or Material used in the final product, such as the following:

A) Structure type (concrete or steel);
B) Pavement type (concrete or asphalt);
C) Drainage Material or size; or
D) Pile type.

Indicative Plans do not necessarily reflect the final locations, quantities, or all elements required to complete the design.

**Inspection** - The act of viewing or looking carefully at construction, manufacturing, design, safety, and maintenance practices, processes, and products, including document control and Working Plan review, to ensure the practices, processes, and products comply with the requirements contained in the Contract and activities specified in the Contract, Design Plans, and/or Project Specifications.

**Inspector** - A Design-Builder representative detailed to inspect methods and Materials, Equipment, and Work both on and off the Site of the Project.

**Instructions to Proposers** - Those documents containing directions for the preparation and submittal of information by the Proposers in response to the RFP.

**Interim Payment** - Payments made per Part 5 Special Provision 697.

**Laboratory** - A testing laboratory retained by the Design-Builder for QC sampling and testing or by the Department for Verification Sampling and Testing, including the Department’s Geotechnical Engineering Bureau or Materials Bureau.

**Labor and Material Bond** - The approved form of security, executed by the Design-Builder and its Surety or Sureties, guaranteeing the payment of all legal charges, costs, amounts, and debts pertaining to the design and construction of the Work.
Landscape Development - Any development or item used as part of the Project or as a separate action through the use, placement, and management of land and elements for aesthetic enhancement, such as decorative surfaces and wall faces, benches, waste receptacles, tables, and plant Materials consistent with a specific, approved landscape architectural Design Plan.

Landscaping - The use and placement of plant Materials (trees, shrubs, vines, and certain ground covers) consistent with an approved landscape architectural Design Plan. Planting vegetation for screening and erosion control purposes does not constitute landscaping.

Land Surveyor - A Land Surveyor licensed or otherwise authorized to practice surveying under Article 145 and registered or otherwise authorized under Article 130 of the New York State Education Law.

Laying Length of Pipe - Meters (laying length) of pipe shall be measured by multiplying the number of whole units by the nominal length of each unit and adding thereto the length of any fractional units incorporated in the Work. The nominal length of a unit or fractional unit shall be the inside measured length from butt end to butt end and exclusive of the bell or groove on the female end.

Lead Principal Participant - The Principal Participant that is designated by the Proposer as having the lead responsibility for managing the Design-Builder’s organization.

Listed Material Source - A local source of Material that may be listed and described in the Plans and in the Contract for possible use on the Project.

Manufacturer - A Manufacturer is an entity that operates or maintains a factory or establishment that produces on its premises the Material, Equipment, or supplies obtained by the Design-Builder for incorporation into the Project.

Material - Any approved material acceptable to the Commissioner and conforming to the requirements of the Specifications.

Material Detail - That information, unique to a particular product, that is necessary to adequately identify it or to describe the proper handling, installation, or use of that product.

Material Supplier - A Material Supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A Material Supplier is a firm that engages in, as its principal business, and in its own name, the purchase and sale of the products in question. A Material supplier who deals in bulk items such as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Packagers, brokers, manufacturer’s representatives or other persons who arrange or expedite transactions are not Material Suppliers

Materials Bureau - The Department’s Materials Bureau has a responsibility in the QA program for Materials to be used on the Contract and maintains a testing facility in Albany, New York.

Method of Measurements - The method in which a Contract Item or Pay Item is measured for conformance with the pay unit.

Minority-owned Business Enterprise - A business enterprise, including a sole proprietorship, partnership, or corporation that has the following attributes:
A) It is at least 51% owned by one or more minority group members;
B) It is an enterprise in which such minority ownership is real, substantial, and continuing;
C) It is an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
D) It is an enterprise authorized to do business in the State and it is independently owned and operated.

**Necessary Basic Project Configuration Change** - Material changes in the Basic Project Configuration which are necessary to correct an error, omission, or defect in the Basic Project Configuration Plans as shown or described in the Contract (with the understanding that a change shall be deemed “necessary” only if the error, omission, or defect creates a problem which cannot reasonably be corrected without a material change in the Basic Project Configuration).

**Notice to Proceed** - Written notice to the Design-Builder to proceed with some or all of the Work as specified in the Contract including, when applicable, the beginning date of the Contract Time. See also, Work Order.

**Order on Contract** - A written order issued by the Commissioner covering contingencies; Extra Work; deductions; increases or decreases; time extensions; and additions, alterations, or omissions to the Plans or Specifications.

**Oversight** - Actions by the Department to satisfy itself that the Design-Builder is designing, constructing and managing the Work in accordance with the Contract Documents. It includes actions identified in the Contract Documents by the terms QA, accept/acceptance, inspect/inspection, audit, ensure, certify, confirm, review, verify or terms of similar import. Department comments as a result of Oversight are conveyed to the Design-Builder through Consultation and Written Comment. Neither the activity of Oversight nor the lack of Consultation and Written Comment on the part of the Department shall be construed to relieve the Design-Builder and its organization from the responsibility and costs for meeting all Contract and regulatory requirements.

**Part** - A major subdivision of the Contract Documents.

**Partial Suspension** - Suspension of Work on some, but not all, items.

**Partnering** - Those actions taken to include all parties with an appropriate and vested interest in the Project in the management of the Project, such that the Project is completed in the most efficient, timely, safe, and cost effective manner for the mutual benefit of all concerned. These actions include, but are not limited to, communication, organization, establishing goals, continuous improvement, problem identification, conflict resolution, and managing change. Interested parties may include, but are not limited to, the Department; the Design-Builder; Subcontractors; Suppliers of goods and services to the Project; the community within which the Project is constructed; the community served by the Project; federal, State, and local governments or other public agencies; and utilities.

**Pay Item** - See Contract Item, above.

**Performance Bond** - The approved form of security, executed by the Design-Builder and its Surety or Sureties, guaranteeing performance of all Work in compliance with the requirements of the Contract Documents, including all Orders on Contract, Amendments, and Supplemental Agreements pertaining thereto.
**Performance Specification** - A specification that establishes Contract requirements in terms of design parameters and performance parameters to be met. Also may include parameters for determining performance and corrective action to be taken.

**Periodic Payment Schedule** - The schedule submitted with the Design-Builder’s Proposal (which schedule may be amended by Order on Contract) that will be the basis for the assessment of periodic payments for each Price Center (PC).

**Person** - Any individual, firm, corporation, company, LLC, joint venture, voluntary association, partnership, trust, or unincorporated organization, or combination thereof.

**Plans** - The official Design Plans and applicable Standard Sheets, which show the location, character, dimensions, and details of the Work to be performed.

Also, the Design-Builder’s Design Plans showing profiles, typical cross sections, and other details; Working Plans; or exact reproductions which show the location, character, dimensions, and general or specific details of the Work to be done.

**Price Center** - A component of the Project for which the Design-Builder provides a Price Center Value (PCV) for all Work included in that component. A PC may be a major contract item or series of interrelated items as identified in the Pricing Information.

**Price Center Value** - That value allocated by the Design-Builder to a PC as set out in the Pricing Information.

**Price Proposal** - The portion of the Proposal that addresses the Project’s cost, Price Centers, Progress Check Points, payment schedule, and Proposal Bond. With the exception of the Proposal Bond, the Price Proposal is included in the Contract Documents at Award.

**Price Proposal Form** - The approved form on which the Department requires a Price Proposal to be prepared and submitted as part of the Proposal for the Work.

**Principal Participant** - Any of the following entities:

A) The Design-Builder (or Proposer);

B) An individual firm, all general partners, or joint venture members of the Design-Builder (or Proposer); and/or

C) All Persons and legal entities holding (directly or indirectly) a 15% or greater interest in the Design-Builder (or Proposer).

**Professional Engineer** - A Professional Engineer licensed or otherwise authorized to practice engineering under Article 145 and registered or otherwise authorized under Article 130 or the New York State Education Law.

**Progress Check Point** - A defined step towards the completion of Work within a PC identified in the Schedule of Progress Check Points.

**Project** - The improvements to be designed and constructed by the Design-Builder and all other Work product to be provided by the Design-Builder in accordance with the Contract Documents.
Project Specifications - Those Specifications developed by the Design-Builder to define and control the specific requirements, conditions, means, and methods to be used on the Project. Project Specifications will be based on the Contract requirements, including the Department’s Standard Specifications (as modified in the Contract Documents), and shall provide finished products that meet or exceed the quality requirements of the Contract. Project Specifications are subject to the review and Consultation and Written Comment of the Department’s Project Manager during Design Reviews.

Proposal - The offer of the Proposer for the Work, when executed and submitted in response to an RFP in the prescribed format and on the prescribed forms. The Proposal includes the Quality Proposal and the Price Proposal.

Proposal Bond - The security furnished with a Proposal to guarantee that the Proposer will enter into the Contract if the Proposer’s Proposal is accepted and satisfies all other conditions of Award.

Proposal Due Date - The date specified in the ITP on which the Proposal is due to the proper representative of the Department.

Proposal Information - The documents so designated in the ITP and submitted to the Department by the Proposer/Design-Builders in accordance with the ITP that will be included in the Contract Documents at Award. The Proposal Information is part of the Quality Proposal.

Proposal Revision - A supplemental Proposal submitted at the request of the Department allowing a responsive Proposer determined to be in the Competitive Range the opportunity to clarify its initial Proposal, correct Deficiencies or Weaknesses in the initial Proposal, submit additional information requested by the Department and/or desired by the Proposer, and submit a revised Price Proposal. A Proposal Revision is also known as a “Best and Final Offer (BAFO).” A request for Proposal Revision generally follows Discussions between the Department and the Proposers.

Proposal Revision Due Date - The date specified by the Department in its request for a Proposal Revision on which the Proposal Revision is due to the proper representative of the Department.

Proposer - A Person submitting an SOQ for the Project in response to an RFQ, and if selected for the Short-List, an entity submitting a Proposal.

Protect in Place - Any activity undertaken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, avoidance of a Utility’s location by construction Equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered a method in which to Protect in Place, whereas temporarily moving power lines to another location after cutting them would be considered a Temporary Relocation. The term includes both temporary measures and permanent installations meeting the foregoing definition.

Provisional Sum - An estimated amount set by the Department and so designated in the Pricing Information serving to provide for payment for specified items of Work or an expenditure which has not been quantified or detailed at the time the Contract is executed, which sum may include provision for Work to be executed or for goods, Materials, or services to be supplied.

Quality Assurance - All planned and systematic Oversight actions by the Department necessary to provide confidence that the Design-Builder is performing QC in accordance with the Quality Plan, that all Work complies with the Contract and that all Materials incorporated in the Work, all Equipment, and all
elements of the Work will perform satisfactorily for the purpose intended. Oversight actions include, but
are not limited to, monitoring and verification of design through auditing, spot-checking and participation
in the review of the design, and monitoring and verification of construction through auditing, spot
inspections and Verification Sampling and testing at production sites and the Project Site. Quality
Assurance also includes Independent Assurance, the Department’s Consultation and Written Comment,
documentation of QA activities, final inspection and Final Acceptance.

**Quality Assurance Program** - The overall quality program and associated activities including
Department QA, Design-Builder QC, the Contract’s quality requirements, and the Design-Builder’s
Quality Plan.

**Quality Control** - The total of all activities performed by the Design-Builder, Designer, Subcontractor,
producer or Manufacture to ensure that the Work meets Contract requirements. For design this includes,
but is not limited to, procedures for design quality, checking, design review including reviews for
constructability, and review and approval of Working Plans. For construction this includes, but is not
limited to, procedures for Materials handling and construction quality. Inspection, sampling and testing
of Materials, plants, production and construction; Material certifications; calibration and maintenance of
Equipment; production process control; and monitoring of environmental compliance. Quality Control
also includes documentation of all QC design and construction efforts.

**Quality Control Engineering Firm (QC Engineer)** - An independent engineering/testing firm
responsible for administering, managing and conducting the construction QC inspection, sampling and
testing specified in the Contract Documents and the Design-Builder’s Quality Plan. The QC Engineer
shall not be owned in any part or controlled by the Design-Builder, any Principal Participant or by any
Construction Subcontractor. The Designer or a firm associated with or subsidiary to the Designer, may
serve as the QC Engineer, except any Designer who is a Principal Participant or any Designer (or
subsidiary of a Designer) that is an Affiliate of any Principal Participant or Construction Subcontractor
shall not serve in the capacity of QC Engineer.

**Quality Control Manager** - The individual employed by the Design-Builder who is responsible for the
overall QC program of the Design-Builder, including the quality of management, design, and
construction.

**Quality Plan** - The plan that sets out the Design-Builder’s means of complying with its obligations in
relation to QC, which plan shall be provided and maintained in accordance with the Contract following
Consultation and Written Comment thereof by the Department’s Project Manager.

**Quality Proposal** - The portion of the Proposal consisting of the Proposal Information and the
Supplemental Selection Information.

**Reasonably Close Conformity** - Compliance with reasonable and customary manufacturing and
construction tolerances where working tolerances are not specified. Where working tolerances are
specified, Reasonably Close Conformity means compliance with such working tolerances. Without
detracting from the complete and absolute discretion of the Department’s Project Manager to insist upon
such tolerances as establishing Reasonably Close Conformity, the Department’s Project Manager may
accept variations beyond such tolerances as Reasonably Close Conformity where they will not materially
affect the value or utility of the Work and the interests of the State.

**Reasonably Compatible** - For purposes of the cumulative payment percentages shown on the Contract
Periodic Payment Schedule (PPS-C), the cumulative percentage shown at the quarter points (25%-50%-

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75%) on the PPS-C for each PC are within 10% of the cumulative percentages shown on the Baseline Progress Schedule for each PC.

**Reference Documents** - The documents provided with and so designated in the RFP. The Reference Documents, including Plans contained therein and/or so designated, are not Contract Documents and were provided to Design-Build for informational purposes only and are relied upon at the Design-Build’s own risk.

**Referenced Standard** - Any standard or Specification applicable to the Project established by reference contained in the Contract to a described publication.

**Region** - One of 11 geographical subdivisions of the State used to designate or identify the location of the proposed Work.

**Regional Director** - The director, acting through the Commissioner, who is delegated the authority and responsibility to execute the total Department prescribed Work Plans for his/her respective Region.

**Relocation** - Each removal, relocation, abandonment, and/or protection in place (including provision of temporary services as necessary) of any and all Utilities that is necessary in order to complete the Work as required by the Contract.

**Request for Proposals** - A document identifying the Project and its Work to be performed and Materials to be furnished in response to which a Proposal may be submitted by a Proposer/Design-Build. The RFP includes the ITP, Contract Documents, and Reference Documents. The RFP is issued only to Persons who are on the Short-List.

**Request for Proposals Plans** - Plans prepared by the Department during its PE, to the extent they are identified in the Contract Documents.

**Request for Qualifications** - The written solicitation issued by the Department seeking SOQs to be used to identify and Short-List the Proposers to receive the RFP for the Project.

**Responsible Engineer** - An engineer, employed by the Design-Build, who has qualified academically, has the requisite practical experience, has passed a recognized examination, and is currently licensed as such in the State of New York and who is in direct charge of the design of a designated Design Unit.

**Right of Way** - A general term denoting land, property, or interests therein (including easements), usually in a strip or parcel acquired for or devoted to a Highway.

**Right of Way Acquisition Schedule** - The schedule for acquisition of ROW permits or easements by the Department set forth in the Contract and/or ITP.

**Roadbed** - The graded portions of a Highway within top and side slopes, prepared as a foundation for the pavement structure and shoulders.

**Roadway** - The portion of a Highway included between the outside edges of the shoulders.

**Road Section** - That portion of a Highway included between the top of the slope in cut and the bottom of slope in fill.
Safety Plan - The plan that sets out the Design-Builder’s means of complying with its obligations in relation to Project safety, which plan shall be provided and maintain in accordance with DB Section 107-07.5 following Consultation and Written Comment by the Department’s Project Manager.

Samples - Representative quantities of Materials taken in specified amounts and frequencies for subsequent testing in accordance with specified standard procedures. Or, physical examples of Materials to be supplied or workmanship, which shall establish standards by which the Work shall be judged, provided such samples meet Contract requirements.

Schedule of Progress Check Points - The schedule describing the Progress Check Points (PCP) and stipulating dates by which PCPs are to be achieved in order to maintain periodic payments in accordance with the Contract.

Scope of the Project - The brief description of the Work to be performed to design and construct the Project as contained in the Contract.

Section - A subdivision of the Project or a subdivision of a Part of the Contract Documents.

Short-List - The list of those Proposers that have submitted SOQs that the Department determines, through evaluation of the SOQs, are eligible to receive an RFP and invited to submit Proposals.

Shoulder - The portion of the roadway contiguous with the Traveled Way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

Site - Those areas designated in writing by the Department for performance of Work and such additional areas as may, from time to time, be designated in writing by the Department for the Design-Builder’s use in performance of the Work. The Site initially includes the area within the ROW limits. For purposes of insurance, indemnification, safety, security requirements, and payment for use of Equipment, the term Site also includes any areas on which Relocation Work is performed and any property being temporarily used by the Design-Builder for storage of Equipment and/or construction Work.

Site Security Plan - The plan that sets out the Design-Builder’s means of complying with its obligations in relation to Site security, which plan shall be provided and maintained in accordance with the Contract following Consultation and Written Comment thereof by the Department’s Project Manager.

Soil Mechanics Bureau - See Geotechnical Engineering Bureau.

Special Provisions - Additions and revisions to the Design-Build Standard Specifications Section 100 and the Standard Provisions, Construction and Materials, covering conditions applicable to this individual Project.

Specialty Items - Work not usually performed by highway contractors and so designated in the Contract. Work that requires specialized knowledge, skill, or Equipment not ordinarily available in construction organizations and in general limited to minor components of the overall Contract. For purposes of this Contract, all engineering and design Work are considered Specialty Items.

Specifications - A general term applied to all provisions and requirements pertaining to performance of the Work.

Stakeholder - The Stakeholders for the Project may include the following:
A) The State, primarily represented by the Department, including its subsidiary agencies and departments;
B) The FHWA, for Federal-aid projects and projects on or affecting the Dwight D. Eisenhower National System of Interstate and Defense Highways or the National Highway System;
C) Other states and/or multi-state authorities directly affected by or cooperating with the development of the Project;
D) Federal and State regulatory and permitting agencies having jurisdiction over portions of the Work;
E) Counties, cities, towns, and villages within the State directly affected by the Project;
F) Other public or private entities impacted or potentially impacted by the Project, such as authorities, Utility Owners, transit systems, and railroads; and
G) Other entities specifically identified by the Department.

See Part 5 Special Provision 101 for a project-specific list of Stakeholders.

Standard Plans - Detailed Plans that depict the dimensional requirements and clearances of certain features of the Project and components, subassemblies, or systems to be incorporated into the Project, issued by the Department or other stakeholder, for general application and repetitive use in connection with the Project.

Standard Specifications - The Department’s most recent version of its Standard Specifications Construction and Materials, as amended.

State - When used, State means the State of New York, represented by the Department through the Commissioner.

Statement of Qualifications - The information prepared and submitted by a Proposer in response to the RFQ.

Structural Steel - Shapes, plates, H-piling, and sheet piling.

Structures - Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains, and other features which may be encountered in the Work and not otherwise classed herein.

Subcontractor - Any individual, firm, partnership, joint venture, LLC, or corporation to whom the Design-Builder, with the written consent of the Department, sublets any part of the Contract.

Substantial Completion - The point at which the Project, or Section thereof, is complete, such that it can be safely and effectively used by the public without further lane closures, barriers, cones, delays, disruption, or impediments, with all lanes open to traffic, as requested by the Design-Builder and Approved by the Department’s Project Manager. For conventional bridge and Highway work, it is the point at which all the following work is complete:

A) Bridge deck;
B) Parapet;
C) Pavement structure, completed to the final configuration of lanes;
D) Shoulder;
E) Permanent signing;
F) Utility Relocations;
G) Retaining structures;
H) A minimum of one application of striping;
I) Traffic barriers; and
J) Safety appurtenances.

Substantial Completion Date - The Date on which the Design-Builder is required to achieve Substantial Completion, per the Contract Documents.

Supplemental Agreement - Written agreement signed by the Department and the Design-Builder to perform work beyond the scope of the original Contract but in conjunction with it.

Supplemental Selection Information - Proposal. The Supplemental Selection Information will not be made a part of the Contract Documents at Award. The Supplemental Selection Information is part of the Quality Proposal.

Surety - The corporate body properly licensed in the State which has issued the Performance and/or Labor and Material Bond.

Suspension and Debarment - The disqualification of a Proposer or Design-Builder from proposing on the Work for a period of time determined in accordance with United States Department of Transportation (US DOT) regulations.

Temporary Relocation - Any interim Relocation of a Utility (i.e., the installation, removal, and disposal of the interim facility) pending installation of the permanent facility in the same or a new location, and any removal and reinstallation of a Utility in the same place with or without an interim relocation.

Termini - A general term used to describe the limits of the Project, and including the beginning and end of the Project, the ROW limits, pit sites, haul roads, and temporary and permanent construction or maintenance easements.

Test - Methods adopted by the Department and the Design-Builder to ascertain the quality, character, and acceptability of Materials and processes utilized in performing the Contract.

Time Related Dispute - Any dispute arising from any event not within the Design-Builder's control, performance, action, force, or factor which materially and adversely affects the scheduled time of performance depicted in the Design-Builder's most recent Department Baseline Progress Schedule submitted to the Department.

Total Proposal Price - The total proposed amount that will be considered to be the correct sum of all proposed PCVs.

Traveled Way - The portion of the highway included in the roadway for the movement of vehicles, exclusive of the shoulders.
Unbalanced Price Proposal - A Price Proposal may be unbalanced either Materially or Mathematically. A Materially Unbalanced Price Proposal is a Price Proposal that generates a reasonable doubt that awarding the Contract to the Proposer submitting the price Proposal will result in the lowest ultimate cost to the Department. A Mathematically Unbalanced Price Proposal is a Price Proposal containing lump sum or Unit Price items that do not reasonably reflect the actual costs plus a reasonable proportionate share of the Proposer’s anticipated profit, overhead costs, and other indirect costs.

Unit Price - The price established by the Contract for a specified unit quantity of Work that is measured for payment.

Utility - A Person, corporation, municipality, or public authority engaged in the distribution of electricity, gases, petroleum products, water, steam, the collection of wastewater, the operation of traffic control systems, or the provision of telecommunication services.

Utility Agreement - The agreements with Utility Owners as described in the Contract.

Utility Information - The Utility-related data set forth in the Contract.

Utility Owner - The owner or operator of any Utility (including Persons and Governmental Persons).

Utility Relocation Plans - The Design Plans for Relocation of a Utility impacted by the Project, to be prepared by the Design-Build or the Utility Owner, as designated in any applicable Utility Agreements.

Value Engineering Change Proposal - A proposal developed and documented by the Design-Build which (A) produces a net savings to the Department without impairing essential functions or characteristics of the Project (including the meeting of requirements contained in all Governmental Approvals); and (B) would modify or require a change in any of the requirements of or constraints set forth in the Contract Documents in order to be implemented. A Value Engineering Change Proposal (VECP) cannot be based solely upon a change in quantities.

Verification Sampling and Testing - Sampling and testing performed to validate the quality of the product. The Department, or a firm retained by the Department, will perform Verification Sampling and Testing.

Warranties - The written commitments of the Design-Build as set forth in the Contract regarding quality and performance over a specified period of time after Final Acceptance of the Project.

Women-owned Business Enterprise - Women-owned Business Enterprise means a business enterprise, including a sole proprietorship, partnership, or corporation that has the following attributes:

A) It is at least 51% owned by one or more US citizens or permanent resident aliens who are women;

B) It is an enterprise in which the ownership interest of such women is real, substantial, and continuing;

C) It is an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and

D) It is an enterprise authorized to do business in the State and it is independently owned and operated.
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**Work** - All of the administrative, design, engineering, real property acquisition support services, Utility support services, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, Material, Equipment, maintenance, documentation, and other duties and services to be furnished and provided by the Design-Builder as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance of the Project except for those efforts which the Contract Documents specify will be performed by the Department of other Persons. In certain cases, the term is also used to mean the products of the Work.

**Work Day** - A Calendar Day, exclusive of Sundays and State recognized legal Holidays, on which weather and other conditions not under the control of the Design-Builder will permit construction operations to proceed for the major part of the day on the principal item or items of Work which would normally be in progress at that time. Work Days exclude Sundays, State recognized public Holidays, and Days on which the Design-Builder is specifically prohibited from working, as identified in the Contract Documents. Days on which the Design-Builder is prohibited from closing a lane or lanes or impeding traffic are considered Work Days unless otherwise noted in the Contract Documents.

**Work Order** - See Notice to Proceed.

**Worker** - See Employee.

**Working Plans** - Those Plans prepared by the Design-Builder to supplement Design Plans to specify additional details and procedures for construction of the Project, including the following:

- A) Construction details;
- B) Erection plans;
- C) Fabrication plans;
- D) Field design change plans;
- E) Stress sheets;
- F) Shop plans;
- G) Lift plans;
- H) Bending diagrams for reinforcing steel;
- I) Falsework plans; and
- J) Similar data required for the successful completion of the Work.
(Project Name)
DESIGN-BUILD PROJECT

PIN ____________

DB CONTRACT DOCUMENTS
PART 2

DB SECTION 102

REQUIREMENTS & CONDITIONS
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<td>General</td>
<td>Changed “New York State Department of Economic Development” to “New York Empire State Development Corporation” and “NYSDED” to “ESDC”</td>
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<td></td>
<td>Changed “Office of Equal Opportunity Development and Compliance” to “Office of Civil Rights” and “EODC” to “OCR”</td>
</tr>
<tr>
<td>102-8.13</td>
<td>Changed 15 calendar days to 7 calendar days</td>
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<tr>
<td>102-9.1</td>
<td>Changed “New York State Department of Transportation” to “New York State Unified Certification Program (NYSUCP)”</td>
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<tr>
<td>102-9.6</td>
<td>Changed “New York State Department of Transportation” to “NYSUCP”</td>
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<td>102-9.13</td>
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SECTION 102
REQUIREMENTS AND CONDITIONS

DB 102-1 INNOVATIVE CONTRACT INCENTIVES/DISINCENTIVES

From time to time, the Department may apply innovative Contract Incentives/Disincentives to a Project. See Part 5 Special Provision 102 for any Incentives/Disincentives that apply to this Project.

DB 102-2 NO MISUNDERSTANDING

The Proposer agrees that it has examined the Contract Documents and the Site of the Work and has fully informed itself from its personal examination of the same regarding the quantities, character, location, and other conditions affecting the Work to be performed including the existence of poles, wires, pipes, ducts, conduits, and other facilities and structures of municipal and other public service corporations on, over, or under the Site.

The Proposer agrees that its proposed Contract Price includes all costs arising from existing conditions shown, or specified in the Contract Documents, and/or readily observable from a Site inspection prior to the Proposal Due Date, and/or generally recognized as inherent in the nature of the Work.

The Department in no way warrants or guarantees that the information made available by the Department or found in the Contract Documents covers all conditions at the Site or that said information and Contract Documents should act as a substitute for personal investigation, interpretation, and judgment by the Proposer.

The intent of the Contract Documents is to include all items/aspects of the Work that are necessary for the proper initiation, execution, and completion of the Work. A requirement occurring in any component of the Contract Documents is as binding as though occurring in all.

The components of the Contract Documents are intended to be complementary and to describe and provide for a complete Project. The following components of the Contract Documents complement one another in the following order of precedence: the Agreement, the Special Provisions, this DB Section 100, the Performance Specifications, the Design Requirements, the DB Utility Requirements, the engineering data, the Request for Proposals (RFP) Plans, the Standard Specifications, and the Design-Builders Proposal. However, where the Design-Builders Proposal presents Work or products of a higher quality than that shown elsewhere in the Contract Documents, and the Department has accepted the proposed change to the Work and products to that of a higher quality, the Design-Builders Proposal will take precedence for that specific higher quality Work and products, as applicable.

Dimensions given on the Plans or which can be calculated will govern over scale dimensions.

When it appears that there is an apparent error or omission in the Contract or there is an apparent conflict or contradiction between any of the various documents mentioned above, or between the documents and the actual Work Site, the Design-Builders has a duty to immediately notify the Department’s Project Manager of the discrepancy. The Department’s Project Manager shall resolve the discrepancy in writing before the Design-Builders proceeds further. The Department’s Project Manager may require the Design-Builders to modify Plans and other documents to correct the error or omission. The Work shall be paid for by the Department pursuant to DB Section 104-4, except under conditions covered by DB Section 104-4.3.
Failure of the Design-Builder to notify the Department’s Project Manager of an apparent discrepancy may be deemed a waiver of the Design-Builder’s right to claim any adjustment in the Contract Price for Extra Work. In addition, the Design-Builder may be fully liable for damages suffered by the Department resulting from this failure to timely notify the Department’s Project Manager of a discrepancy.

**DB 102-3 COOPERATION BY THE DESIGN-BUILDER**

The Design-Builder will be supplied with two conformed sets of the Contract, one set of which the Design-Builder shall keep available on the Work Site at all times. A set will consist of one paper hardcopy and one Compact Disc – Read Only Memory (CD-ROM) set. The Design-Builder may purchase additional sets for the cost of printing, assembling, and mailing the documents.

The Design-Builder shall give its constant personal attention to the Work while it is in progress and shall cooperate with the Department and its other contractors in every possible way. The Design-Builder shall place in charge a competent and reliable English speaking superintendent, who shall have authority to act for the Design-Builder, shall be capable of managing the Contract and the design and construction Work being performed, and who shall be acceptable to the Department’s Project Manager. The Design-Builder shall maintain on the Work Site or at a convenient nearby location, an office where its superintendent can be contacted. The Design-Builder shall assure that its superintendent attends the Project initiation meeting.

The Design-Builder shall, at all times, employ labor and Equipment which shall be sufficient to prosecute the several classes of Work to full completion in the manner and time specified. All Workers must have sufficient skill and experience to properly perform the Work assigned them. All Workers engaged on special or skilled Work shall have had sufficient experience in such Work to properly and satisfactorily perform it and operate the Equipment involved. Any person employed by the Design-Builder whom the Department’s Project Manager may deem incompetent or unfit to perform the Work shall be at once discharged, and shall not be again employed. In case of a disagreement with the Design-Builder regarding the discharge of such Employees, the matter may be reviewed by the Commissioner.

The Department will provide an experienced Project Manager with an adequate staff to keep pace with the Design-Builder’s progress and will maintain an office on the Work Site or in a convenient nearby location.

The Design-Builder shall recognize the Department’s Project Manager as the Department’s representative on all matters relating to the Project.

**DB 102-4 OTHER CONTRACTS, COORDINATION, AND ACCESS**

The State reserves the right to let other contracts in connection with this Work. The Design-Builder acknowledges that, from the Contract Documents, it has been informed of such other contracts in the Work area. The Design-Builder has carefully reviewed the Contract Documents and all other pertinent information made available by the Department that relate to the nature and scheduling of these other contracts that may be awarded and will submit a Baseline Progress Schedule that takes into account the need to coordinate its Work with those other contractors. It is the obligation and duty of the Design-Builder under the Contract to coordinate its Work with the work of these other contractors. There may be other contractors, subcontractors, Utilities, or employees of the Department and its authorized representatives working at or adjacent to the Work Site during the performance of the Contract by the Design-Builder. The Design-Builder may not have exclusive access to or occupancy of the territory within or adjacent to the limits of the Project. To the extent indicated in the Contract Documents, the Department may also require that certain facilities and areas be used concurrently by the Design-Builder.
and others. Consistent with the Contract Documents, the Department will advise the Design-Builder of the schedules of others. However, the Design-Builder should anticipate that its Work may be interrupted or delayed from time to time on account of the concurrent activities of others.

The Design-Builder shall arrange the Work and shall place and dispose of the Material being used so as to not unreasonably interfere with the operations of the other contractors within the limits of this Project. The Design-Builder shall join its Work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

The Design-Builder and each other contractor shall assume all liability, financial or otherwise, in connection with their respective contracts, and shall protect and save the Department harmless from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by the Design-Builder or other contractors because of the presence and operations of other contractors working within the limits of this Project.

If the Design-Builder and another contractor are unable to agree on the sequence of work or other matters, either may petition the Department’s Project Manager for a decision resolving issues between the parties. The Department’s Project Manager shall allow a reasonable time for response by all affected parties. After review of all comments, the Department’s Project Manager shall render a decision within five days, which shall be binding on all parties.

In the event that Utility facility adjustments are to be made by a Utility Owner’s forces in connection with and during the life of the Contract, the Design-Builder will be required to cooperate with the various Utility Owners and to coordinate and arrange the sequence of its Work to conform with the progressive operations of the Utility Owner’s work underway or to be put underway.

**DB 102-5 COOPERATION WITH UTILITIES**

The Department’s interaction with Utilities located within the Highway Right Of Way (ROW) is governed by 17 NYCRR (Official Compilation of Codes, Rules and Regulations of the State of New York) Part 131.

The Department will notify all Utilities, pipeline owners, or other parties who seemingly are affected by the proposed construction and endeavor to have agreements executed with potentially affected Utilities prior to the Award of the Contract. Any executed agreements between potentially affected Utilities and the Department are located in the Reference Documents.

In the Contract Documents Part 6, the Department has identified potentially affected Utilities and indicated relocation responsibility for each potentially affected Utility. The indicated relocation responsibility will be that the Utility will relocate its own facilities, that the Utility is interested in negotiating with the Design-Builder to relocate the facilities, or that the Utility will be relocated as a part of this Contract.

If it is indicated in the Contract Documents Part 6 that a certain Utility will relocate its own facilities, the Design-Builder is responsible for all coordination between itself and the Utility in order to maintain schedule.

If it is indicated in the Contract Documents Part 6 that the Design-Builder is to relocate certain Utilities, the Design-Builder is responsible for all coordination between itself and the Utility in order to maintain schedule. If the Contract Documents Part 6 indicates that the relocation of a certain Utility will be
reimbursed under this Contract, the Design-Builder should identify each Utility relocation identified as reimbursable under this Contract as its own Price Center (PC) and include the price in the Price Proposal.

If the Contract Documents Part 6 indicates that a certain Utility is interested in allowing the Design-Builder to relocate its facilities but that that Utility is responsible the cost of its relocation, the Design-Builder may enter into negotiations with that Utility for the relocation the Utility’s facilities. Any negotiations that the Design-Builder may have with a Utility regarding relocation of its facilities are strictly between the Design-Builder and that Utility; the State is not a party to those negotiations or to any agreement which may be made based on those negotiations. However, if a Utility is interested in having negotiations with the Design-Builder regarding facility relocation, the Design-Builder shall exercise due diligence and good faith efforts in coming to agreement with the Utility regarding facility relocation. If agreement cannot be reached within a reasonable time, the Design-Builder shall notify the Department’s Project Manager of the status of negotiations and outstanding issues. The Design-Builder shall collect any reimbursement for Work done on behalf of that Utility directly from that Utility. The Department shall not be held liable by the Design-Builder for such Work or the payment therefore or for failed negotiations between the Department and the Utility. The Design-Builder shall remain responsible for the coordination between itself and the Utility in order to maintain the Contract’s schedule.

If, after Award of the Contract, the responsibility status of a certain Utility changes (i.e., if the Utility originally indicated that it will move the facilities itself and the Utility subsequently requests the Design-Builder to relocate the facilities or if the Utility indicated that it would be interested in allowing the Design-Builder to remove its facilities and the Utility subsequently chooses to move its own facilities), the Department must be immediately notified. A change in this responsibility status may require a change in the Contract Price for this Contract. Regardless of any changes in relocation responsibility status, the Design-Builder is responsible for all coordination between itself and the Utility in order to maintain its schedule.

If the Design-Builder requests changes in the alignment of temporary haul roads or detours, or requests authority to use borrow pits or Material pits other than those designated on the Plans and described in the Contract Documents, it shall be the Design-Builder’s responsibility to make all the necessary arrangements and provide payment for Utility adjustment or Relocation incident thereto.

The Department will make available to the Design-Builder upon request all information obtained from Utilities, pipeline owners, and other parties that the Department has notified concerning the proposed construction. Such information will be considered Reference Documents. Regardless of who is required to bear the cost of any proposed Relocation or to perform the Work relating to such Relocation, the location of Utilities and potential impact of Relocation of such facilities shall be considered in finalizing the design of the Project, with the following goals:

A) Avoiding Relocation of Utilities to the extent practicable;
B) If Relocation of a Utility is not reasonably avoidable, protecting the facility in place to the extent practicable; and
C) Otherwise minimizing the potential costs and delays relating to Relocations to the extent practicable.

The foregoing goals shall be pursued by taking into consideration the impact of Utility Relocations on the Project as a whole, without regard to who is required to bear the cost of any proposed Relocation or to perform the Work relating to such Relocation, and without regard to whether or not the Design-Builder is entitled to an Order on Contract with respect thereto.
The Design-Build shall be responsible for resolving all problems resulting from the Design-Build’s failure to comply with the responsibility to make inquiries or notify all known Utility companies, pipeline owners, or other parties of any Work or conflicts. In this instance, the Design-Build will not be allowed adjustments for delays or extra expense.

In general, the Design-Build will indicate various Utility items, certain of which are to be designed and/or relocated or adjusted by the Utility or others and those that are to be designed and/or relocated or adjusted by the Design-Build. If the Utility Owner or others fail to design, relocate, or adjust the Utility, the responsibility for which is not imposed on the Design-Build by the Contract, the Work involved in the relocation or adjustment may be required to be effected by the Design-Build by an Order on Contract, if necessary, and performed at Unit Prices identified in the Proposal, or, if none exist, at negotiated prices or on a Force Account basis in accordance with DB Sections 104-4 and 109[S or L]-9.

If public or private Utility lines or pipelines or other appurtenances are encountered during the course of the Work, which are unknown to the Department and to the Design-Build and were not readily apparent from diligent investigation of the Site or records, the Design-Build shall immediately suspend construction operations at the site of the Utility in question until such time that the Department and the Utility Owner negotiate a Utility agreement and, if necessary, the Design-Build and Utility negotiate an agreement for the required Relocation or adjustment. If the Relocation or adjustment of the Utility causes a delay in the Design-Build’s construction operations, the Department’s Project Manager and the Design-Build may negotiate compensation.

All Utility Relocations shall be accomplished in accordance with all laws and regulations developed to protect archaeological sites.

In some cases, the Design-Build may be required by the Department’s Project Manager to effect the Relocation or adjustment by an Order on Contract. This Work shall be effected by the Design-Build at the Unit Prices identified in the Proposal, or, if none exist, at negotiated prices or on a Force Account basis in accordance with DB Sections 104-4 and 109-9[S or L].

At points where the Design-Build’s operations are adjacent to Utilities, damage to which might result in considerable expense, loss, or inconvenience, Work shall not begin until all arrangements necessary for the protection thereof have been made by the Design-Build and the Utility Owner. The Design-Build shall cooperate with the owners of underground or overhead Utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication of rearrangement Work may be reduced to a minimum, and that services rendered by those parties will not be unnecessarily interrupted.

In the event of interruption to Utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Design-Build shall promptly notify the proper authority in the restoration of service. If water service is interrupted, the Design-Build shall provide continuous repair work until the service is restored. No Work shall be undertaken around fire hydrants until provision for service has been approved by the local fire authority.
DB 102-6  WORK AFFECTING RAILROADS

DB 102-6.1  Supervision

All Work on any project affecting a railroad company’s property and/or ROW facilities, including temporary track detour, shall be carried out under the joint supervision of the Department and the railroad company in a manner satisfactory to both.

DB 102-6.2  Railroad Notice and Approval

No Work shall begin until the railroad company has been notified in writing by the Design-Builder of the anticipated date to begin Work, the anticipated type of Work, and the anticipated length of time required to complete the Work.

The Design-Builder shall obtain the written approval of the appropriate representative(s) of the railroad company or companies affected in respect to the details and methods regarding constructing any structures, track detours, falsework, removal of structures, allowable track clearances, and any or all other details that may in any manner affect the operation or maintenance of any or all railroad facilities. Equipment used for the erection or removal of structures over railroad facilities shall have a minimum lifting capacity of 150% of the lift weight (operational capacity limited to 66 2/3% of the tipping load). The requirement that written approval shall be obtained from the appropriate representative(s) of the railroad company shall be complied with before the Design-Builder begins actual construction Work. The Design-Builder shall include in its Price Proposal all the costs of these requirements including any expense occasioned by delay or interruption of its Work by reason of the operation or maintenance of the railroad facilities.

Approval by the appropriate representative(s) of the railroad company affected does not absolve the Design-Builder from any liability resulting from its contractual operations.

A copy of the written agreements between the railroad company and the Design-Builder concerning the protection of the railroad company’s property or completion of the Work shall be provided to the Department.

DB 102-6.3  Railroad Clearances

No temporary bridge, falsework, staging, or obstructions shall be erected over the track or tracks where the vertical underclearance is less than 6,706 mm (22 feet) over top of rail until the existing bridge warnings have been relocated or new or temporary bridge warnings are installed by the railroad company or companies which are affected and are in service.

The Design-Builder shall so conduct its Work and handle its Equipment that no part of any Material or Equipment shall foul an operated track or wire lines without written permission of the appropriate representative of the railroad company affected. When the Design-Builder desires to foul an operated track it must give the appropriate representative of the railroad company affected at least eight days notice, in writing, of its intentions so that the proper protection can be arranged. An operated track is fouled when any object is brought closer than the clearances set forth by the railroad company.

Absolute minimum temporary underclearance above top of high rail shall be as indicated on the Plan or in the Contract Documents. Cranes, shovels, and any other Equipment shall be considered to be fouling the track when located in such a position that failure of same with or without load brings the Equipment
within the fouling limit. A power line wire is fouled when any object is brought to a point less than 1 829 mm (6 feet) from the wire.

**DB 102-6.4 Railroad Employees**

When, in the opinion of the appropriate representative of the railroad company, the Design-Builder’s normal operations in progressing this Contract are such that an operated track is or might be fouled or railroad traffic endangered, the railroad company will employ protective labor, when found necessary for railroad operations. Unless an item for railroad protection is included in the Contract, payment for the services described above shall be made to the railroad company directly by the State pursuant to the terms of a State-railroad agreement negotiated for the Project. When an item for railroad protection is included in the Contract, the Design-Builder shall pay for such services. All services for protective labor and similar protective service occasioned by the operation of the Design-Builder, except as noted above, shall be at the sole expense of the Design-Builder.

The Design-Builder shall, at its own expense, carry compensation and other insurance for protective labor furnished by the railroad company as specified in Part 5 Special Provision 107.

It is agreed that the furnishing of any protective labor shall not relieve the Design-Builder from any liability of payment for any damage caused by its operations (see DB Section 107.25 and Part 5 Special Provision 107).

**DB 102-6.5 Foundations**

Foundations may be extended or lowered if deemed necessary by the Department’s Project Manager and the appropriate representative of the railroad company affected only if such change is ordered by the Department’s Project Manager. Any and all increases in quantities caused by changes of this character will be paid for at the Unit Prices proposed for the respective items involved, if included in the Design-Builder’s Price Proposal, or at negotiated prices or on a Force Account basis in accordance with DB Sections 104-4 and 109-9.

**DB 102-6.6 Design-Builder’s Private Grade Crossing**

If the Design-Builder elects and the railroad company approves, to have installed for its own use a private grade crossing at the Site of the Work, the Design-Builder shall make a formal request to the railroad company for such a crossing. After the Design-Builder has entered into an agreement with the railroad company pertaining to the size and type of crossing, the payment of the cost for installing and removing the crossing, the obtaining of the necessary insurance for the protection of the railroad company, and the required protection to railroad traffic when the crossing is in use, the Design-Builder will be responsible for the installation and removal of the temporary crossing at the sole expense of the Design-Builder.

**DB 102-6.7 Sidetrack Facilities**

When sidetrack facilities are required by the Design-Builder, it shall, at its sole cost and expense, make the necessary arrangements for the use of existing sidings or tracks not in service or the construction of new sidings. It shall, at its sole cost and expense, restore any and all existing sidings and tracks used for sidetrack facilities to the condition existing prior to use by the Design-Builder. The construction location and use of all sidetrack facilities are to be subject to the approval of the appropriate representative of the railroad company affected.
It shall be understood that the railroad company may move the Design-Builder’s cars which are placed on existing sidings at any time to permit the placing of cars for said railroad company’s business. When any turnouts from the main tracks are approved by the railroad company such turnouts will be furnished, installed, and removed by the railroad company at the expense of the Design-Builder. Any signal work and rails necessary for sidetrack facilities will be furnished, installed, and removed by the railroad company at the Design-Builder’s expense. When available from railroad stock, the railroad company may furnish, on the request of the Design-Builder and at its current prices plus its usual overhead for labor and Material, such Material as may be required for the restoring of existing sidings used for sidetrack facilities and for the construction of additional sidetracks.

**DB 102-6.8 Use of Explosives**

Blasting shall be conducted in such a manner as not to endanger the public or obstruct Highways or endanger facilities or operation of the railroad. The Design-Builder shall furnish, while blasting, at its own cost and expense, watch persons and other protection necessary to protect the public and railroad.

The Design-Builder’s attention is directed to DB Section 107-7.6 with regard to blasting.

**DB 102-6.9 Railroad Use of Completed Work**

The Design-Builder agrees that the railroad company affected may, prior to the completion of the Work to be performed under the Contract and the acceptance thereof, enter upon and use any portion of said Work without any compensation whatever to the Design-Builder for such use and without any compensation or payment whatever to the Design-Builder for any delay in the Work caused by such use. The taking possession and use shall not be deemed an Acceptance of the Work so taken and used or any part thereof.

**DB 102-6.10 Protection of Railroad Service and Facilities**

The Design-Builder shall take special care and vigilance to avoid injury to the trains, tracks, or other facilities of the railroad company and shall conduct its Work so as not to interfere with the movement of trains or other operations of the railroad company. Whenever Work may affect the safety or movement of trains, the method of doing the Work shall first be submitted to the appropriate representative of the railroad company affected for his/her approval, and no Work affecting such safety or movement of trains shall be commenced or prosecuted until written approval of the appropriate representative of the railroad company is received. It is understood that the approval of the appropriate representative of the railroad company will not release the Design-Builder from any responsibility for any damages to the railroad company caused by the acts of the Design-Builder or its Employees and Subcontractors. If, during the carrying out of the Contract Work, the trains, tracks, or other facilities of the railroad company are endangered, the Design-Builder shall immediately do such Work as directed by the Department’s Project Manager to restore safety and, upon failure of the Design-Builder to carry out such orders immediately, the railroad company may, with the approval of the Department’s Project Manager, take whatever steps are necessary to restore safe conditions. The cost and expense to the railroad company of restoring safe conditions or of any damage to the railroad company’s trains, tracks, or other facilities caused by the Design-Builder’s operations shall, when approved by the Department’s Project Manager, be considered a charge against the Design-Builder and shall be paid for by it, or upon its failure or refusal to pay such charge within a reasonable time after the railroad company submits the bill to it, the amount thereof may be deducted by the Department from any monies due or that may become due to it under its Contract, and any such sum so deducted may be paid to the railroad company after an audit by the State of the items of such cost and expense.
In performing construction operations both on and off railroad ROW areas, the Design-Builder shall prevent the fouling of railroad track ballast with earth, mud, silt, or other foreign matter. To prevent fouling of the ballast, it may be necessary for the Design-Builder to construct temporary earth dikes, sheeting, or tie cribbing or provide other precautionary measures that are required.

Where, in the opinion of the railroad company, demolition Work, concreting, or hauling along or across tracks will result in ballast becoming fouled, the Design-Builder shall take preventive measures to protect the entire ballast section by nailing canvas, plywood, or similar Material to the ties in the entire area to be affected. The protective Material shall remain in place until there is no further possibility of fouling the ballast and then be removed by the Design-Builder.

The Work required to protect the railroad track ballast shall be performed by and at the expense of the Design-Builder and under the supervision of, and to the satisfaction of, the appropriate representative of the railroad company. The railroad company will assume no responsibility for the adequacy of the Work.

In the event that the railroad track ballast does become fouled after the aforementioned protective measures are taken, the railroad company, with its own forces, shall remove and replace the fouled ballast with clean ballast. The charges for this Work will be billed by the railroad company against the Design-Builder.

**DB 102-6.11 Coordination of Work**

The Design-Builder shall be responsible for the coordination of the Work of its various Subcontractors. The Design-Builder shall coordinate with the railroad company in carrying out railroad Force Account Work. When the Work of the Design-Builder or Subcontractor dovetails with the railroad Force Account Work, the Material shall be delivered and the operations conducted so as to carry on the Work continuously in an efficient and skillful order. Delays or Oversight on the part of the Design-Builder or Subcontractors in getting any or all of their Work done in the proper way, thereby causing cutting, removing, and replacing of Work already in place shall not be the basis for a claim for extra compensation. Such Work shall be done at the cost and expense of the offending Design-Builder or Subcontractor.

The Design-Builder has no claim for damages or extra compensation from the Department if the Work is delayed due to action or inaction on the part of the railroad company.

**DB 102-6.12 Railroad Equipment**

It is agreed that if the Design-Builder elects to use work trains or any railroad Equipment which operates on the tracks of the railroad company, the operation of such trains and Equipment is subject to any requirements determined by the appropriate representative of the railroad company affected. It is understood that the cost of the services of any railroad employees required by the railroad company to operate such trains or Equipment is to be paid by the Design-Builder. This shall include the cost of necessary flagmen.

**DB 102-6.13 Operation of Railroad**

The Design-Builder shall make every possible effort to reduce to a minimum the length of time that the railroad company will have to operate over any track detour, and to this end it shall continue full operation throughout the winter months, if directed by the Department’s Project Manager, on any and all Work necessary to permit the railroad company to restore its tracks to their permanent location as quickly
The Design-Builder shall conduct its Work so that schedule speed can be maintained by the railroad at all times.

**DB 102-6.14 Telegraph, Telephone, and Signals**

The cost of all changes in telegraph, telephone, and signal lines necessary to clear the Site for the structures shall be charged to the Project. The cost of all changes in telegraph, telephone, and signal lines made for the convenience of the Design-Builder shall be paid for by the Design-Builder as part of its construction costs.

**DB 102-6.15 Clean-up**

Before requesting Final Acceptance of Work accomplished on property belonging to the railroad company, the Design-Builder shall obtain written release from the railroad company that the property has been cleaned, cleared, and returned to a condition acceptable to the railroad company and the Design-Builder has removed all of the tools, implements, and other Material belonging to the Design-Builder or one of its Subcontractors, Employees, or agents. If after diligent effort the Design-Builder is not able to obtain a release from the railroad company, the Design-Builder will provide the Department’s Project Manager with written evidence of efforts to obtain the release, and the Department’s Project Manager will either provide the Design-Builder with a list of required additional steps to obtain the release or the release requirement will be waived.

All of the above correspondence shall be in writing.

**DB 102-7 LABOR AND EMPLOYMENT**

This DB Section 102-7 applies only if this Project is financed with Federal-aid. The provisions of the New York State Labor Law, as amended, shall be applicable regardless of financing source.

**DB 102-7.1 Payroll Records**

The Design-Builder shall furnish the Department’s Project Manager each week with its payroll records and statement of compliance with respect to the wages paid each of its Employees and its Subcontractors’ employees (including apprentices, trainees, watch persons, and guards) engaged on the Work during the preceding weekly payroll period. See Appendix 102-A for Form HC-231-1, Design-Builder’s Payroll Statement and the Certification of Officer of Design-Builder or Subcontractor.

**DB 102-7.2 New York State Department of Labor Schedules**

The Design-Builder shall post, in a location designated by the Department’s Project Manager, a copy of the New York State Department of Labor’s (NYSDOL) schedules of prevailing wages and supplements for this Project, a copy of all re-determinations of such schedules for the Project, the New York State Workers’ Compensation Law Section 51 notice, all other notices required by law to be posted at the Site, NYSDOL’s notice that this Project is a public work project on which each Worker is entitled to receive the prevailing wages and supplements for the occupation at which he or she is working, and all other notices which the Department’s Project Manager directs the Design-Builder to post. The Design-Builder shall provide a surface for such notices which is satisfactory to the Department’s Project Manager. The Design-Builder shall maintain such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible, or removed for any reason. The Design-Builder shall post such notices before commencing any Work on the Site and shall maintain such notices until all Work on the Site is complete.
DB 102-7.3 Notice to Design-Builder Employees

The Design-Builder shall also distribute to each Worker for this Contract a notice, in a form provided by the Department’s Project Manager, that this Project is a public work project on which each Worker is entitled to receive the prevailing wage and supplements for the occupation at which he or she is working. Such notice shall be distributed to each Worker before he or she starts performing any Work under this Contract. At the time of distribution, the Design-Builder shall have each Worker sign a statement, in a form provided by the Department’s Project Manager, certifying that the Worker has received the notice required by this Section, which signed statement shall be maintained with the payroll records required by DB Section 102-8.1.

DB 102-8 MINORITY-AND WOMEN-OWNED BUSINESS ENTERPRISE UTILIZATION FOR NON-FEDERAL-AID CONTRACTS

It is the policy of the State that Minority-owned Business Enterprises (MBE) and Women-owned Business Enterprises (WBE) shall have the maximum opportunity to participate in the performance of State contracts. The parties to this Contract shall take all necessary and reasonable steps in accordance with the laws, rules, and regulations cited in this Section to ensure that MBEs and WBEs have the maximum opportunity to compete for and perform subcontracts. The Department and its Design-Builder shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of New York State Department of Transportation contracts. This policy shall be made a part of all subcontracts and agreements entered into as a result of this Contract.

The State, to this end, has enacted Article 15-A of the New York State Executive Law and Part 140 of Title 5 of NYCRR. The parties to this Contract are required to comply with these laws, rules, and regulations and to follow MBE and WBE program requirements.

DB 102-8.1 Eligibility of MBEs and WBEs

Only those MBE and WBE firms that are certified by the New York Empire State Development Corporation (ESDC) are eligible to be used for goal attainment on this Contract. Minority and Women-owned Business Enterprise certification is not an endorsement of the quality or performance of the business, but simply an acknowledgment of the firm’s status as an MBE or WBE.

In the event that the Design-Builder or a Proposer, in good faith, proposes to use a firm that is listed as a certified MBE or WBE in its Proposal, and that firm is later found by the Department to be ineligible or unable to perform, then the Design-Builder or Proposer will be required to substitute another certified firm of the kind needed to meet the goal before Award or, if the finding of ineligibility occurs after the Contract Award, in a timely fashion as determined by the Department’s Project Manager, at no additional cost to the Department.

DB 102-8.2 Goal

The Department has established utilization goals for MBEs and WBEs which are expressed as a percentage of the total Contract’s price. These goals are stated in the ITP Section 6.9 and in the Contract Documents at Part 1 Article 6.1 and remain in effect throughout the life of the Contract. In executing the Contract, the Design/Builder declares that it subscribes to the utilization goals and will make a good faith effort to meet or exceed the goals, or demonstrate that it could not meet the goals despite its best efforts. The Contract’s goals are then considered to be a target or a minimum figure to which the Design-Builder commits. When the Contract is awarded with MBE and WBE participation that is less than the Contract’s goals, the Design-Builder is required to continue good faith efforts, as defined in DB Section 102-8.6,
throughout the life of the Contract in order to increase the MBE and WBE participation to meet or exceed the Contract’s goals.

**DB 102-8.3 Zero Percent Goals**

For contracts which have zero percent goals, the Design/Builder agrees to make good faith efforts to utilize certified MBEs and WBEs for any subcontracts awarded by the Design/Builder in connection with the Contract.

**DB 102-8.4 Counting MBE and WBE Participation toward MBE and WBE Goals**

Minority- and Women-owned Business Enterprise participation shall be counted toward meeting the MBE and WBE goals in accordance with the following:

A) **Subcontracting.** If a firm is determined to be an eligible MBE or WBE, as defined in DB Section 102-8.1, the total MBE or WBE agreed amount of the items of Work to be performed by the MBE or WBE is counted toward the applicable MBE or WBE goal except as provided in paragraphs B, C, and D below.

B) **Joint Ventures.** Joint ventures between certified MBE and WBE firms and non-MBE or non-WBE firms as Subcontractors will be counted toward the MBE or WBE Contract goal in proportion to the percentage of ownership and control of each firm within the joint venture, subject to Approval by the Department of the joint venture agreement to be furnished by the Design-Builder or Proposer before Award of the Contract. The joint venture agreement must include a detailed breakdown of the following:

1) Contract responsibility of the MBE or WBE for specific Contract Items of Work,
2) Capital participation by the MBE or WBE,
3) Specific Equipment to be provided to the joint venture by the MBE or WBE,
4) Specific responsibilities of the MBE or WBE in the control of the joint venture,
5) Specific staffing and skills to be provided to the joint venture by the MBE or WBE, and
6) Percentage distribution to the MBE or WBE of the projected profit or loss incurred by the joint venture.

C) In addition to these requirements, the MBE/WBE joint venture must perform a commercially useful function as an MBE/WBE Subcontractor as defined in DB Section 102-8.5(A).

D) **Manufacturers, Fabricators, and Suppliers (Regular Dealers).** The Design-Builder may count toward the MBE/WBE goals the expenditures for Material and supplies obtained from MBE or WBE Manufacturers, Fabricators, and Suppliers (regular dealers) in the amount noted below. The MBE/WBE Manufacturer, Fabricator, or Supplier must assume the actual and contractual responsibility for the provision of the Material and supplies.

1) Count the entire expenditure to an MBE or WBE Manufacturer.
2) Count the entire expenditure to an MBE or WBE Fabricator.
3) Count sixty percent of the expenditure to a MBE or WBE Supplier.
4) The Design-Builder or Proposer must indicate, in the form of an explanation on the AAPHC-89, D/M/WBE Utilization Worksheet, the PC for the Material to be supplied.

E) Trucking Services. Count toward the MBE or WBE goals the expenditure for trucking services provided by certified MBEs or WBEs in accordance with the following:

1) Count the pro-rated value of trucking services provided by trucks owned or leased on a long-term basis by the MBE or WBE trucking firm that appears on the AAPHC-89. For purposes of this Section, a long-term lease is a lease of six months or more. Also, trucks that are leased on a long-term basis are leased without an operator.

2) Count the pro-rated value of trucking services provided by trucks hired or rented from other certified MBE or WBE trucking firms by the MBE/WBE trucking firm that appears on the AAPHC-89. Hired or rented trucks may include operators.

3) No credit will be received for the value of trucking services that are provided by trucks that are not owned, leased on a long-term basis, hired, or rented from certified MBE or WBE trucking firms.

4) The Design-Builder or Proposer must indicate, in the form of an explanation on the AAPHC-89, the item number(s) for which the trucking services are to be performed, the type of trucking service to be performed (on-site versus off-site), and the corresponding dollar value for those services (per item).

5) The Design-Builder or Proposer must provide before Award the calculations and any pertinent documentation that support the dollar value of the proposed MBE/WBE trucking services. The Design-Builder must also provide within 30 Days of Award a list of all proposed MBE or WBE trucking firms to be used on the Project and the number of trucks to be provided by each proposed MBE or WBE trucking firm. This list must be updated over the course of the Contract whenever there is a change to the trucking firms on the list or the number of trucks to be provided by each firm.

6) On-Site Trucking. For purposes of this Section, on-site trucking is defined as follows:

a) Within the boundaries of the physical place where the construction will remain.

b) Off-site facilities that are dedicated exclusively to the performance of the Contract and are so located in proximity to the actual construction location that it would seem reasonable to include them.

7) Trucking services provided for on-site trucking are considered to be a subcontracting activity. The MBE or WBE trucking firm that appears on the AAPHC-89 may not subcontract any portion of its on-site trucking operations.

8) Off-Site Trucking. For purposes of this Section, off-site trucking is defined as follows:
a) Outside of the boundaries of the physical place where the construction will remain; and
b) Off-site facilities that were established by a commercial Supplier or Material Supplier prior to Award of the Contract and used for multiple customers.

9) Any MBE/WBE trucking firm that appears on the AAPHC-89 must control the day-to-day trucking operations on the Project. The MBE or WBE is responsible for the following:
   a) Negotiating and executing rental/leasing agreements;
   b) Hiring and firing the Work force;
   c) Coordinating the daily trucking needs with the Design-Builder; and
   d) Scheduling and dispatching trucks.

10) The Design-Builder or Proposer must explain in writing the scope of Work to be performed by the MBE or WBE for all items indicated as partial items on the AAPHC-89 at the time the Design-Builder or Proposer submits the Utilization Package. An MBE or WBE that holds a Department contract may not count its own utilization in the Contract toward the MBE or WBE Contract goals.

**DB 102-8.5 Conditions of Participation**

Minority and Women-owned Business Enterprise participation will be counted toward meeting the MBE and WBE Contract goals, subject to all of the following conditions:

A) Commercially Useful Function. The Design-Builder is responsible for ensuring that MBEs and WBEs performing Work on the Contract perform a commercially useful function. An MBE or WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of the Work under the Contract and carries out its responsibilities by actually performing, managing, and supervising the Work involved in accordance with normal industry practice (except where such practices are inconsistent with the MBE and WBE regulations). Regardless of whether an arrangement between the Design-Builder and the MBE or WBE represents standard industry practice, if the arrangement erodes the ownership, control, or independence of the MBE or WBE or in any other way does not meet the commercially useful function requirement the Design-Builder shall receive no credit toward the goal.

B) Work Force. The MBE or WBE must employ a Work force (including administrative and clerical) separate and apart from that employed by the Design-Builder, other Subcontractors on the Project, or their Affiliates. This does not preclude the employment by the MBE or WBE of an individual that has been previously employed by another firm involved in the Contract, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE or WBE shall not be allowed.

C) Supervision. All Work performed by the MBE or WBE must be controlled and supervised by that MBE/WBE without duplication of supervisory personnel from the Design-Builder or other Subcontractors. This does not preclude routine communication between the supervisory personnel of the MBE or WBE and other supervisors necessary to coordinate the Work of the Contract.
D) Equipment. Minority- and Women-owned Business Enterprise Subcontractors may supplement their Equipment by renting or leasing additional Equipment in accordance with customary industry practice. However, no more than 50% of the Equipment required to perform the Work of the Subcontractor may be obtained from the Design-Builder, other Subcontractors on the Project, or their Affiliates. If the MBE/WBE obtains Equipment from any of those sources, the Department shall obtain from the MBE or WBE documentation demonstrating that similar Equipment and terms could not be obtained at a lower cost from other customary sources of Equipment. The required documentation shall include, but not be limited to, copies of the rental or leasing agreements and the names, addresses, and terms quoted by other sources of Equipment.

DB 102-8.6 Good Faith Efforts

To ensure that MBE and WBE firms are given the maximum practical opportunity to participate in the Work of the Contract, the Design-Builder or Proposer must make good-faith efforts to obtain MBE/WBE participation in order to fulfill the MBE and WBE Contract goals. The Design-Builder’s or Proposer’s demonstration of good-faith efforts must be at least as extensive as, but not limited to, the following:

A) Efforts to utilize the services of minority and women community organizations; minority and women contractors’ groups; local, State, and federal minority and women business assistance offices; and other organizations that provide assistance in the recruitment and placement of MBEs and WBEs.

B) Attendance by a representative of the Design-Builder or Proposer, who is knowledgeable of the Contract Work at pre-proposal, pre-award, and/or other meetings, if any, scheduled by the Department to inform MBEs and WBEs of subcontracting and other opportunities for participation in the Contract. At these meetings, a Department representative will explain the required Contract Work and the Design-Builder or Proposers may solicit the interest of the MBE and WBE attendees in any specific portions of the Work.

C) Efforts to secure participation by certified MBE and WBE firms. Only MBEs and WBEs certified by ESDC shall be used to fulfill goals on 100% State funded projects.

D) Written solicitation of MBEs and WBEs. A written solicitation inquiry will be sent to all MBE and WBE firms. Notification must be made in a timely fashion such that the MBEs and WBEs contacted have a reasonable period of time in which to respond. The Design-Builder’s or Proposer’s solicitation will cover certified MBEs and WBEs listed in the New York State Directory of Certified Minority- and Women-Owned Business Enterprises maintained by ESDC. Geographic limits are not acceptable as good faith efforts for Work typically subcontracted to non-MBE or non-WBE firms on a statewide basis. It will be mandatory for the Design-Builder or Proposer to contact all MBEs and WBEs who have expressed interest in this Contract to the Design-Builder or Proposer and to document efforts taken to secure their participation in the Contract.

E) Efforts to select portions of the Work proposed to be performed by MBEs or WBEs in order to increase the likelihood of achieving the stated Contract goal. Where certified MBEs or WBEs have expressed interest to the Design-Builder in performing certain Work that the Design-Builder normally performs with his/her own forces, and the Contract’s goal has not otherwise been attained, the Design-Builder will be required to subcontract such Work or portions of it in order to meet the goal.

F) Efforts to negotiate with MBEs and WBEs for specific subcontracts. Price alone will not be an acceptable basis for rejecting MBE or WBE bids, unless it can be shown that no reasonable price can be obtained from an MBE or WBE.
G) Efforts to aid the MBEs and WBEs contacted with needed assistance in obtaining bonding or insurance required by the Design-Builder. Difficulties encountered by the MBE or WBE in obtaining bonding or insurance required by the Design-Builder will not be acceptable reasons for the Design-Builder’s failure to meet the Contract’s goal.

H) Providing interested MBEs and WBEs with adequate information about the Plans, Specifications, and requirements of the Contract.

I) Record of solicitation effort. The Design-Builder and Proposers must keep records of efforts to solicit and negotiate with MBEs and WBEs, using Form AAP-10, Solicitation Log, as a continuing record of pre- and post-Contract Award activity. When submitting a D/M/WBE Schedule of Utilization (Form AAP-19) to the Department, the Design-Builder or Proposer will attach the log, together with the supplemental information specified in the instructions for the Form AAP-10, as evidence of good-faith efforts. Such supplemental efforts must include at least the following:

1) All envelopes of solicitation inquiries that were returned as undeliverable; and

2) Any quotations submitted by MBEs or WBEs that are not included in the MBE/WBE Schedule of Utilization with an explanation for the Design-Builder’s or Proposer’s action in each case.

DB 102-8.7 Minority-owned Business Enterprise/Women-owned Business Enterprise Utilization Package

The Design-Builder shall submit a complete utilization package within 30 Calendar Days after the execution of the Contract. The MBE/WBE utilization package consists of the following elements:

A) Form AAP-19, D/M/WBE Schedule of Utilization;

B) Form AAPHC-89, D/M/WBE Utilization Worksheet (NOTE: Form AAPHC-89 must be cosigned by both the Design-Builder and the Subcontractor); and

C) All of the information pertaining to good faith efforts listed in DB Section 102-8.6.

After the Design-Builder’s initial submission of its utilization package, it will be required to submit utilization package updates concurrently with the execution of subcontracts with MBEs/WBEs or any time there is a change in the utilization package. See DB Section 102-8.11 for more information regarding revisions to the utilization package.

DB 102-8.8 Design-Builder’s Failure to Comply

The Department's Award of this Contract is conditioned upon the Design-Builder’s fulfillment of the requirements of this Section. If the Design-Builder fails to submit a complete utilization package as defined in DB Section 102-8.7 by the thirtieth Calendar Day after the execution of the Contract and/or fails to attain the MBE/WBE utilization goals and to satisfactorily document its good faith efforts as defined in DB Section 102-8.6 above, the Contract may be terminated by the Department.

DB 102-8.9 Minority-owned/Women-owned Business Enterprise Officer

The Proposer or Design-Builder shall designate an MBE/WBE Officer who will have the responsibility to, and be capable of, effectively administering and promoting an active MBE/WBE program, and who is assigned adequate authority to do so. See also DB Section 102-10.3.
**DB 102-8.10 Conformance to MBE/WBE Schedule of Utilization**

Following the Award of the Contract, the Design-Build is required to enter into subcontracts or agreements with the MBEs and WBEs identified on the approved D/M/WBE Schedule of Utilization, for Work of the kind and amount identified therein. The Department’s Project Manager will monitor the Work of the Contract to ensure that the MBEs and WBEs identified perform the Work in accordance with the D/M/WBE Schedule of Utilization. While not in compliance with the schedule, and if it is determined that the Design-Build is not in compliance with DB Section 102-8.6, the Design-Build shall not be entitled to payment, nor shall any payment be rendered on account of Work done or Material furnished.

**DB 102-8.11 Revisions in MBE/WBE Utilization**

If, after the Award of the Contract, a subcontract or purchase order held by an MBE, WBE, or joint venture involving an MBE or WBE is modified or terminated, the Design-Build shall immediately notify the Department of such modification or termination and the reasons therefore, or an alternative subcontract or purchase order for a commensurate dollar amount furnished by another MBE or WBE. Any change in MBE or WBE utilization must be accepted by the Department through submission of a revised AAP-19 and an AAPHC-89/AAPHC-89-1 (Amended) signed by both parties.

The Design-Build must receive this acceptance prior to implementing any proposed change. Failure by the Design-Build to obtain acceptance could result in appropriate sanctions.

For purposes of this Section, a revision in MBE/WBE utilization is considered to be any of the following modifications:

A) Reducing the dollar value of or eliminating the MBE’s or WBE's item(s) of Work. In the event that this results in a shortfall in goal attainment, the Design-Build will be required to make good faith efforts to backfill in accordance with DB Section 102-8.6.

B) Removing one MBE or WBE and substituting another MBE or WBE for the same item(s) of Work.

C) Increasing the dollar value of an item of Work or adding a new item of Work to an MBE or WBE already participating on the Contract.

D) Adding an MBE or WBE to the Contract.

**DB 102-8.12 Monitoring Design-Build Compliance**

The Design-Build will allow the Director of the Office of Civil Rights (OCR) and other authorized representatives of the Department to conduct periodic inspections of the Design-Build's MBE and WBE participation efforts during the performance of this Contract. In order to determine whether the Design-Build has complied with the requirements of this Section, the Commissioner may proceed by order to show cause, attend a hearing before the Contract Review Unit, file a complaint with the Division of Minority and Women's Business Development of ESDC pursuant to Section 316 of Article 15-A of the New York State Executive Law, or follow any other lawful procedure upon due notice in writing to the Design-Build. When the Design-Build has been found to have failed to meet the Contract’s goals and to exert a good-faith effort to have otherwise failed to comply with this Section, the Contract may be canceled, terminated, or suspended in whole or in part in accordance with DB Section 105-6 and Section 40 of the New York State Highway Law. Such other sanctions may be imposed and remedies invoked as provided under the authority of Article 15-A of the New York State Executive Law and Part 140 et seq. of Title 5 of NYCRR; by rule, regulation, or order of the Commissioner; or as otherwise provided by law.
DB 102-8.13 Prompt Payment

Failure by the Design-Builder to pay any Subcontractor within 7 calendar days of receipt of payment from the Department for Work performed that is accepted by the Department, in violation of Section 139-f of the New York State Finance Law, could result in the withholding of future estimated payments by the Department. The Design-Builder shall submit reports on payments made to Subcontractors as required by the Department. If it is determined by the Department that a Subcontractor has not received payment due and owing in accordance with Section 139-f of the New York State Finance Law, the Department may direct the Design-Builder to make such payment. Any such direction by the Department is a lawful direction. While such direction is not complied with, the Design-Builder shall not be entitled to have any payment made nor shall any estimate be rendered on account of Work done.

DB 102-8.14 Required Records

The Design-Builder shall keep records and documents for six years following performance of this Contract to indicate compliance with this Section. These records and documents, or copies thereof, will be made available at reasonable times and places for inspection by any authorized representatives of the Department and will be submitted to the Department upon request, together with other compliance information which may be required.

DB 102-8.15 Non-Discrimination

The Design-Builder shall not use the requirements of this Section to discriminate against any qualified company or group of companies.

DB 102-8.16 Reporting Violations of Program Rules

The Design-Builder is responsible for ensuring that the MBE or WBE performs a commercially useful function on the Contract as defined in DB Section 102-8.5(A). If the Design-Builder becomes aware of any violations of that Section, the Design-Builder is required to promptly report the violations to the Department’s Project Manager.

DB 102-8.17 Requests for Waiver

The Design-Builder may request a waiver of all or part of the Contract's MBE and WBE goals by submission of all the information required by Section 543.7 of Title 9 of NYCRR to the Office of Civil Rights (OCR). The submission of such a request and any appeal of the Department's decision are governed by Part 140 of Title 5 of NYCRR.

DB 102-8.18 Design-Builder Agreement

The Design-Builder agrees as a condition of this Contract to be bound by the provisions of Section 316 of Article 15-A of the New York State Executive Law.

DB 102-9 DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION FOR FEDERAL-AID CONTRACTS

This DB Section 102-9 applies to any New York State Department of Transportation Federal-aid Design-Build Contract.
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It is the policy of the United States (US) and of the State that Disadvantaged Business Enterprises (DBE) shall have the maximum opportunity to participate in the performance of Federal-aid contracts. The parties to this Contract shall take all necessary and reasonable steps in accordance with the laws, rules, and regulations cited in this Section to ensure that DBEs have the maximum opportunity to compete for and perform contracts. The Department and its Design-Builder shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of Work under New York State Department of Transportation Federal-aid contracts. This policy shall be made a part of all subcontracts and agreements entered into as a result of this Contract.

The US Congress, to this end, has enacted the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97-424), the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURRA) (Pub. L 100-17), and the Inter-modal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240) and regulations have been promulgated under 49 CFR Part 26. New York State has enacted Section 85 of the New York State Highway Law; Section 428 of the New York State Transportation Law; and Chapter 1, Title 17 of the NYCRR. The parties to this Contract are required to comply with these laws, rules, and regulations and the following DBE program requirements.

DB 102-9.1 Eligibility of DBEs

Only those DBE firms that are certified by the New York State Unified Certification Program (NYSUCP) are eligible to be used for goal attainment on this Contract. Disadvantaged Business Enterprise certification is not an endorsement of the quality or performance of the business, but simply an acknowledgment of the firm's status as a DBE.

In the event that the Design-Builder or Proposer, in good faith, proposes to use a firm that is listed as a certified DBE in its Proposal, and that firm is later found by the Department to be ineligible or unable to perform, then the Design-Builder or Proposer will be required to substitute another certified firm of the kind needed to meet the goal, before Award or, if the finding of ineligibility occurs after the Contract Award, in a timely fashion as determined by the Department’s Project Manager, at no additional cost to the Department.

DB 102-9.2 Goal

The Department has established a utilization goal for DBEs which is expressed as a percentage of the total Contract price. This goal is stated in the Instructions to Proposers (ITP) Section 6.9 and Article 6.2 of the Agreement and remains in effect throughout the life of this Contract. In executing this Contract, the Design-Builder declares that it subscribes to the utilization goal and must meet or exceed the goal or demonstrate that it could not meet it despite its best efforts. The Contract’s goal is then considered to be a target figure to which the Design-Builder commits during the Contract Time. When the Contract is awarded with DBE participation that is less than the Contract’s goal, the Design-Builder is required to continue good faith efforts, as defined in DB Section 102-9.6, throughout the life of this Contract in order to increase the DBE participation to meet or exceed the Contract’s goal.

Under the Federal Highway Administration’s (F.H.W.A.) Design-Build Contracting; Final Rule (55 Fed. Reg. 75,902, 75907 (2002)), The Department may, at its discretion, consider separate DBE Contract goals for the various elements of the Contract, including design, construction, ROW acquisition, construction inspection, and Maintenance and Protection of Traffic (MPT), among others. Please refer to Part 1 Article 5.2 to determine whether an overall DBE Contract goal or separate DBE Contract goals have been set for this Contract.
DB 102-9.3 Zero Percent Goal

For contracts which have a zero percent goal, the Design-Builder agrees to make good faith efforts to utilize certified DBEs for any subcontracts awarded by the Design-Builder in connection with the Contract.

DB 102-9.4 Counting DBE Participation towards DBE Goals

Disadvantaged Business Enterprise participation shall be counted toward meeting the DBE goal in accordance with the following:

A) Subcontracting. If a firm is determined to be an eligible DBE, as defined in DB Section 102-9.1, the total amount of the items of Work to be performed by the DBE is counted toward the applicable DBE goal except as provided in paragraphs B, C, and D below.

B) Joint Ventures. Joint ventures between certified DBE firms and non-DBE firms as Subcontractors will be counted toward the DBE contract goal in proportion to the percentage of ownership and control of each firm within the joint venture, subject to acceptance by the Department of the joint venture agreement to be furnished by the Design-Builder or Proposer before Award of the Contract. The joint venture agreement must include a detailed breakdown of the following:

1) Contract responsibility of the DBE for specific Contract Items of Work,
2) Capital participation by the DBE,
3) Specific Equipment to be provided to the joint venture by the DBE,
4) Specific responsibilities of the DBE in the control of the joint venture,
5) Specific staffing and skills to be provided to the joint venture by the DBE, and
6) Percentage distribution to the DBE of the projected profit or loss incurred by the joint venture.

C) In addition to these requirements, the DBE joint venturer must perform a commercially useful function as a DBE Subcontractor as defined in DB Section 102-9.5(A).

D) Manufacturers, Fabricators, and Suppliers (Regular Dealers). Count toward the DBE goal the expenditures for Material and supplies obtained from DBE Manufacturers, Fabricators, and Suppliers (regular dealers) in the amount noted below. The DBE Manufacturer, Fabricator, or Supplier must assume the actual and contractual responsibility for the provision of the Material and supplies.

1) Count the entire expenditure to a DBE Manufacturer.
2) Count the entire expenditure to a DBE Fabricator.
3) Count sixty percent of the expenditure to a DBE Supplier.
4) The Proposer must indicate, in the form of an explanation on the AAPHC-89, DBE Utilization Worksheet, the PC for the Material to be supplied.

E) Trucking Services. Count toward the DBE goal the expenditure for trucking services provided by certified DBEs in accordance with the following:

1) Count the pro-rated value of trucking services provided by trucks owned or leased on a long-term basis by the DBE trucking firm that appears on the AAPHC-89. For purposes of this Section, a long-term lease is a lease of six
months or more. Also, trucks that are leased on a long-term basis are leased without an operator.

2) Count the pro-rated value of trucking services provided by trucks hired or rented from other certified DBE trucking firms by the DBE trucking firm that appears on the AAPHC-89. Hired or rented trucks may include operators.

3) No credit will be received for the value of trucking services that are provided by trucks that are not owned, leased on a long-term basis, hired, or rented from certified DBE trucking firms.

4) The Design-Builder or Proposer must indicate in the form of an explanation on the AAPHC-89 the item number(s) for which the trucking services are to be performed, the type of trucking service to be performed (on-site versus off-site), and the corresponding dollar value for those services (per item).

5) The Design-Builder or Proposer must provide, before Award, the calculations and any pertinent documentation that support the dollar value of the proposed DBE trucking services. The Proposer must also provide within 30 Days of Award, a list of all proposed DBE trucking firms to be used on the Project and the number of trucks to be provided by each proposed DBE trucking firm. This list must be updated over the course of the Contract whenever there is a change to the trucking firms on the list or the number of trucks to be provided by each firm.

6) On-Site Trucking. For purposes of this Section, on-site trucking is defined as the following:
   a) Within the boundaries of the physical place where the construction will remain.
   b) Off-site facilities that are dedicated exclusively to the performance of the Contract and are so located in proximity to the actual construction location that it would seem reasonable to include them.
   c) Trucking services provided for on-site trucking are considered to be a subcontracting activity. The DBE trucking firm that appears on the AAPHC-89 may not subcontract any portion of its on-site trucking operations.

7) Off-Site Trucking. For purposes of this Section, off-site trucking is defined as the following:
   a) Outside of the boundaries of the physical place where the construction will remain.
   b) Off-site facilities that were established by a commercial Supplier or Material Supplier prior to Award of the Contract and used for multiple customers.
   c) Trucking services provided for off-site trucking are not considered to be a subcontracting activity; it is considered to be a service.

8) The DBE trucking firm that appears on the AAPHC-89 must control the day-to-day trucking operations on the Project. The DBE is responsible for the following activities:
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a) Negotiating and executing rental/leasing agreements;
b) Hiring and firing the Work force;
c) Coordinating the daily trucking needs with the Design-Builders; and
d) Scheduling and dispatching trucks.

9) The Design-Builder must explain in writing the scope of Work to be performed by the DBE for all items indicated as partial items on the AAPHC-89 at the time the Design-Builder submits the utilization package. A DBE that holds a Department contract may not count its own utilization in the Contract toward the DBE Contract goal.

DB 102-9.5 Conditions of Participation

Disadvantaged Business Enterprise participation will be counted toward meeting the DBE Contract goal, subject to all of the following conditions:

A) Commercially Useful Function. The Design-Builder is responsible for ensuring that DBEs performing Work on the Contract perform a commercially useful function. A DBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of Work on the Contract and carries out its responsibilities by actually performing, managing, and supervising the Work involved in accordance with normal industry practice (except where such practices are inconsistent with the DBE regulations). Regardless of whether an arrangement between the Design-Builder and the DBE represents standard industry practice, if the arrangement erodes the ownership, control, or independence of the DBE or in any other way does not meet the commercially useful function requirement, the Design-Builder shall receive no credit toward the goal.

B) Work Force. The DBE firm must employ a Work force, (including administrative and clerical) separate and apart from that employed by the Design-Builder, other Subcontractors on the Project, or their Affiliates. This does not preclude the employment by the DBE of an individual that has been previously employed by another firm involved in the Contract, provided that the individual was independently recruited by the DBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the DBE shall not be allowed.

C) Supervision. All Work performed by the DBE must be controlled and supervised by the DBE without duplication of supervisory personnel from the Design-Builder or other Subcontractors. This does not preclude routine communication between the supervisory personnel of the DBE and other supervisors necessary to coordinate the Work of the Contract.

D) Equipment. Disadvantaged Business Enterprise Subcontractors may supplement their Equipment by renting or leasing additional Equipment in accordance with customary industry practice. However, no more than 50% of the Equipment required to perform the Work of the Subcontractor may be obtained from the Design-Builder, other Subcontractors on the Project, or their Affiliates. If the DBE obtains Equipment from any of those sources, the Department shall obtain from the DBE documentation demonstrating that similar Equipment and terms could not be obtained at a lower cost from other customary sources of Equipment. The required documentation shall include, but not be limited to, copies of the rental or leasing agreements and the names, addresses, and terms quoted by other sources of Equipment.
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DB 102-9.6 Good Faith Efforts

To ensure that DBE firms are given the maximum practical opportunity to participate in the Work of the Contract, the Design-Builder or Proposer must make good-faith efforts to obtain DBE participation in order to fulfill the DBE Contract goal. The Design-Builder’s or Proposer’s demonstration of good-faith efforts must be at least as extensive as, but not limited to, the following:

A) Efforts to utilize the services of minority and women community organizations; minority and women contractors’ groups; local, State, and federal minority and women business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.

B) Attendance by a representative of the Design-Builder or Proposer who is knowledgeable of the Contract Work at pre-proposal, pre-award, and/or other meetings, if any, scheduled by the Department to inform DBEs of subcontracting and other opportunities for participation in the Contract. At these meetings, the Department’s representative will explain the required Contract Work and the Design-Builder or Proposers may solicit the interest of the DBE attendees in any specific portions of the Work.

C) Efforts to secure participation by certified DBE firms. Only DBEs certified by NYSUCP shall be used to fulfill goals on Federal-aid projects.

D) Written solicitation of DBEs. A written solicitation inquiry will be sent to all DBE firms. Notification must be made in a timely fashion such that the DBEs contacted have a reasonable period of time in which to respond. The Design-Builder’s or Proposer’s solicitation will cover certified DBEs listed in the Department’s Registry of Disadvantaged Business Enterprises maintained by the OCR. It will be mandatory for the Design-Builder or Proposer to contact all DBEs who have expressed interest in the Contract to the Design-Builder or Proposer and to document efforts taken to secure their participation in the Contract and in any future Work.

E) Efforts to select portions of the Work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated Contract goal. Where certified DBEs have expressed interest to the Design-Builder in performing certain Work that the Design-Builder normally performs with its own forces, and the Contract’s goal has not otherwise been attained, the Design-Builder will be required to subcontract such Work or portions thereof in order to meet the goal.

F) Efforts to negotiate with DBEs for specific subcontracts. Price alone will not be an acceptable basis for rejecting DBE bids, unless it can be shown that no reasonable price can be obtained from a DBE.

G) Efforts to aid the DBEs contacted with needed assistance in obtaining bonding or insurance required by the Design-Builder. Difficulties encountered by the DBE in obtaining bonding or insurance required by the Design-Builder will not be acceptable reasons for the Design-Builder’s failure to meet the Contract’s goal.

H) Providing interested DBEs with adequate information about the Plans, Specifications, and requirements of the Contract.

I) Record of solicitation effort. The Design-Builder and Proposers must keep records of efforts to solicit and negotiate with DBEs, using Form AAP-10, Solicitation Log, as a continuing record of pre- and post-Award activity. When submitting a D/M/WBE Schedule of Utilization (Form AAP-19) to the Department, the Design-Builder or Proposer will attach the log, together with the supplemental information specified in the
instructions for the AAP-10, as evidence of good-faith efforts. Such supplemental efforts must include at least the following:

1) All envelopes of solicitation inquiries that were returned as undeliverable; and
2) Any quotations submitted by DBEs that are not included in the D/M/WBE Schedule of Utilization with an explanation for the Design-Builder’s or Proposer’s action in each case.

DB 102-9.7 Disadvantaged Business Enterprise Utilization Package

The Design-Builder shall submit a complete utilization package within 30 Calendar Days after execution of the Contract. The DBE utilization package consists of the following elements:

A) Form AAP-19, D/M/WBE Schedule of Utilization;
B) Form AAPHC-89, D/M/WBE Utilization Worksheet (NOTE: Form AAPHC-89 must be co-signed by both the Design-Builder and the Subcontractor); and
C) All of the information pertaining to good faith efforts listed in DB Section 102-9.6.

DB 102-9.8 Proposer’s Failure to Comply

The Department's Award of the Contract is conditioned upon the Design-Builder’s or Proposer’s fulfillment of the requirements of this Section. If the Design-Builder or Proposer fails to submit a complete utilization package as defined in DB Section 102-9.7 by the thirtieth Calendar Day after the execution of the Contract and/or fails to attain the DBE utilization goal, and to satisfactorily document its good faith efforts as defined in DB Section 102-9.6 above, the Contract may be terminated.

DB 102-9.9 Disadvantaged Business Enterprise Officer

The Design-Builder or Proposer shall designate a DBE Officer who will have the responsibility to, and be capable of, effectively administering and promoting an active DBE program, and who is assigned adequate authority to do so. See also DB Section 102-10.3.

DB 102-9.10 Conformance to DBE Schedule of Utilization

Following the Award of the Contract, the Design-Builder is required to enter into subcontracts or agreements with the DBEs identified on the approved D/M/WBE Schedule of Utilization, for Work of the kind and amount identified therein. The Department’s Project Manager will monitor the Work of the Contract to ensure that the DBEs identified perform the Work in accordance with the D/M/WBE Schedule of Utilization. While not in compliance with the schedule, and if it is determined by the Department that the Design-Builder is not in compliance with DB Section 102-9.6, the Design-Builder shall not be entitled to payment nor shall any payment be rendered on account of Work done or Material furnished.

DB 102-9.11 Revisions in DBE Utilization

If, after the Award of the Contract, a subcontract, or purchase order held by a DBE or joint venture involving a DBE is modified or terminated, the Design-Builder shall immediately notify the Department of such modification or termination and the reasons therefore or an alternative subcontract or purchase order for a commensurate dollar amount furnished by another DBE.
Any change in DBE utilization must be accepted by the Department through submission of a revised AAP-19 and an AAPHC-89/AAPHC-89-1 (Amended) signed by both parties. The Design-Builder must receive this acceptance prior to implementing any proposed change. Failure by the Design-Builder to obtain acceptance could result in appropriate sanctions.

For purposes of this Section, a revision in DBE utilization is considered to be any of the following modifications:

A) Reducing the dollar value of or eliminating the DBE's item(s) of Work. In the event that this results in a shortfall in goal attainment, the Design-Builder will be required to make good faith efforts to backfill in accordance with DB Section 102-10.6.

B) Removing one DBE and substituting another DBE for the same item(s) of Work.

C) Increasing the dollar value of an item of Work or adding a new item of Work to a DBE already participating on the Contract.

D) Adding a DBE to the Contract.

DB 102-9.12 Monitoring Design-Builder Compliance

The Design-Builder will allow the Director of OCR and other authorized representatives of the Department or the federal government to conduct periodic inspections of the Design-Builder's DBE participation efforts during the performance of this Contract. In order to determine whether the Design-Builder has complied with the requirements of this Section, the Commissioner may proceed by order to show cause, attend a hearing before the Contract Review Unit, or follow any other lawful procedure upon due notice in writing to the Design-Builder. When the Design-Builder has been found out of compliance under this Section, the Contract may be canceled, terminated, or suspended in whole or in part in accordance with the Contract Documents and Section 40 of the New York State Highway Law and the Design-Builder may be referred to the United States Department of Transportation (USDOT) for possible suspension or debarment as provided in 49 CFR 29 and such other sanctions as may be imposed and remedies invoked as provided under the authority of 49 CFR 26, or by rule, regulation, order of the Commissioner, or as otherwise provided by law.

DB 102-9.13 Prompt Payment

Failure by the Design-Builder to pay any Subcontractor within 7 calendar days of receipt of payment from the Department for Work performed that is accepted by the Department, in violation of Section 139-f of the New York State Finance Law, could result in the withholding of future estimated payments by the Department. The Design-Builder shall submit reports on payments made to Subcontractors as required by the Department. If it is determined by the Department that a Subcontractor has not received payment due and owing in accordance with Section 139-f of the New York State Finance Law, the Department may direct the Design-Builder to make such payment. Any such direction by the Department is a lawful direction under the Contract Documents. While such direction is not complied with, the Design-Builder shall not be entitled to have any payment made nor shall any estimate be rendered on account of Work done.

DB 102-9.14 Required Records

The Design-Builder shall keep records and documents for six years following performance of this Contract to indicate compliance with this Section. These records and documents, or copies thereof, will be made available at reasonable times and places for inspection by any authorized representatives of the
New York State Department of Transportation

Department and will be submitted to the Department upon request, together with other compliance information which may be required.

**DB 102-9.15 Non-Discrimination**

The Design-Build shall not use the requirements of this Section to discriminate against any qualified company or group of companies.

**DB 102-9.16 Reporting Violations of Program Rules**

The Design-Builders shall not use the requirements of this Section to discriminate against any qualified company or group of companies.

The Design-Build is responsible for ensuring that the DBE performs a commercially useful function on the Contract as defined in DB Section 102-10.5(A). If the Design-Builders becomes aware of any violations of this Section, the Design-Builders is required to promptly report the violations to the Department’s Project Manager.

**DB 102-9.17 Approval to Subcontract on Federal-aid Contracts**

The Department’s OCR requires the co-signature of all DBE Subcontractors on AAPHC-89 recommending Award of the Contract. This co-signature requirement only applies to Federal-aid contracts.

Lack of DBE co-signatures will delay Award of the Contract.

**DB 102-10 EQUAL EMPLOYMENT OPPORTUNITY**

**DB 102-10.1 General**

A) Equal Employment Opportunity requirements not to discriminate and to take Affirmative Action to assure Equal Employment Opportunity (EEO), as required by federal Executive Order 11246, Federal Executive Order 11375, and New York State Executive Order 45, are set forth in Part 1 Articles 18 and 19 and in this DB Section 102-11 which are imposed pursuant to Section 140 of 23 United States Code (USC), as established by Section 22 of the Federal-aid Highway Act of 1968. Non-discrimination and Affirmative Action are also required by the New York State Labor Law, Section 220-e, as amended, and the regulations of the New York State Department of Transportation relative to Federal-aid projects [49 Code of Federal Regulations (CFR) Part 21], including employment practices when the agreement covers a program set forth in Appendix B of 49 CFR Part 21. The requirements set forth in this DB Section 102-11 shall constitute the specific Affirmative Action requirements for this Contract.

B) The Design-Builders will work with the State and the federal government in carrying out EEO obligations and in the review of their activities under this Contract.

C) The Design-Builders and all its Subcontractors holding subcontracts of $10,000.00 or more will comply with the minimum specific requirements of EEO of federal Executive Order 11246, as set forth in Volume 6, chapter 4, section 1, subsection 1 of the Federal-Aid highway program manual. The Design-Builders will include these requirements in every subcontract with such modification of language as is necessary to make them binding on the Subcontractor.
New York State Department of Transportation

DB 102-10.2 Equal Employment Opportunity Policy

The Design-Builder, its Subcontractors, or any Person acting on behalf of the Design-Builder or its Subcontractors will accept as their operating policy the following statement which is designed to further the provision of EEO to all persons without regard to their race, color, religion, sex, national origin, age, disability, or marital status, and to promote the full realization of EEO through a positive continuing program:

“It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, or during consideration for employment, without regard to their race, religion, sex, or color, national origin, age, disability or marital status. Such non-discriminatory action shall include, but not be limited to: employment, job assignment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.”

DB 102-10.3 Equal Employment Opportunity Officer

The Design-Builder will designate and make known to the New York State Department of Transportation contracting officers an EEO Officer and MBE/WBE Officer (or, DBE Officer for Federal-aid projects) who will jointly have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so. See DB Sections 102-8.9 and 102-9.9 for information regarding MBE/WBE or DBE Officers, respectively.

DB 102-10.4 Dissemination of Policy

A) All members of the Design-Builder’s staff who are authorized to hire, supervise, promote, and discharge Employees; who recommend such action; or who are substantially involved in such action will be made fully cognizant of, and will implement, the Design-Builder’s EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken at a minimum:

1) Periodic meetings of supervisory and personnel office Employees will be conducted before the start of Work and then not less than once every six months, at which time the Design-Builder’s EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or another knowledgeable company official.

2) All new supervisory (first level of supervision and above) or personnel office Employees will be given a thorough review by the EEO Officer or another knowledgeable company official of all major aspects of the Design-Builder’s EEO obligations within 30 days following their reporting for duty with the Design-Builder.

3) All personnel who are engaged in direct recruitment for the Project will be instructed in the Design-Builder’s procedures for locating and hiring minority group and female Employees by the EEO Office or appropriate company official. (Minority groups referred to herein shall mean Black, Hispanic, Asian/Pacific Islander, and American Indian/Alaskan.)

B) In order to make the Design-Builder’s EEO policy known to all Employees, prospective Employees, and potential sources of Employees (i.e., schools; employment agencies;
labor unions, where appropriate; and college placement officers) the Design-Builder will take the following actions:

1) Notices and posters setting forth the Design-Builder’s EEO policy will be placed in areas readily accessible to Employees, applicants for employment, and potential Employees.

2) The Design-Builder’s EEO policy and the procedures to implement such policy will be brought to the attention of Employees by means of meetings, Employee handbooks, or other appropriate means.

C) In all solicitations either by competitive bidding or negotiation made by the Design-Builder for Work to be performed under a subcontract, including procurements of Material or Equipment, each potential Subcontractor or Supplier shall be notified by the Design-Builder of the Design-Builder’s obligations under this Contract and the New York State Department of Transportation’s and federal regulations relative to non-discrimination.

**DB 102-10.5 Recruitment**

A) When advertising for Employees, the Design-Builder will include in all advertisements for Employees the following notation: “An Equal Opportunity Employer.” All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the Project Work force would normally be derived. These advertisements shall state that all qualified applicants will be afforded EEO without regard to race, religion, sex, color, national origin, age, disability, or marital status.

B) The Design-Builder will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private Employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges, and minority group organizations. To meet this requirement, the Design-Builder’s EEO Officer will identify sources of potential minority group Applicants, and establish with such identified sources procedures whereby minority group applicants may be referred to the Design-Builder for employment consideration.

C) In the event the Design-Builder has a valid bargaining agreement providing for exclusive hiring hall referrals, the Design-Builder is expected to observe the provisions of that agreement to the extent that the system permits the Design-Builder’s compliance with EEO contract provisions. [The USDOL has held that where implementation of such agreements has the effect of discriminating against minorities or women, or obligates the Design-Builder to do the same, such implementation violates the federal Executive Order 11246.]

D) The Design-Builder will encourage present Employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such Employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with Employees.

**DB 102-10.6 Personnel Actions**

Wages, working conditions, and Employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination,
shall be taken without regard to race, color, religion, sex, national origin, age, disability, or marital status. The following procedure shall be followed:

A) The Design-Builder will conduct periodic inspections of the Project Site to ensure the working conditions and Employee facilities do not indicate discriminatory treatment of Project Site personnel.

B) The Design-Builder will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory practices.

C) The Design-Builder will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Design-Builder will promptly take corrective action. If the review indicated that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

D) The Design-Builder will promptly investigate all complaints of alleged discrimination made in connection with obligations under this Contract, will attempt to resolve such complaints, and will take appropriate corrective action within 15 days. All subsequent corrective actions or decisions will also be documented and forwarded to the New York State Department of Transportation Compliance Officer within seven days after such action has taken place. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Design-Builder will inform every complainant of the results and all of their avenues of appeal should the complaint be denied.

**DB 102-10.7 Training and Promotion**

A) The Design-Builder will assist in locating, qualifying, and increasing the skills of minority group and women Employees and applicants for employment.

B) Consistent with the Design-Builder’s Work force requirements and as permissible under federal and State regulations, the Design-Builder shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance).

C) The Design-Builder will advise Employees and applicants for employment of available training programs and entrance requirements for each.

D) The Design-Builder will periodically review the training and promotion potential of minority group and women Employees and will encourage eligible employees to apply for such training and promotion.

**DB 102-10.8 Unions**

If the Design-Builder relies in whole or in part upon unions as a source of Employees, the Design-Builder will use their best effort to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions and to effect referrals by such unions of minority and female Employees. The Design-Builder will send to each labor union or representative of Workers with which it is bound by a collective bargaining or other agreement or understanding a notice to be provided by the New York State Division of Human Rights, advising such labor union or representative of the Design-Builder’s compliance with the non-discrimination clauses. Actions by the Design-Builder, either directly or through a Design-Builder association acting as agent, will include the following procedures:
A) The Design-Builder will use its best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group Employees and women so that they may qualify for higher paying employment.

B) The Design-Builder will use its best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age, disability, or marital status.

C) The Design-Builder is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union, and such labor union refuses to furnish such information to the Design-Builder. The Design-Builder shall so certify to the State and shall set forth what efforts have been made to obtain such information. Further, if the Design-Builder was directed to do so by the Department in the RFP for this Contract, the Design-Builder shall request such labor union or representative to furnish him with a written statement that such labor union or representative accepts the non-discrimination clauses and will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under this Contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request, the Design-Builder shall promptly notify the New York State Division of Human Rights and set forth what efforts have been made to obtain such information.

D) In the event the union is unable to provide the Design-Builder with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the Design-Builder will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age, disability, or marital status, making full efforts to obtain qualified and/or qualifiable minority group persons and women. [The United States Department of Labor (USDOL) has held that it shall be no excuse that the union with which the Design-Builder has a collective bargaining agreement providing for exclusive referral failed to refer minority Employees.] In the event the union referral practice prevents the Design-Builder from meeting the obligations pursuant to federal Executive Order 11246, as amended, and this DB Section 102-10, the Design-Builder shall immediately notify the New York State Department of Transportation.

**DB 102-10.9  Affirmative Action in Subcontracting**

A) The Design-Builder will not discriminate on the grounds of race, religion, sex, color, national origin, age, disability, or marital status in the selection of Subcontractors, including procurements and leases of Equipment.

B) If the Design-Builder determines to use a Subcontractor as part of this Contract, Affirmative Action shall be taken to increase the participation of minority business firms in that Work. As part of the Affirmative Action, the Design-Builder will identify and contact minority business firms and solicit proposals for the Work to be subcontracted.

C) The Design-Builder will document the Affirmative Action steps taken to comply with DB Section 102-10.9(B). Such documentation will be provided at the time or submittal of the
Proposal and the Design-Builder shall update this documentation with the execution of each subcontract after Award of this Contract.

D) By execution of this Contract, the Design-Builder certifies that the Affirmative Action steps in DB Sections 102-10.9(A), (B), and (C) above were taken when soliciting proposals for the Work in this Contract indicated to be subcontracted and that these steps will be taken should any Work be subcontracted in the future.

E) The Design-Builder will ensure binding Subcontractor and vendor compliance with their EEO obligations. The Design-Builder will take such actions in enforcing the provisions of such subcontract or purchase order as the Department may direct, including sanctions or remedies for non-compliance. If the Design-Builder becomes involved in or is threatened with litigation with a Subcontractor or a vendor as a result of such direction by the Department, the Design-Builder shall promptly so notify the New York State Office of the Attorney General, requesting it to intervene and protect the interest of the State of New York.

DB 102-10.10 Records and Reports

A) The Design-Builder will keep such records as are necessary to determine compliance with the Design-Builder’s EEO obligations. The records kept by the Design-Builder will be designed to indicate the following:

1) The number of minority and non-minority group members and women employed in each Work classification on the Project, where required by the New York State Department of Transportation Compliance Officer.

2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to Design-Builders that rely in whole or in part on unions as a source of their Work force).

3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female Employees.

4) The progress and efforts being made in securing the services of minority group Subcontractors or Subcontractors with meaningful minority and female representation among their Employees.

5) Compliance with all other requirements in these provisions such as meetings, instructions, and employment efforts.

B) The Design-Builder will comply with Sections 291 through 299 of the New York State Executive Law and the New York State Civil Rights Law and will provide all information and reports required by federal and State regulations or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by State or federal officials to be pertinent to ascertain compliance with such laws, regulations, orders, and instructions. All such records must be retained for a period of six years following completion of the Contract Work and shall be available at reasonable times and places for inspection by authorized representatives of the State and the F.H.W.A.

C) The Design-Builder will submit to the New York State Department of Transportation a monthly report for the first three months after beginning Work, thereafter upon request, and each month of July following the initial submission for the duration of the Project indicating the number of minority, women, and non-minority group Employees currently
engaged in each Work classification required by the Contract Work. This information is to be reported on Form PR-1391, Federal-aid Highway Construction Contractor’s Monthly EEO Report. If on-the-job training is being required by this Contract, the Design-Build will be required to furnish Form FHWA-1409, Federal-Aid Highway Construction Contractor’s Semi-Annual Training Report.

D) Failure to comply with this DB Section 102-10 may be considered unsatisfactory performance and may subject this Contract to termination under DB Section 105-6. Non-compliance may result in the Design-Build’s being declared ineligible for future agreements made by or on behalf of the State or a public authority or agency of the State, until it satisfies the New York State Commissioner of Human Rights that it has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such findings shall be made by the New York State Commissioner of Human Rights after conciliation efforts by the New York State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the New York State Division of Human Rights, notice thereof has been given to the Design-Build, and an opportunity has been afforded them to be heard publicly before the New York State Commissioner of Human Rights or official designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided for by law. These may include, but are not limited to, the following:

1) Withholding of payments to the Design-Build under this Contract until the Design-Build complies; and/or

2) Cancellation, termination, or suspensions of this Contract in whole or in part.

**DB 102-11  STATE AND LOCAL SALES TAX EXEMPTION.**

In connection with capital improvement contracts, under the New York State Tax Law, all tangible personal property which will become an integral component of a structure, building, or real property of the State, or any of its political subdivisions, is exempt from State and local retail sales tax and compensating use tax.
(Project Name)
DESIGN-BUILD PROJECT

PIN _________

DB CONTRACT DOCUMENTS
PART 2

DB SECTION 102
REQUIREMENTS AND CONDITIONS

APPENDIX 102A
FORMS
FORMS INDEX

AAP 10, D/M/WBE Subcontractor and Supplier Solicitation Log

AAP 19c, Disadvantage/Minority/Women’s Business Enterprise Schedule of Utilization

AAP 35, NYSDOT Workforce and Training Utilization Schedule

AAP26, Monthly Training Progress Report Forms:

AAPHC 89, D/M/WBE Utilization Worksheet and Approval to Subcontract

AAPHC 89-1, D/M/WBE Utilization Worksheet Amendment

Certification of Officer of Design-Builder or Subcontractor

FHWA 1391, Annual EEO Report

HC-231-1, Design-Builder’s Payroll Statement

HC250b, Application for Extension of Completion Date

NYSDOT Training Program Outline & Evaluation Forms:
- Bridge Safety Inspection NICET Level 1
- Bridge Safety Inspection NICET Level II
- Bridge Safety Inspection NICET Level III
- Computer-Aided Drafting
- Highway Construction NICET Level 1
- Highway Construction NICET Level II
- Highway Design NICET Level 1
- Highway Design NICET Level II
- Highway Survey NICET Level I
- Highway Survey NICET Level II
- Highway Traffic Operations NICET Level I
- Highway Traffic Operations NICET Level II

OSHA 3165, OSHA Notice

PW 30, Application for Dispensation for Hours

SF 1444, Request for Authorization of Additional Classification and Rate
### D/M/WBE SUBCONTRACTOR AND SUPPLIER SOLICITATION LOG

<table>
<thead>
<tr>
<th>CONTRACT NO.</th>
<th>COUNTY</th>
<th>LETTING DATE</th>
<th>PAGE NO</th>
<th>PARTICIPATION GOALS</th>
<th>COMBINED</th>
<th>DBE GOAL: %</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>D/MBE: %</td>
<td>D/WBE: %</td>
<td></td>
</tr>
</tbody>
</table>

**CONTRACTOR NAME AND ADDRESS (Include zip code)**

**CONTACT PERSON:**

**CONTRACTOR FEDERAL IDENT NO.**

**TELEPHONE NO:** (  )

### D/M/WBE FIRMS SOLICITED TO PERFORM CONTRACTING WORK OR TO SUPPLY MATERIALS

<table>
<thead>
<tr>
<th>COMPANY NAME AND CONTACT PERSON'S NAME</th>
<th>FEDERAL EMPLOYER IDENTIFICATION NO.</th>
<th>TELEPHONE NUMBER (Incl. Area Code)</th>
<th>WORK TYPE(S) BEING SOLICITED</th>
<th>TYPES AND DATES OF CONTACT</th>
<th>D/M/WBE RESPONSE CODE(S)</th>
<th>BIDDER ACTION CODE</th>
</tr>
</thead>
</table>

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Form AAP 10 1 of 2
INSTRUCTIONS FOR COMPLETING FORM AAP-10
D/M/WBE SUBCONTRACTOR AND SUPPLIER SOLICITATION LOG

New York State Department of Transporation Standard Specification §102-21 requires Prime Contractors to report efforts to solicit participation by Disadvantaged, Minority and Women-owned Business Enterprises in construction contracts. The D/M/WBE Subcontractor and Supplier Solicitation Log is used for this purpose. The log is to be maintained by each prospective Proposer throughout the development/subcontractor solicitation period. THE APPARENT LOW PROPOSER MUST COMPLETE ALL SECTIONS OF THIS FORM AS A PRE-REQUISITE TO CONTRACT AWARD AND SUBMIT IT, ALONG WITH FORMS AAP 11 (D/M/WBE SOLICITATION RESPONSE) OR PRESCRIBED ALTERNATIVES, TO DOCUMENT GOOD FAITH EFFORT IN THE DEVELOPMENT OF A D/M/WBE UTILIZATION PLAN. The Plan, as described in Standard Specification §102-21, will be submitted to the Office of Equal Opportunity Development and Compliance. (EODC).

CONTRACT NO.: Enter N.Y. State Contract Number (Example: D259726).

COUNTY: Enter name of county or counties (Example: Albany & Essex).

LETTING DATE: Enter the date (Month/Day/Year) on which this Project is schedule to be let.

PAGE NO.: Enter 1 of 1; 1 of 2; 2 of 2; etc. Use additional forms as needed.

PARTICIPATION GOALS: Enter DBE participation goal(s) as stated in the Proposal.

CONTRACTOR NAME AND ADDRESS: Enter name and address (including zip code) and telephone number (including area code) of your firm.

CONTACT PERSON: Enter the name of the person in your firm who has been designated as the Compliance Contact Person for this Project.

CONTRACTOR FEDERAL IDENT. NO: Enter your Federal Employer Identification Number.

COMPANY NAME AND CONTACT PERSON’S NAME: Enter the name of the solicited firm and the name of the individual associated with the firm to whom the solicitation inquiry was sent or with whom subcontract negotiations have taken place.

FEDERAL EMPLOYER IDENTIFICATION NO.: Enter the Federal Employer Identification Number of the solicited firm.

TELEPHONE NUMBER: Enter the telephone number (including area code) of the solicited firm.

WORK TYPE(S) BEING SOLICITED: Enter the work type(s) for which this firm has been solicited in connection with this Contract. (NOTE: Work type codes are provided for every firm listed in the Registry of Disadvantaged/Minority/Women-owned Business Enterprises issued by the New York State Department of Transportation. If a firm is solicited that is NOT included in the NYSDOT Registry, but is included in the Directory of Certified Minority and Women-owned Business Enterprises issued by the New York State Department of Economic Development, enter the appropriate SIC code listed for the firm in the DED Directory).

TYPE AND DATES OF CONTACT: Enter dates on which your firm has contacted the solicited firm, either by mail (date solicitation inquires sent), telephone (including time of call) or other person-to-person contacts. Identify the type of contact by prefacing each date with “M” if a mail contact; “T” if a telephone call: and “D” if a direct meeting with the firm.

D/M/WBE RESPONSE CODE: Enter the code(s) [11 through 14; 21 through 26] for the response(s) checked by the solicited firm on Form AAP 11 (Solicitation Response).

PROPOSER ACTION CODE: Enter the code describing your action in this Proposal with respect to the solicited firm, as follows:

<table>
<thead>
<tr>
<th>CODE</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>31</td>
<td>This firm has been selected for Utilization in the Contract.</td>
</tr>
<tr>
<td>32</td>
<td>This firm is unavailable to participate in the Contract for the reason(s) stated on the Solicitation Response.</td>
</tr>
<tr>
<td>33</td>
<td>This firm is no longer in business. (NOTE: If this action is checked, attach your explanation as to why the solicitation was sent to the firm and how evidence that it was no longer in business was obtained).</td>
</tr>
<tr>
<td>34</td>
<td>A solicitation inquiry to this firm was returned as undeliverable. (NOTE: If this response is checked, attach the returned envelope showing that it was undeliverable).</td>
</tr>
<tr>
<td>35</td>
<td>We were unable to reach this firm in a telephone follow-up to the solicitation inquiry. (NOTE: If this response is checked, indicate in the Dates of Contact column the dates and times at which follow-up was attempted).</td>
</tr>
<tr>
<td>36</td>
<td>This firm did not respond to telephone messages. (NOTE: If this response is checked, indicate in the Dates of Contact column the dates and times at which messages were left).</td>
</tr>
<tr>
<td>37</td>
<td>This firm has not been selected or Utilization in the Contract. (NOTE: If this response is checked, attach an explanation for this action. If a quote was provided by the firm, a copy of it must be attached).</td>
</tr>
</tbody>
</table>
DISADVANTAGED/MINORITY/WOMEN’S BUSINESS ENTERPRISE  
SCHEDULE OF UTILIZATION

**INSTRUCTIONS**
1. The low Proposer must complete all appropriate sections of this form as a prerequisite to Contract Award or to any amendment to approved D/M/WBE Utilization.
2. For initial Contract Award, this form must be accompanied by a completed Form AAP 10-Solicitation Log, and by Form AAP 11-D/M/WBE Solicitation, or the prescribed alternative, for each D/M/WBE listed on the solicitation log; and by a completed Form AAP 89-D/M/WBE Utilization Worksheet, for each D/M/WBE that will be utilized in the Contract.
3. For Amendment to an Approved Award, this form must be accompanied by a completed Form AAP 89 for any D/M/WBE that is to be added to the original Utilization Plan; and/or by a completed Form AAP 89-1-D/M/WBE Utilization Worksheet Amendment, for any D/M/WBE whose approved utilization is to be changed.
4. Describe D/M/WBE utilization as one of the following:
   - SC – Subcontract Construction
   - TS – Trucking or Services
   - MS – Source of Materials or Supplies
5. The dollar value of utilization for each D/M/WBE is the actual amount to be paid to the D/M/WBE, not the Contract bid price.

**CHECK ONE:**
- Schedule for initial Contract Award
- Schedule for Amending Utilization

**CONTRACT INFORMATION**

<table>
<thead>
<tr>
<th>Proposer</th>
<th>Fed. Emp ID No.</th>
</tr>
</thead>
<tbody>
<tr>
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<table>
<thead>
<tr>
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</table>

<table>
<thead>
<tr>
<th>City</th>
<th>State</th>
<th>Zip</th>
<th>Total Amt. Proposed = $</th>
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<tbody>
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<table>
<thead>
<tr>
<th>Contract No.</th>
<th>Location (County)</th>
<th>D/MBE Goal</th>
<th>% x Total Amt. Prop = $</th>
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</thead>
<tbody>
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<table>
<thead>
<tr>
<th>Letting Date</th>
<th>D/WBE Goal</th>
<th>% x Total Amt. Prop = $</th>
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<tbody>
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<table>
<thead>
<tr>
<th>Fed. Aid Project No.</th>
<th>Combine DBE Goal</th>
<th>% x Total Amt. Prop = $</th>
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<tbody>
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</table>

**UTILIZATION INFORMATION**

**D/MBE UTILIZATION**

<table>
<thead>
<tr>
<th>D/MBE UTILIZATION (Firm Name)</th>
<th>Fed. Emp ID No.</th>
<th>Utilization as (See Inst #4)</th>
<th>Dollar Value of Utilization (See Inst. #5)</th>
</tr>
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<tbody>
<tr>
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</tbody>
</table>

| TOTAL D/MBE UTILIZATION + $ |

**D/WBE UTILIZATION**

<table>
<thead>
<tr>
<th>D/WBE UTILIZATION (Firm Name)</th>
<th>Fed. Emp ID No.</th>
<th>Utilization as (See Inst #4)</th>
<th>Dollar Value of Utilization (See Inst. #5)</th>
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</table>

| TOTAL D/WBE UTILIZATION = $ |

| TOTAL COMBINED DBE UTILIZATION = $ |

Date / / Signature Title

**TO BE COMPLETED BY EODC**

The Proposer has _____, has not _____ demonstrated good faith efforts to secure D/M/WBE utilization in satisfaction of the Contract goals as required by the Contract Specifications.

Date / / Signature

Form AAP 19c
# WORKFORCE AND TRAINING UTILIZATION SCHEDULE

|---------------------|-----------|--------------------------|-----------------------|----------------------|---------------------|

7. Name and Project Address of Prime Contractor

<table>
<thead>
<tr>
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<tbody>
<tr>
<td></td>
<td>JAN M F T</td>
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<tr>
<td>Equipment Operators</td>
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<tr>
<td>Teamsters</td>
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<tr>
<td>Ironworkers</td>
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<td>Cement Masons</td>
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<tr>
<td>Electricians</td>
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<tr>
<td>Painters</td>
<td></td>
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<tr>
<td>Surveyors</td>
<td></td>
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<tr>
<td><strong>TOTAL-ALL CRAFTS</strong></td>
<td></td>
</tr>
<tr>
<td>Laborers</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL-WORKFORCE</strong></td>
<td></td>
</tr>
</tbody>
</table>

10. Remarks

11. Prepared by (Signature & Title)
12. Telephone
13. Date

Page ___ of ___
## MANPOWER AND TRAINING UTILIZATION SCHEDULE

### 12. Training Programs and Starting Dates

<table>
<thead>
<tr>
<th>Construction Craft / Trade</th>
<th>Training Program</th>
<th>Starting Date</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

### 13. Proposal to Train Apprentice (Only for Contracts containing the Training Special Provision)

Minority or Woman
Indentured Apprenticeship (Name) __________________________________________ Craft/Trade __________________________

Registered Apprenticeship Program ____________________________________________

## INSTRUCTIONS FOR COMPLETING THE MANPOWER AND TRAINING UTILIZATION SCHEDULE

The Manpower and Training Utilization Schedule is to be completed by the Contractor prior to the Affirmative Action Preconstruction Meeting and each time there is a significant change in the Contract Schedule. A separate form is required for each year the Contract is in effect.

7. Construction Crafts/Trades: Enter the name of all trades to be employed on the Contract during the construction year. Use additional pages if necessary.

8. Estimated Average Monthly Contract Workforce: Enter the average number of employees in each trade expected to work on the Contract for each month. Include all classifications, i.e., journeyworker, apprentice, for the Contractor and all subcontractors. Do not include the initial indentured apprentice or trainee required by the Training Special Provisions. Do not include laborers, they are estimated separately.

12. Training Programs and Starting Dates: Enter the approved training program the Contractor would use to train the employees for journeyworker status in each of the trades listed under 7. Enter the earliest date during the construction year when training in that trade could commence.

13. Proposal to Train Apprentice: Complete only for Contracts containing the Training Special Provision. Where the Contractor has identified and desires to employ a specific minority or woman indentured apprentice, enter the name, trade, and apprenticeship program of the minority or woman indentured apprentice to be trained on the Contract.
## MONTHLY TRAINING PROGRESS REPORT

**Period** ____________________________
**Month/Year**

**PROJECT D#** ______________________

**LOCATION OF PROJECT (COUNTY)**

**AGREEMENT D#** ______________________

### 1. NAME OF CONTRACTOR/CONSULTANT:

1A. **ADDRESS:** ____________________________

1B. **TELEPHONE:** ________________________

### 2. NAME OF APPRENTICE/TRAINEE:

2A. **SEX**

   - Male [M]
   - Female [F]

2B. **ADDRESS:** ____________________________

2C. **TELEPHONE:** ________________________

### 3. SOCIAL SECURITY NUMBER:

### 4. EMPLOYEE STATUS (Check One):

- NEW HIRE
- UP-GRADE
- RE-HIRE

### 5. ETHNIC GROUP DESIGNATION (Check One):

- BLACK
- ASIAN
- NATIVE AMERICAN
- HISPANIC
- OTHER

### 6. JOB CLASSIFICATION OF APPRENTICE/TRAINEE AND CLASSIFICATION NUMBER:

6A. **LOCAL/SPONSOR:** ____________________________

### 7. DATE

7A. **STARTED:** ________

7B. **DATE COMPLETED:** _______

### 8. TRAINING STATUS (Check one)

- APPRENTICE
- TRAINEE

### 9. TERMINATION (If training was terminated prior to completion of approved program, explain reason for termination in comments section)

- SEASONAL LAY-OFF
- PROJECT COMPLETED
- DISMISSAL
- TEMPORARY LAY-OFF

### 10. HISTORY

- TOTAL REQUIRED HOURS OF TRAINING PROGRAM: ______ HRS.
- PREVIOUS TRAINING RECEIVED OTHER PROJECTS: ______ HRS.
- CLASS HOURS ______
- PROVIDED THIS PERIOD: ______ HRS.
- REMAINING TO COMPLETE: ______ HRS.

### TRAINEE EVALUATION

**ATTENDANCE:**

- REGULAR
- IRREGULAR

**PUNCTUALITY:**

- REGULAR
- IRREGULAR

**QUALITY OF WORK**

- HIGH
- SATISFACTORY
- NEEDS IMPROVEMENT
- UNSATISFACTORY

**OVERALL PERFORMANCE**

- OUTSTANDING
- SATISFACTORY
- MARGINAL
- UNSATISFACTORY

**PROGRESS ON TRAINING PROGRAM**

- AHEAD OF SCHEDULE
- ON SCHEDULE
- BEHIND SCHEDULE

**COMMENTS:**

_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________

### I HAVE READ AND UNDERSTAND THE ABOVE REPORT

**TRAINEE/APPRENTICE SIGNATURE:** ____________________________
**DATE:** _____________

**REPORT PREPARED BY:**

- **Supervisor of Trainee/Apprentice**
- **DATE:** _____________

**REPORT REVIEW BY:**

- **Signature & Title of NYSDOT Representative**
- **DATE:** _____________

**AAP 26**
**1 of 2**
FORM INSTRUCTIONS

PURPOSE

The Monthly Training Progress Report is prepared by the Contractor/Subcontractors and Consultants/Subconsultants to document the Trainee/Apprentices progress in completing their prospective training programs. The report covers the various phases of the Trainees/Apprentices monthly training activity. The completed report is used to monitor the Contractor/Subcontractor and Consultant/Subconsultant compliance with the Training Special Provision requirement.

SUBMISSION

To be completed by the Contractor/Consultant when the training is provided. The Contractor will submit the original and a copy to the EIC when:

(1) Training program begins;
(2) When training ends e.g. seasonal lay-off, project completed, dismissal, temporary lay-off, etc.;
(3) Along with the JT 401 if the Trainee is an Apprentice.

NOTE: If the Trainee is an Apprentice, the AAP26 must be accompanied by the State of New York Department of Labor Apprenticeship Agreement Form JT 401, which EQUALS a COMPLETE PACKAGE.

The supervisor of the Trainee/Apprentice shall make out the Monthly Progress Report and discuss it with Trainee/Apprentice then signs his/her name. The Trainee/Apprentice, upon review, shall sign the Progress Report. An original and a copy of the Progress Report are due in the EIC office by the 15th of the month.

The EIC will:

(1) Check report for accuracy:
   a. Training hours, race, sex, etc;
   b. That the report is complete; and
   c. That the EIC agrees with any written comments.
(2) EIC will sign both complete (CHECKED) reports if he/she agrees with the reports. If the EIC disagrees, he/she will return the reports to Contractor/Consultant for corrections;
(3) Keep one of the complete report for EIC EEO files; and
(4) Submit one of the completed report to the Regional Office by the 20th of the month.

DIRECTIONS FOR COMPLETING FORM

Period
Month/Year (self explanatory)

Agreement D# is applicable to Consultant Agreement only. Project D# refers to construction contracts only.

NOTE: In the case where both Consultant Agreement and construction project numbers are applicable: Example Construction Inspection Agreement with a Trainee, please indicate the Consultant D number and the construction project D#. Location of Project (self explanatory).

1. Name of Contractor/Consultant, please circle one.
1A. Address of Contractor/Consultant.
1B. Telephone number of Contractor/Consultant.
2. Name of Trainee/Apprentice.
2A. Indicate male or female.
2B. Address of Trainee/Apprentice.
2C. Telephone number of Trainee/Apprentice.
3. Social Security number of Trainee/Apprentice.
4. Employee Status:  
   Indicate: New Hire, Up Grade, Re-hire.
5. Ethnic group designation – (Indicate which group).
6. Indicate job classification by writing craft, indicate program number by using the following identification numbers, e.g. for carpenter write 10;  
   NOTE: For the purposes of tracking we have included similar crafts under the same identification number.

<table>
<thead>
<tr>
<th>Craft</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carpenters</td>
<td>10</td>
</tr>
<tr>
<td>Cement Mason</td>
<td>20</td>
</tr>
<tr>
<td>Equipment Operator</td>
<td>30</td>
</tr>
<tr>
<td>Ironworker</td>
<td>40</td>
</tr>
<tr>
<td>Laborer</td>
<td>50</td>
</tr>
<tr>
<td>Office of Engineering</td>
<td>60</td>
</tr>
<tr>
<td>Painter</td>
<td>70</td>
</tr>
<tr>
<td>Welder</td>
<td>80</td>
</tr>
<tr>
<td>Electrician</td>
<td>90</td>
</tr>
</tbody>
</table>

6A. If Local, indicate number of spaces provided (e.g. L123), if Open Shop Association write OSA in spaces provided and if sponsor of apprenticeship program is a Contractor, in spaces provided write C.

7. Start date of training on this Project. Date completed is the date applicable to item #10.
8. Indicate type of training.
9. Check appropriate box and give explanation in comments section.
10. History (self explanatory)

COMMENTS, please indicate any issue, concerns, etc., not indicated on form.

Trainee/Apprentice signature (self explanatory).
Report prepared by, this signature shall represent the supervisor of the Trainee/Apprentice and preparer of this report.
Reviewed by: (self explanatory).
**New York State Department of Transportation**

**D/M/WBE UTILIZATION WORKSHEET – FORM AAPHC 89 – PART 1**

<table>
<thead>
<tr>
<th>CONTRACT NO.</th>
<th>COUNTY</th>
<th>F.A. PROJECT NO</th>
<th>PAGE NO.</th>
<th>DATE SUBMITTED</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>____ OF ____</td>
<td><strong><strong>/</strong></strong>/______</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CONTRACTOR NAME AND ADDRESS (Include zip code)</th>
<th>SUBCONTRACTOR NAME AND ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>TELEPHONE NO: ( )</td>
<td>TELEPHONE NO: ( )</td>
</tr>
</tbody>
</table>

The Contractor shall inform the Engineer in Charge the dates when the Subcontractor starts and completes all work under the Subcontract. When work performed by the Subcontractor is included in an estimate for payment, labor affidavits, copies of payrolls, etc., are to be submitted in the same manner and number as required of the Prime Contractor.

This approval may be rescinded at any time in the progress of the work if work of the Subcontractor is determined unsatisfactory.

No work may be assigned by the Subcontractor to a second tier Subcontractor. No work may be performed by a Subcontractor other than that specifically approved by the Regional Director. The signators below agree that violations of the foregoing may result in no payment by the State for the related work.

No work shall be started by the Subcontractor prior to filing the required insurances. The Contractor and Subcontractor hereby certify that the Subcontract is in writing, and contains all the pertinent provisions of the Prime Contract in regard to Federal and State Laws and Regulations.

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>NAME</th>
<th>LESS THAN 100%</th>
<th>BID AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>SPECIALTY $</td>
<td>NON-SPECIALTY $</td>
</tr>
<tr>
<td>AGREED AMOUNT $</td>
<td>% TO CNT</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| TOTALS | $ | $ | $ |

The Subcontractor named above is approved for utilization under the provisions of Standard Specification §102.21. Approval of this worksheet conveys only the Department's concurrence in the use of the named Subcontractor for the items specified, and application of the D/M/WBE Agreed Amount to the participation goals of the Contract. Regional approval of an Approval to Subcontract Form HC 89 is required prior to subletting or otherwise assigning any part of the Contract.

**APPROVED FOR OFFICE OF EQUAL OPPORTUNITY DEVELOPMENT AND COMPLIANCE BY:**

**DATE APPROVED**

_____ / _____ / ________
BID AMOUNT: Enter the Prime Contractor Total Bid Price for items of Work being subcontracted, item by item, under appropriate heading of “Specialty” or “Non-Specialty” and enter totals for each. “Specialty” items, if any, are designated in the Contract Proposal. If only part of the item is to be subcontracted, enter the portion of the Prime Contractor Bid Amount that represents the portion of the item that is being subcontracted. For other than subcontract work, i.e., materials, supplies and off-site trucking or other services, no entry is required under “Specialty” or “Non-Specialty” headings.

D/M/WBE ONLY: AGREED AMOUNT: In addition to completing the appropriate bid amount columns as described above or the Utilization Worksheet enter the agreed amount for each item of work to be performed by the certified D/M/WBE included in the Contractor’s Utilization Plan, whether subcontractor, materials supplier, trucker or provider of other services.

TOTALS: Enter the sum of all Bid Amounts and of D/M/WBE Agreed Amounts, if any.

Subcontractor Approvals and Approved Amendments will be sequentially numbered for each Prime Contract in the order that they were approved. Any approved copy will be provided to the Prime Contractor and the Engineer-in-Charge of the Project in each instance.
The Contractor shall inform the Engineer in Charge the dates when the Subcontractor starts and completes all work under the Subcontract. When work performed by the Subcontractor is included in an estimate for payment, labor affidavits, copies of payrolls, etc., are to be submitted in the same manner and number as required of the Prime Contractor.

This approval may be rescinded at any time in the progress of the work if work of the Subcontractor is determined unsatisfactory.

No work may be assigned by the Subcontractor to a second tier Subcontractor. No work may be performed by a Subcontractor other than that specifically approved by the Regional Director. The signators below agree that violations of the foregoing may result in no payment by the State for the related work.

No work shall be started by the Subcontractor prior to filing the required insurances. The Contractor and Subcontractor hereby certify that the Subcontract is in writing, and contains all the pertinent provisions of the Prime Contract in regard to Federal and State Laws and Regulations.

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>NAME</th>
<th>Less Than 100%</th>
<th>BID AMOUNT</th>
<th>D/M/WBE ONLY: AGREED AMOUNT</th>
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<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td>$ SPECIALTY</td>
<td>$ NON-SPECIALTY</td>
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</tr>
</tbody>
</table>

**TOTALS** $  

**REGIONAL OFFICE USE ONLY**

Original Total Contract Price (Less Specialty Items) $  

Percent of Original Total Contract Price (above) approved this date %  

Percent of Original Total Contract Price previously approved %  

Percent of Original Total Contract Price approved to date %  

The Subcontractor named above is authorized to perform work on the above noted Contract for the items listed herein. However, a subcontract shall be of no force and effect until approved below.

**APPROVED FOR REGIONAL DIRECTOR BY:** (Name and Title)  

<table>
<thead>
<tr>
<th>REGION</th>
<th>DATE APPROVED</th>
<th>APPROVAL NO.</th>
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</thead>
<tbody>
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</table>

**APPROVAL TO SUBCONTRACT – FORM AAPHC 89 – PART 2**
New York State Department of Transportation

INSTRUCTIONS FOR COMPLETING FORM AAPHC 89
D/M/WBE UTILIZATION WORKSHEET AND APPROVAL TO SUBCONTRACT

New York State Department of Transportation Standard Specification §102-21 requires that, prior to Contract Award, Prime Contractors must obtain written consent of the Commissioner of Transportation to a Utilization Plan that identifies certified disadvantaged, minority or women-owned business enterprises that have committed to perform Work on a proposed contract. Authority for approval of Utilization Plans has been delegated to the Office of Equal Opportunity Development and Compliance (EODC). The D/M/WBE Utilization Worksheet is used to describe in item detail the Utilization Plan for each proposed subcontractor.

Standard Specifications §101-56, §102-08A and §108-05 require Prime Contractors to obtain written consent of the Commissioner of Transportation prior to subletting or otherwise assigning any part of the Contract. Authority for approval to subcontract has been delegated to Regional Directors of Transportation. The Approval to Subcontract is used for that purpose.

The D/M/WBE Utilization Worksheet and Approval to Subcontract have been designed for use as a single package, Form AAPHC 89. When submitting forms included in the Contractor’s Utilization Plan, prepare a signed, two-part typewritten set of both pages, as described below. When submitting forms for firms not included in the Contractor’s Utilization Plan, only an Approval to Subcontract is to be completed. All D/M/WBE Utilization Worksheets are to be submitted directly to EODC as attachments to the Contractor’s Utilization Plan, Form AAP 19. All Approval to Subcontract forms are to be submitted directly to the Regional Office having jurisdiction over the Contract. The Regional Office will not process Approvals to Subcontract until the Contractor’s Utilization Plan has been approved by the EODC.

Approval of the Utilization Worksheet conveys only the Department’s concurrence in the use of the named subcontractor for the items specified, and application of the D/M/WBE Agreed Amount to the participation goals of the Contract. REGIONAL APPROVAL OF AN APPROVAL TO SUBCONTRACT IS REQUIRED PRIOR TO SUBLETTING OR OTHERWISE ASSIGNING ANY PART OF THE CONTRACT.

CONTRACT NO: Enter N.Y. State contract number. Example: D261726.

COUNTY: Enter name of county or counties. Example: Albany & Essex.


PAGE NO.: Enter 1 of 1, 1 or 2, 2 or 2, etc. Use additional forms as needed.

DATE SUBMITTED: Enter data completed forms are submitted to EODC and/or Regional Office (MO/DAY/YR). For firms included in the Contractor’s Utilization Plan, the dates on both pages must agree. If they do not, the request will not be processed.

CONTRACTOR NAME AND ADDRESS: Enter name and address (including zip code) and telephone number (including area code) of the Prime Contractor.

SUBCONTRACTOR NAME AND ADDRESS: Enter name and address (including zip code) and telephone number (including area code) of the Subcontractor.

EST. BEGINNING DATE: Enter estimated month and year in which subcontractor work will begin.

EST. COMPLETION DATE: Enter estimated month and year in which subcontractor work will be completed.

SIGNATURES: Authorized representative of both the Prime and Subcontractor sign and date.

ITEM NO. AND NAME: Enter each item by Specification number and name. If only part of an item is to be subcontracted, check the “Less than 100%” box and attach a description of the specific work to be performed to both pages of this form.

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>NAME</th>
</tr>
</thead>
<tbody>
<tr>
<td>00.00</td>
<td>Supply of eligible materials</td>
</tr>
<tr>
<td>00.01</td>
<td>Provision of eligible manufactured or altered materials</td>
</tr>
<tr>
<td>00.02</td>
<td>Rental of equipment</td>
</tr>
<tr>
<td>00.05</td>
<td>Provision of security services</td>
</tr>
<tr>
<td>99.99</td>
<td>Provision of eligible trucking services</td>
</tr>
</tbody>
</table>

NOTE: This form is also used to report non-subcontract activities to be purchased from D/M/WBE sources. Use the following codes under “ITEM NO.” and enter dollar amounts for them on Form AAPHC 89 under “D/M/WBE ONLY: AGREED AMOUNT $”

PART 1 - Main Office
PART 2 - Regional Office
The Contractor shall inform the Engineer in Charge the dates when the Subcontractor starts and completes all work under the Subcontract. When work performed by the Subcontractor is included in an estimate for payment, labor affidavits, copies of payrolls, etc., are to be submitted in the same manner and number as required of the Prime Contractor.

This approval may be rescinded at any time in the progress of the work if work of the Subcontractor is determined unsatisfactory.

No work may be assigned by the Subcontractor to a second tier Subcontractor. No work may be performed by a Subcontractor other than that specifically approved by the Regional Director. The signators below agree that violations of the foregoing may result in no payment by the State for the related work.

No work shall be started by the Subcontractor prior to filing the required insurances. The Contractor and Subcontractor hereby certify that the Subcontract is in writing, and contains all the pertinent provisions of the Prime Contract in regard to Federal and State Laws and Regulations.

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>NAME</th>
<th>Previos Entry</th>
<th>Less Than 100%</th>
<th>BID AMOUNT</th>
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NET TOTAL AMENDMENTS $ $ $ $ $ $ $ $ 

The Subcontractor named above is approved for utilization under the provisions of Standard Specification §102.21. Approval of this worksheet conveys only the Department’s concurrence in the use of the named Subcontractor for the items specified, and application of the D/M/WBE Agreed Amount to the participation goals of the Contract. Regional approval of an Approval to Subcontract (Amended) Form HC 89-1 is required prior to subletting or otherwise assigning any new work shown on this worksheet.

PART 1 - Main Office
PART 2 - Regional Office
New York State Department of Transportation

PAGE NO.: Enter 1 of 1, 1 or 2, 2 or 2, etc. Use additional forms as needed.

DATE SUBMITTED: Enter data completed forms are submitted to EODC and/or Regional Office (MO/DAY/YR). For firms included in the Contractor’s Utilization Plan, the dates on both pages must agree. If they do not, the request will not be processed.

CONTRACTOR NAME AND ADDRESS: Enter name and address (including zip code) and telephone number (including area code) of the Prime Contractor.

SUBCONTRACTOR NAME AND ADDRESS: Enter name and address (including zip code) and telephone number (including area code) of the Subcontractor.

SUBCONTRACTOR FEDERAL IDENTIFICATION NO: Enter the Federal employer identification number of the subcontractor.

EST. BEGINNING DATE: Enter estimated month and year in which subcontractor work will begin.

EST. COMPLETION DATE: Enter estimated month and year in which subcontractor work will be completed.

AMENDMENT TO APPROVAL NO.: Enter the number of the previous Approval to Subcontract that is being amended by this Approval to Subcontract (Amended). Find this number in the lower right corner of the previously approved form.

SIGNATURES: Authorized representative of both the Prime and Subcontractor sign and date.

ITEM NO. AND NAME: Enter each item by Specification number and name. If only part of an item is to be subcontracted, check the “Less than 100%” box and attach a description of the specific work to be performed to both pages of this form.

NOTE: This form is also used to report non-subcontract activities to be purchased from D/M/WBE sources. Use the following codes under “ITEM NO.” and enter dollar amounts for them on Form AAPHC 89 under “D/M/WBE ONLY: AGREED AMOUNT $”

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>NAME</th>
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<tr>
<td>00.00</td>
<td>Supply of eligible materials</td>
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<tr>
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<td>Provision of eligible manufactured or altered materials</td>
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<tr>
<td>00.02</td>
<td>Rental of equipment</td>
</tr>
<tr>
<td>00.05</td>
<td>Provision of security services</td>
</tr>
<tr>
<td>99.99</td>
<td>Provision of eligible trucking services</td>
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</tbody>
</table>

LESS THAN 100%: Check this box on the line marked ‘PREV: if this box was checked on the original or subsequently amended Approval to Subcontract. Check this box on the line mark “NEW: if only part of an amended item still is or will be subcontracted.

BID AMOUNT PREV.: Enter amount shown on the form AAPHC 89-1 that is being amended, item by item, under the appropriate heading of “Specialty” or “Non-Specialty”. For new items that have not been previously approved, enter “0” under the appropriate heading.

BID AMOUNT NEW: Enter the Prime Contract bid at price now applicable directly under the amount being amended. To completely eliminate an item of Work from a previous approval, enter “0” directly under the amount being amended. If less than 100% of an amended item of work is to be subcontracted, enter only the portion of the Prime Contract bid amount that represents the proportion of the item that is being subcontracted.

D/M/WBE ONLY: AGREED AMOUNT: In addition to completing the appropriate bid amount columns as described above, on the Utilization Worksheet Amendment enter on the line marked “PREV: the previous agreed amount for each item of work to be performed by a certified D/M/WBE approved for utilization whether subcontractor, materials supplier, trucker or provider of other services. NOTE: Do not enter Bid Amounts for non-subcontract items or work (e.g.: materials supply and trucking). For new items of work that have not been previously approved, enter “0” under this column. Enter the new agreed amount on the line marked “NEW”. For previously approved items of work that are being eliminated from this subcontract, enter “0” on the line marked “NEW” directly under the previous agreed amount.

TOTALS: Enter the sum of all PREV Bid Amounts and of D/M/WBE Agreed Amounts, if any (e.g.: Entry No. 1 PREV = Entry No. 2 PREV, etc) and the sum of all NEW Bid Amounts and D/M/WBE Agreed Amounts, if any (e.g.: Entry No. 1 NEW = Entry No. 2 NEW, etc). Enter the results of Total all NEW Bid Amounts & D/M/WBE Agreed Amounts, MINUS Total all PREV Bid Amounts & D/M/WBE Agreed Amounts on the line marked “NET TOTAL AMENDMENTS”.

Subcontractor Approvals and Approval Amendments will be sequentially numbered for each Prime Contract in the order that they are approved. An approved copy will be provided to the Prime Contractor and the Engineer-in-Charge of the Project in each instance.
The Contractor shall inform the Engineer in Charge the dates when the Subcontractor starts and completes all work under the Subcontract. When work performed by the Subcontractor is included in an estimate for payment, labor affidavits, copies of payrolls, etc., are to be submitted in the same manner and number as required of the Prime Contractor.

This approval may be rescinded at any time in the progress of the work if work of the Subcontractor is determined unsatisfactory.

No work may be assigned by the Subcontractor to a second tier Subcontractor. No work may be performed by a Subcontractor other than that specifically approved by the Regional Director. The signators below agree that violations of the foregoing may result in no payment by the State for the related work.

No work shall be started by the Subcontractor prior to filing the required insurances. The Contractor and Subcontractor hereby certify that the Subcontract is in writing, and contains all the pertinent provisions of the Prime Contract in regard to Federal and State Laws and Regulations.

**ONLY LIST ITEMS TO BE ADDED, DELETED, INCREASED OR DECREASED: SEE INSTRUCTIONS**

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>NAME</th>
<th>Previous or New Entry</th>
<th>Less Than 100%</th>
<th>BID AMOUNT</th>
<th>D/M/WBE ONLY:</th>
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Total of all PREV Bid Amounts

Total of NEW Bid Amounts

NET TOTAL AMENDMENTS $ $ $

**REGIONAL OFFICE USE ONLY**

Original Total Contract Price (Less Specialty Items) $

Percent of Original Total Contract Price (above) added or subtracted (+ %) this date %

Percent of Original Total Contract Price previously approved %

Percent of Original Total Contract Price approved to date %

The Subcontractor named above is authorized to perform work on the above noted Contract for the items listed herein. However, a subcontract shall be of no force and effect until approved below.

APPROVED FOR REGIONAL DIRECTOR BY: (Name and Title:)

<table>
<thead>
<tr>
<th>REGION</th>
<th>DATE APPROVED</th>
<th>APPROVAL NO.</th>
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APPROVAL TO SUBCONTRACT (AMENDED) – FORM AAPHC 89-1 – PART 2

CONTRACT NO. COUNTY F.A. PROJECT NO PAGE NO. DATE SUBMITTED ____ OF _____ ____/____/______

CONTRACTOR NAME AND ADDRESS (Include zip code) SUBCONTRACTOR NAME AND ADDRESS

TELEPHONE NO: ( ) TELEPHONE NO: ( )

SUBCONTRACTOR FED. IDENT NO: ________________

EST. BEGINNING DATE EST. COMPLETION DATE:

(Mo. & Yr.) _________/_______ (Mo. & Yr.) _________/_______

AMENDMENT TO APPROVAL NO.: __________________________

ONLY LIST ITEMS TO BE ADDED, DELETED, INCREASED OR DECREASED: SEE INSTRUCTIONS

BID AMOUNT

ITEM NO. NAME Previous or New Entry Previous or New Entry

Original Total Contract Price (Less Specialty Items) $
New York State Department of Transportation

INSTRUCTIONS FOR COMPLETING FORM AAPHC 89-1
D/M/WBE UTILIZATION WORKSHEET AMENDMENT
AND APPROVAL TO SUBCONTRACT (AMENDED)

New York State Department of Transportation Standard Specification §102-21 requires that, prior to Contract Award, Prime Contractors must obtain written consent of the Commissioner of Transportation to a Utilization Plan that identifies certified disadvantaged, minority or women-owned business enterprises that have committed to perform Work on a proposed contract. Authority for approval of Utilization Plans has been delegated to the Office of Equal Opportunity Development and Compliance (EODC). The D/M/WBE Utilization Worksheet is used to describe in item detail the Utilization Plan for each proposed subcontractor. The D/M/WBE Utilization Worksheet Amendment is used to describe in item detail any change (addition, subtraction, increase and/or decrease) to a previously approved Worksheet.

Standard Specifications §101-56, §102-08A and §108-05 require Prime Contractors to obtain written consent of the Commissioner of Transportation prior to subletting or otherwise assigning any part of the Contract. Authority for approval to subcontract has been delegated to Regional Directors of Transportation. The Approval to Subcontract is used for that purpose. The Approval to Subcontract (Amended) is used for approval of any change (addition, subtraction, increase and/or decrease) to a previously approved Approval to Subcontract.

The D/M/WBE Utilization Worksheet Amendment and Approval to Subcontract (Amended) have been designed for use as a single package, Form AAPHC 89-1. When submitting forms included in the Contractor’s Utilization Plan, prepare a signed, two-part typewritten set of both pages, as described below. Entries made on the Utilization Worksheet Amendment will automatically provide data for an Approval to Subcontract (Amended) except that item-level D/M/WBE agreed amounts will not be shown on the second page. When submitting forms for firms not included in the Contractor’s Utilization Plan, only an Approval to Subcontract (Amended) is to be completed. All D/M/WBE Utilization Worksheets Amendments are to be submitted directly to EODC as attachments to a revised Contractor’s Utilization Plan, Form AAP 19. All Approval to Subcontract (Amended) forms are to be submitted directly to the Regional Office having jurisdiction over the Contract. The Regional Office will not process Approvals to Subcontract (Amended) until the Contractor’s revised Utilization Plan has been approved by the EODC.

Approval of the Utilization Worksheet Amendment conveys only the Department’s concurrence in the use of the named subcontractor for the items specified, and application of the D/M/WBE Agreed Amount to the participation goals of the Contract. REGIONAL APPROVAL OF AN APPROVAL TO SUBCONTRACT (AMENDED) IS REQUIRED PRIOR TO SUBLETTING OR OTHERWISE ASSIGNING ANY PART OF THE CONTRACT.

Only one D/M/WBE Utilization Worksheet and/or Approval to Subcontract is to be submitted for each subcontractor on this Prime Contract. DO NOT submit amendments to the item(s) or amount(s) of work proposed for a subcontractor on another form AAPHC 89. After initial forms have been filed for a given subcontractor, any amendments to the item(s) or amount(s) of work to be performed by this subcontractor will be submitted on Form AAPHC 89-1.

Examples: (1) To add or delete items of work and/or increase or decrease the value of an item of work on a previously approved Utilization Worksheet and/or Approval to Subcontract: complete one or both pages of Form AAPHC 89-1.

(2) To Transfer part of a previously approved Utilization Worksheet and/or Approval to Subcontract from one subcontractor to another previously approved subcontractor: complete two set of Form AAPHC 89-1. On the first, request approval to decrease previously approved value(s) and on the second, request approval to increase previously approved value(s).

(3) To transfer part of a previously approved Utilization Worksheet and/or Approval to Subcontract from one subcontractor to a new, not previously approved subcontractor: complete one or both pages of Form AAPHC 89-1 and one or both pages of Form AAPHC 89. On the form AAPHC 89-1, request approval to decrease the value of a previously approved subcontract; on the Form AAPHC 89, request approval to execute an entirely new subcontract with a new subcontractor.

AN AMENDMENT THAT REDUCES THE UTILIZATION OF AN APPROVED D/M/WBE MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION (i.e., a letter of unavailability from the D/M/WBE).

Contract No.: Enter N.Y. State contract number. Example: D25170B.

County: Enter name of county or counties. Example: Albany & Essex.

F.A. Project No.: Enter only for Federal-Aid projects.
CERTIFICATION OF OFFICER OF DESIGN-BUILDER OR SUBCONTRACTOR

I, ______________________ _______________________________, am an officer with the title of __________________________ in the firm of __________________________ and am authorized by that firm to sign and swear to the validity and accuracy of the statements below:

(1) I pay or supervise the payment of laborers, workers and mechanics employed by __________________________ on the __________________________ Project. During the payroll period commencing on the _________ day of _________________, 20__ and ending the _________________ day of _________________, 20__, all laborers, workers and mechanics employed on said project were paid the wages and supplements recorded as earned on the attached payroll records. No deductions have been made either directly or indirectly from the wages and supplements other than deductions shown on the payroll records.

(2) The payroll records submitted for the above period and attached hereto are correct and complete. The number of hours shown for each employee reflects the actual hours worked by that employee. The classification shown for each employee is accurate and conforms with the work he or she performed.

Signed      ________________________________
Title of Officer     ________________________________
Name of Firm     ________________________________
Address     ________________________________

Sworn to before me this

_______ day of _________, 20__

NOTARY PUBLIC OR OFFICIAL AUTHORIZED TO ADMINISTER OATHS

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE SIGNATURE OF THIS CERTIFICATION AND DESIGN-BUILDER OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION.
# FEDERAL AID HIGHWAY CONSTRUCTION CONTRACTORS
## ANNUAL EEO REPORT

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<th>4. TYPE OF CONSTRUCTION</th>
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<th>AMERICAN INDIAN OR ALASKAN NATIVE</th>
<th>ASIAN OR PACIFIC ISLANDER</th>
<th>WHITE (Not of Hispanic Origin)</th>
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<td>APPRENTICES</td>
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11. Prepared by (Signature & Title of Contractor’s Representative)  
   Date: _______/_____/______  
   REVIEWED BY: (Signature & Title of State Highway Officer)  
   Date: _______/_____/______

This report is required by law and regulation 22 U.S.C. 140a and 23 CFR Part 230. Failure to report will result in noncompliance with this regulation.
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Date:________________________________________

I, ___________________________________________, _______________________

(Name of signatory party)  (title)   do hereby state:

(1) That I pay or supervise the payment of the persons employed by
________________________________ on the ______________________: that
(Design-Builder or Subcontractor)  (Building or Work)
during the payroll period commencing on the __________ day of ___________,
200_, and ending the _________ day of ______________, 200_, all persons
employed on said project have been paid the fully weekly wages earned, that no
rebates have been or will be made either directly or indirectly to or on behalf of
said ____________________________________________________ from the full
(Design-Builder or Subcontractor)
weekly wages earned by any person and that no deductions have been made either
directly or indirectly from the full wages earned by any person, other than
permissible deductions as define in:

Art 6, Section 193 of the New York State Labor Law, applicable to State
projects, and as described below.

OR

Regulations, Part 3 (29 CFR Subtitle A) issued by the Secretary of Labor
967; 76 Stat. 357; 40 U.S.C. 287c), applicable to Federal or Federally-
aided projects, and as described below:

____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________

(2) That any payrolls otherwise under this Contract required to be submitted
for the above period are correct and complete; that the wage rates for laborers or
mechanics contained therein are not less than the applicable wage rates contained in
any wage determination incorporated into the Contract; that the classifications set
forth therein for each laborer or mechanic conform with the Work he/she performed.

(3) That any apprentices employed in the above period are duly registered in
a bona fide apprenticeship program registered with the New York State Department
of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS;
FUNDS OR PROGRAMS
  ☐ In addition to the basic hourly wage rates to each laborer or
mechanic listed in the above referenced payroll, payment of fringe
benefits as listed in the contract have been or will be made to
appropriate programs for the benefit of such employees, except as
noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH
  ☐ Each laborer or mechanic listed in the above referenced payroll has
been paid as indicated on the payroll, an amount not less than the
sum of the applicable basic hourly wage rate plus the amount of
the required fringe benefits as listed in the contract, except as noted
in Section 4(c) below.

(c) EXCEPTIONS

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<tr>
<th>EXCEPTION (CRAFT)</th>
<th>EXPLANATION</th>
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REMARKS

____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________

NAME AND TITLE  SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS
MAY SUBJECT THE DESIGN-BUILDER OR SUBCONTRACTOR TO CIVIL
OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND
SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE
**General:** The use of HC-231-1, payroll form is not mandatory. This form has been made available for the convenience of Design-Builders and subcontractors required by their NYS Highway Contracts and subcontracts to submit weekly payrolls, on State and Federal or Federally-aided construction contracts. This payroll provides for the Design-Builder’s showing on the face of the payroll all monies paid to the employees, whether as basic rates or as cash in lieu of fringes. Detailed instructions concerning the preparation of the payroll follow:

**Design-Builder or Subcontractor:** Fill in your firm’s name and check appropriate box.

**Address:** Fill in your firm’s address.

**Column 1 – Name, Address and Social Security number of Employee:** The employee’s full name must be shown on each weekly payroll submitted. The employee’s address must also be shown on the payroll covering the first week in which the employee works on the project. The address need not be shown on subsequent weekly payrolls unless his address changes. Space is available in the name and address section so that social Security numbers may be listed.

**Column 2 – Withholding Exemptions:** This column is merely inserted for employer’s convenience and is not a requirement.

**Column 3 – Work Classifications:** List classification descriptive or work actually performed by employee. Consult classifications and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting officer or Agency representative. Employee may be shown as having worked in more than one classification provided accurate breakdown of hours so worked is maintained and shown on submitted payroll by use of separate line entries.

**Column 4 – Hours Worked:** On all contracts enter as overtime hours worked in excess of 8 hours per day and 40 hours a week.

**Column 5 – Total:** Self-explanatory.

**Column 6 – Rate of Pay, including Fringe Benefits:** In straight time box, list actual hourly rate paid the employee for straight time worked plus any cash in lieu of fringes paid the employee. When recording the straight time hourly rate, any cash paid in lieu of fringes may be shown separately from the basic rate, thus $18.54/6.30. This is of assistance in correctly computing overtime. See “Fringe Benefits” below. In overtime box show overtime hourly rate paid, plus any cash in lieu of fringes paid the employee. See “Fringes Benefits” below. Payment for overtime shall be at a rate commensurate with the premium wages prevailing in the area in which the Work is performed. In addition to paying not less than the predetermined rate for the classification in which the employee works, the Design-Builder shall pay to approved plans, funds or programs or shall pay as cash in lieu of fringes amounts predetermined as fringe benefits in the wage decision made part of the contract. See “Fringe Benefits” below.

**FRINGE BENEFITS – Design-Builders who pay all required fringe benefits:** A Design-Builder who pays fringe benefits to approved plans, funds or programs in amounts not less than were determined in the applicable wage decision of the Industrial Commissioner shall continue to show on the face of the payroll the basic cash hourly rate and overtime rate paid to his employees just as he has always done. Such a Design-Builder shall check paragraph 4(a) or the statement of reverse of the payroll to indicate that he is also paying to approved plans, funds or programs not less than the amount predetermined as fringe benefits for each craft. Any exceptions shall be noted in Section 4(c).

**Design-Builder who pay no fringe benefits:** A Design-Builder who pays no fringe benefits shall pay to the employee, and insert in the straight time hourly rate column of the payroll, an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half in lieu of fringes, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half-time premium on basic or regular rate, plus the required cash in lieu of fringes at the straight time rate. In addition, the Design-Builder shall check paragraph 4(b) of the statement to indicate that he is paying fringe benefits in cash directly to his employees. Any exceptions shall be noted in Section 4(c).

**Use of Section 4(c); Exceptions**

Any Design-Builder who is making payment to approved plans, funds, or programs in amounts less than wage determination requires is obligated to pay the deficiency directly to the employees as cash in lieu of fringes. Any exceptions to Section 4(a) or 4(b), whichever the Design-Buider may check, shall be entered in Section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid the employee as cash in lieu of fringes and the hourly amount paid to plans, funds or programs as fringes. The Design-builder shall pay, and shall show that he is paying to each such employee for all hours (unless otherwise provided by applicable determination) worked on a NYS Highway Construction project an amount not less than the predetermined rate plus cash in lieu of fringes shown in Section (c). The rate paid and the amount of cash paid in lieu of fringe benefits per hour should be entered in Column 6 on the payroll. See paragraph on “Design-Builders who pay no fringe benefits” for computation of overtime rate.

**Column 7 – Gross Amount Earned:** either gross amount earned on this project. If part of the employee’s weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the NYS Highway Construction project and then the gross amount earned during the week on all projects, thus $95.00/970.00.

**Column 8 – Deductions:** Five columns are provided for showing deductions made. If more than five deductions should be involved, sue first 4 columns: show the balance of deductions under “Other” describe the deductions contained in the “Other” column; show actual total under “Total Deductions” column; in the attachment to the payroll describe the deductions contained in the “Other” column. All deductions must be in accordance with the provisions of the Article 6, Section 193 of the New York State Labor Law. If the employee worked on other jobs in addition to this project, show actual deductions from his weekly gross wage, but indicate that deductions are based on his gross wages.

**Column 9 – Net wages Paid for Week:** Self-explanatory.

**Totals:** Space has been left at the bottom of the columns so that totals may be shown if the Design-builder so desires.

**Statement Required by State and Federal Regulations:** While this form need not be notarized, the statement is subject to the penalties provided by applicable State and Federal Laws. Accordingly, the party signing this required statement should have knowledge of the facts represented as true. Space has been provided between item (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the “Deductions” column above, state “See Deductions column in this payroll.”
This page is intentionally left blank.
APPLICATION FOR EXTENSION OF COMPLETION DATE

TO: NEW YORK STATE DEPARTMENT OF TRANSPORTATION

Contract No: ________________ Federal Project No(s): _________________ County: _____________

Letting Date: ________________ Award Date: ________________ Completion Date: _____________

The Completion Date of the above Contract (has ___) (has not ___) been amended by one or more approved extensions and now bears the date of ________________________________.

The Contract identified above provides for completion of the work covered thereby as entered herein. In accordance with the provisions of Article 2 of said Contract, the undersigned of record hereby makes application for an extension of the date of completion of said Contract to the ______ day of _________________, 200__.

Pursuant to Article 2 of said Contract – “No extension beyond the date of completion fixed by the terms of this Contract shall be effective until approved in writing by the State. Such extension shall be for such time and upon such terms and conditions as shall be fixed by the State, which may include the assessment of liquidated damages and a charge for engineering and inspection expenses actually incurred upon the work, --“.

In consideration for the granting of an extension of the Contract Completion Date requested herein, the undersigned Design-Builder hereby acknowledges and agrees to the following terms and conditions:

Pursuant to Standard Specifications §108-07 EXTENSION OF TIME: “When the Work embraced in the Contract is not completed on or before the date specified therein, all appropriate engineering and inspection expenses incurred by the State, its consultants and inspection agencies, and by railroad companies, from the schedule Contract Completion Date to the final date of completion of the Work, may be charged to the Design-Builder. When assess, the charges shall be deducted from any monies due the Design-Builder.”

Approval of this Application for Extension of Completion Date, without a charge for engineering and inspection service, shall not obligate the State, in any manner whatsoever, to liability in any claim for damages for delay which may be made against the State in connection with the aforesaid Contract, and such approval is granted solely for the purpose of completing the Work and expediting progress payments.

It is understood that the Commissioner of Transporation does not, if this extension of completion date is approved, waive or release any claim the Department of Transportation may have against the Design-Builder whether it be for actual or liquidated damages for any reason whatsoever.

The approximate percentages and description of Work remaining to be performed during the period of extension requested herein and the reasons such Work has not been competed are sh own ion the reverse side of this Application of Completion Date.

Design-Builder

Dated: ________________________, 200__, By: ___________________________________

Signature & Title

For Agency Use Only

Extension of the Completion Date of the Contract identified above is approved to ______________________

With/without a charge for engineering and inspection service after ______________________

Date: ________________________

Asst. Deputy Chief Engineer for Construction

Description of Work remaining to be performed and reasons such Work has not be completed:
New York State Department of Transportation

TRAINING PROGRAM OUTLINE & EVALUATION
BRIDGE SAFETY INSPECTION NICET LEVEL I

Company Name: __________________________________________

Contract “D” Number: ____________________________ Pin Number: ______________

Trainee’s Name: __________________________________________

Anticipated State Date: ______________________________________

Total Program Hours: _______________________________________

Person Administering Training (Please print): _______________________

Project Manager (Please print): ________________________________

Note: The numbers listed are NICET work elements numbers. Consult the NICET program detail manual for topic coverage.

<table>
<thead>
<tr>
<th>NICET Training Program Elements</th>
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<td>Hours</td>
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CONFIRMATION BY TRAINEE

Each Trainee shall sign the following statements: (Prior to NYSDOT acceptance of training program), also the trainee will be given a new copy of the training outline (should any changes be necessary).

Part I: I have read the terms and have received a copy of my Training Program and have been given a Form to keep track of my training hours. I understand the intent and the purpose of the Training Program and I will comply with all the conditions set forth in the program.

Sign: __________________________

Date: _________________________

Each trainee shall sign the following the following statement (upon completion of the training program):

Part II: I have completed the training program elements listed above and will be taking a NICET exam on __________ (date) that could qualify me for Level I, Level II (circle one) certification.

Sign: __________________________

Date: _________________________
Company Name: ____________________________________________________________

Contract “D: Number: ___________________________ Pin Number: ________________

Trainee’s Name: __________________________________________________________________________

Anticipated State Date: _____________________________________________________________________

Total Program Hours: _______________________________________________________________________

Person Administering Training (Please print): ____________________________________________________

Project Manager (Please print): ______________________________________________________________

Note: The numbers listed are NICET work elements numbers. Consult the NICET program detail manual for topic coverage.

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<thead>
<tr>
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CONFIRMATION BY TRAINEE

Each Trainee shall sign the following statements: (Prior to NYSDOT acceptance of training program), also the trainee will be given a new copy of the training outline (should any changes be necessary).

Part I: I have read the terms and have received a copy of my Training Program and have been given a Form to keep track of my training hours. I understand the intent and the purpose of the Training Program and I will comply with all the conditions set forth in the program.

    Sign: ____________________________
    Date: ____________________________

Each trainee shall sign the following the following statement (upon completion of the training program):

Part II: I have completed the training program elements listed above and will be taking a NICET exam on ___________ (date) that could qualify me for Level I, Level II (circle one) certification.

    Sign: ____________________________
    Date: ____________________________
New York State Department of Transportation

TRAINING PROGRAM OUTLINE & EVALUATION
BRIDGE SAFETY INSPECTION NICET LEVEL III

**CONFIRMATION BY TRAINEE**

Each Trainee shall sign the following statements: (Prior to NYSDOT acceptance of training program), also the trainee will be given a new copy of the training outline (should any changes be necessary).

**Part I:** I have read the terms and have received a copy of my Training Program and have been given a Form to keep track of my training hours. I understand the intent and the purpose of the Training Program and I will comply with all the conditions set forth in the program.

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Each trainee shall sign the following statement (upon completion of the training program):

**Part II:** I have completed the training program elements listed above and will be taking a NICET exam on _________ (date) that could qualify me for Level I, Level II (circle one) certification.

Sign: ____________________________
Date: ____________________________
TRAINING FINAL EVALUATION
COMPUTER-AIDED DRAFTING

Company Name: ____________________________
Contract “D” Number: ____________________________
County(s) (Project Location): ____________________________
Trainee Name: ____________________________

Identify Trainee Progress at the conclusion of training on subject project.

<table>
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<tr>
<th>Work Elements</th>
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</table>
Comments:


Comments:


Upon conclusion of the training program, will the trainee be retained?

Yes    No    (If no, please explain)

Comments:


Submitted by:

_________________________________________  Date: __________________________

Trainee’s Signature:

_________________________________________  Date: __________________________
New York State Department of Transportation

TRAINING PROGRAM OUTLINE & EVALUATION
HIGHWAY CONSTRUCTION NICET LEVEL 1

Company Name: ________________________________

Contract #C: Number: ___________________________ Pin Number: ____________________

Trainee’s Name: __________________________________

Anticipated State Date: ___________________________

Total Program Hours: ______________________________

Person Administering Training (Please print): ________________________________

Project Manager (Please print): ________________________________

Note: The numbers listed are NICET work elements numbers. Consult the NICET program detail manual for topic coverage.

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<th>NICET Training Program Elements</th>
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CONFIRMATION BY TRAINEE

Each Trainee shall sign the following statements: (Prior to NYSDOT acceptance of training program), also the trainee will be given a new copy of the training outline (should any changes be necessary).

Part I: I have read the terms and have received a copy of my Training Program and have been given a Form to keep track of my training hours. I understand the intent and the purpose of the Training Program and I will comply with all the conditions set forth in the program.

Sign: ________________________________

Date: ________________________________

Each trainee shall sign the following the following statement (upon completion of the training program):

Part II: I have completed the training program elements listed above and will be taking a NICET exam on __________ (date) that could qualify me for Level I, Level II (circle one) certification.

Sign: ________________________________

Date: ________________________________
New York State Department of Transportation

TRAINING PROGRAM OUTLINE & EVALUATION
HIGHWAY CONSTRUCTION NICET LEVEL II

Company Name: ____________________________
Contract "D: Number: ____________________________ Pin Number: ____________________________
Trainee's Name: ____________________________
Anticipated State Date: ____________________________
Total Program Hours: ____________________________
Person Administering Training (Please print): ____________________________
Project Manager (Please print): ____________________________

Note: The numbers listed are NICET work elements numbers. Consult the NICET program detail manual for topic coverage.

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CONFIRMATION BY TRAINEE

Each Trainee shall sign the following statements: (Prior to NYSDOT acceptance of training program), also the trainee will be given a new copy of the training outline (should any changes be necessary).

Part I:  I have read the terms and have received a copy of my Training Program and have been given a Form to keep track of my training hours. I understand the intent and the purpose of the Training Program and I will comply with all the conditions set forth in the program.

Sign: ____________________________
Date: ____________________________

Each trainee shall sign the following the following statement (upon completion of the training program):

Part II:  I have completed the training program elements listed above and will be taking a NICET exam on __________ (date) that could qualify me for Level I, Level II (circle one) certification.

Sign: ____________________________
Date: ____________________________
New York State Department of Transportation

TRAINING PROGRAM OUTLINE & EVALUATION
HIGHWAY DESIGN NICET LEVEL I

Company Name: ____________________________________________________________

Contract “D: Number: ________________________________ Pin Number: ____________

Trainee’s Name: ____________________________________________________________

Anticipated State Date: ____________________________________________________

Total Program Hours: ______________________________________________________

Person Administering Training (Please print): _________________________________

Project Manager (Please print): ________________________________

Note: The numbers listed are NICET work elements numbers. Consult the NICET program detail manual for topic coverage.

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CONFIRMATION BY TRAINEE

Each Trainee shall sign the following statements: (Prior to NYSDOT acceptance of training program), also the trainee will be given a new copy of the training outline (should any changes be necessary).

Part I: I have read the terms and have received a copy of my Training Program and have been given a Form to keep track of my training hours. I understand the intent and the purpose of the Training Program and I will comply with all the conditions set forth in the program.

Sign: ____________________________

Date: ____________________________

Each trainee shall sign the following the following statement (upon completion of the training program):

Part II: I have completed the training program elements listed above and will be taking a NICET exam on _________ (date) that could qualify me for Level I, Level II (circle one) certification.

Sign: ____________________________

Date: ____________________________
# TRAINING PROGRAM OUTLINE & EVALUATION
## HIGHWAY DESIGN NICET LEVEL II

**Company Name:**

**Contract “D: Number:**

**Pin Number:**

**Trainee’s Name:**

**Anticipated State Date:**

**Total Program Hours:**

**Person Administering Training (Please print):**

**Project Manager (Please print):**

**Note:** The numbers listed are NICET work elements numbers. Consult the NICET program detail manual for topic coverage.

<table>
<thead>
<tr>
<th>NICET Training Program Elements</th>
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<td><strong>Level II</strong></td>
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Sign: ____________________________

Date: ____________________________
Trainee's Name: ________________________________________________________________

Anticipated State Date: _________________________________________________________

Total Program Hours: _________________________________________________________

Person Administering Training (Please print): ________________________________

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Note: The numbers listed are NICET work elements numbers. Consult the NICET program
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Date: ____________________________

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Part II: I have completed the training program elements listed above and will be taking a NICET
exam on ____________ (date) that could qualify me for Level I, Level II (circle one) certification.

Sign: ____________________________

Date: ____________________________
New York State Department of Transportation

TRAINING PROGRAM OUTLINE & EVALUATION
HIGHWAY SURVEY NICET LEVEL II

Company Name: ____________________________
Contract “D” Number: ____________________________ Pin Number: ____________________________
Trainee’s Name: ____________________________
Anticipated State Date: ____________________________
Total Program Hours: ____________________________
Person Administering Training (Please print): ____________________________
Project Manager (Please print): ____________________________

Note: The numbers listed are NICET work elements numbers. Consult the NICET program detail manual for topic coverage.

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<th>NICET Training Program Elements</th>
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Sign: ____________________________
Date: ____________________________
New York State Department of Transportation

TRAINING PROGRAM OUTLINE & EVALUATION
HIGHWAY TRAFFIC OPERATIONS NICET LEVEL I

Company Name: ____________________________________________________________

Contract “D: Number: ____________________________ Pin Number: ________________

Trainee’s Name: ____________________________________________________________

Anticipated State Date: ____________________________

Total Program Hours: ______________________________________________________

Person Administering Training (Please print): __________________________________

Project Manager (Please print): ______________________________________________

Note: The numbers listed are NICET work elements numbers. Consult the NICET program detail manual for topic coverage.

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Date: ____________________________
New York State Department of Transportation

TRAINING PROGRAM OUTLINE & EVALUATION
HIGHWAY TRAFFIC OPERATIONS NICET LEVEL II

Company Name: ________________________________

Contract “D” Number: ___________________________ Pin Number: __________________

Trainee’s Name: ________________________________

Anticipated State Date: __________________________

Total Program Hours: ____________________________

Person Administering Training (Please print): ________________________________

Project Manager (Please print): ________________________________

Note: The numbers listed are NICET work elements numbers. Consult the NICET program detail manual for topic coverage.

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Part II: I have completed the training program elements listed above and will be taking a NICET exam on __________ (date) that could qualify me for Level I, Level II (circle one) certification.

Sign: ____________________________
Date: ____________________________
You Have a Right to a Safe and Healthful Workplace

IT’S THE LAW!

- You have the right to notify your employer or OSHA about workplace hazards. You may ask OSHA to keep your name confidential.
- You have the right to request an OSHA inspection if you believe that there are unsafe and unhealthful conditions in your workplace. You or your representative may participate in the inspection.
- You can file a complaint with OSHA within 30 days of discrimination by your employer for making safety and health complaints or for exercising your rights under the OSH Act.
- You have a right to see OSHA citations issued to your employer. Your employer must post the citations at or near the place of the alleged violation.
- Your employer must correct workplace hazards by the date indicated on the citation and must certify that these hazards have been reduced or eliminated.
- You have the right to copies of your medical records or records of your exposure to toxic and harmful substances or conditions.
- Your employer must post this notice in your workplace.

The Occupational Safety and Health Act of 1970 (OSH Act), P.L. 91-596, assures safe and healthful working conditions for working men and women throughout the Nation. The Occupational Safety and Health Administration, in the U.S. Department of Labor, has the primary responsibility for administering the OSH Act. The rights listed here may vary depending on the particular circumstances. To file a complaint, report an emergency, or seek OSHA advice, assistance, or products, call 1-800-321-OSHA or your nearest OSHA office:

- Atlanta (404) 562-2300
- Boston (617) 565-9860
- Chicago (312) 353-2220
- Dallas (214) 767-4731
- Denver (303) 844-1600
- Kansas City (816) 426-5861
- New York (212) 337-2378
- Philadelphia (215) 861-4900
- San Francisco (415) 975-4310
- Seattle (206) 553-5930

Teletypewriter (TTY) number is 1-877-889-5627. To file a complaint online or obtain more information on OSHA federal and state programs, visit OSHA’s website at www.osha.gov. If your workplace is in a state operating under an OSHA-approved plan, your employer must post the required state equivalent of this poster.

1-800-321-OSHA
www.osha.gov

Occupational Safety and Health Administration • OSHA 3165 U.S. Department of Labor
APPLICATION FOR DISPENSATION FOR HOURS

Applicant must complete both sides and have a representative of the Department of Jurisdiction (contracting agency) complete certification at bottom; return to the address shown above.

APPLICANT: (Firm name, office address and phone number of applicant contractor)

<table>
<thead>
<tr>
<th>NAME AND ADDRESS:</th>
<th>FEDERAL EMPLOYER IDENTIFICATION NUMBER</th>
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<tr>
<th>PROJECT IDENTIFICATION:</th>
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<tr>
<td>Prevailing Rate Case #</td>
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<tr>
<td>COUNTY:</td>
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DESCRIPTION OF LOCATION: (City, town, intersection, street or route, etc.)

<table>
<thead>
<tr>
<th>NATURE OF PROJECT: (Check one)</th>
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<tbody>
<tr>
<td>☐ 1 NEW BUILDING</td>
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<tr>
<td>☐ 2 HEAVY AND HIGHWAY CONSTRUCTION (NEW AND REPAIR)</td>
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<tr>
<td>☐ 3 ADDITION TO EXISTING STRUCTURE</td>
</tr>
<tr>
<td>☐ 4 NEW SEWER OR WATERLINE</td>
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<tr>
<td>☐ 5 OTHER NEW CONSTRUCTION</td>
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<tr>
<td>☐ 6 OTHER RECONSTRUCTION, MAINTENANCE REPAIR OR ALTERATION</td>
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<tr>
<td>☐ 7 DEMOLITION</td>
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REASON FOR REQUESTING DISPENSATION

DISPENSATION REQUIRED: (Complete statement below)

Application is made for a period beginning ________________ and ending ________________ to permit ________________ hours per day, ________________ days per week.

(Date) (Signature of Contractor or Authorized Representative) (Title)

This Section to be Certified by an Officer of the Department of Jurisdiction

IT IS HEREBY CERTIFIED THAT THE ABOVE DESCRIBED PUBLIC WORK PROJECT IS OF AN IMPORTANT NATURE AND THAT A DELAY IN CARRYING IT TO COMPLETION WOULD RESULT IN SERIOUS DISADVANTAGE TO THE PUBLIC.

(DEPARTMENT OF JURISDICTION) (STREET ADDRESS)

(TOWN, CITY, STATE) (ZIP CODE) 

(Please Print Name, and Title) (Date)

TELEPHONE NO.:       (PW-30 (5-93)

1 of 2
List the job classifications for which this dispensation is requested and the number of employees in each classification.

<table>
<thead>
<tr>
<th>JOB CLASSIFICATION (OCCUPATIONS)</th>
<th>Number to be Employed</th>
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When this application is complete, have an Officer of the Department of Jurisdiction complete the certification section and return it to this office. No worker, laborer, or mechanic may be employed in excess of 8 hours in any one day nor 5 days in any one calendar week until you receive a notice of determination.
**Request for Authorization of Additional Classification and Rate**

Note: The Design-Builder shall complete items 3 through 18 and submit the request in quadruplicate to the Contracting Officer.

1. To: Administrator  
   Wage and Hour Division  
   U.S. Department of Labor  
   Washington, DC 20210

2. From (Reporting Office)

3. Design-Builder

4. Date of Request

5. Contract Number

6. Date Bid Opened (sealed bidding)

7. Date of Award

8. Date Contract work Started

9. Date Option exercised (if applicable) (SCA Only)

10. Subcontractor (if any)

11. Project and description of work (Attach additional sheet if needed)

12. Location (City, County and State)

13. In order to complete the Work provided for under the above Contract, it is necessary to establish the following rate(s) for the indicated classifications not included in the Department of labor determination.

   Number: _____________________________________  Dated: ____________________ 

   a. List in order proposed classification title(s), job description(s), duties and rationale for proposed classifications (SCA only)  

   (Use reverse side or attached additional sheets, if necessary)

   b. Wage Rates  

   c. Fringe Benefits Payments

14. Signature and Title of Subcontractor Representative (if any)

15. Signature and Title of Design-Builder Representative

16. Signature of Employee or Representative

   Title

   Check Appropriate Box

   ☐ Agree  ☐ Disagree

TO BE COMPLETED BY CONTRACTING OFFICER (Check as appropriate – See FAR 22.1019 (SCA) or FAR 22.407-3 (DBA)

☐ The interested parties agree and the Contracting Officer recommends approval by the Wage and Hour Division. Available information and recommendations are attached.

☐ The Interested parties cannot agree on the proposed Classification and Wage Rate. A determination of the question by the Wage and Hour Division is therefore requested; available information and recommendation are attached.

(Send 3 copies to Department of Labor)

Signature of Contracting Officer or Representative  
Title  
Telephone No.  
Date Submitted

Contract Form
(Project Name)
DESIGN-BUILD PROJECT

PIN ____________

DB CONTRACT DOCUMENTS
PART 2

DB SECTION 103
APPLICABLE LAW AND PARTNERING
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| DB 103-2 | PARTNERING | 1 |
| DB 103-3 | REQUIREMENT OF CONTRACT BONDS | 2 |
SECTION 103
APPLICABLE LAW AND PARTNERING

DB 103-1  COMPLIANCE WITH APPLICABLE LAW

The Design-Builder agrees that it will conduct its operations in compliance with all the laws and regulations of the United States (US), the State, and any applicable public authorities; the ordinances of any applicable city, village, town, or county; and the lawful direction of the officers, agents, or representatives of the US, the State, any public authorities, or any applicable city, village, town, or county. All costs due to compliance with the above described laws, regulations, and ordinances shall be included in the Price Proposal unless otherwise provided for in the Contract.

DB 103-2  PARTNERING

It is the Department’s policy to use the principles of Partnering to guide the management of Design-Build (DB) contracts and the DB program within the parameters covered by the laws, regulations, and other policies that govern work in the public sector.

These Partnering principles are intended to promote quality through continuous improvement at all stages of design and construction. The goal of the Department is to complete each project in the most efficient, timely, safe, and cost effective manner to the mutual benefit of the Design-Builder and the Department, meaning a quality Project delivered on time, within budget, and without significant disputes.

None of the actions identified as part of, or taken in the course of, Partnering shall be construed to alter, modify, delete, or waive any of the provisions or requirements of the Contract Documents or any applicable laws or regulations.

The Department, with the Design-Builder, will manage the Contract in a cooperative manner utilizing the following principles of Project Partnering:

A) Establish communications with all involved parties early in the Partnering process;
B) Establish a relationship of shared trust, equity, and commitment;
C) Develop strategies for identifying mutual goals;
D) Develop strategies for timely communications and decision making;
E) Establish a process for timely response to changes or variations in field conditions;
F) Solve potential problems at the lowest level, before they negatively impact the Project;
G) Encourage the use of products, technology, and processes that provide a demonstrated level of improved quality; and
H) Develop a plan for periodic joint evaluation based on mutually agreed goals.

These Specifications are to be implemented in an equitable fashion that recognizes the problems that are inherent in design and construction, addresses the different-than-expected field conditions, resolves disputes in an open communications manner, and makes Contract adjustments in a timely and fair manner consistent with the terms of the Contract. These Specifications are intended to fairly allocate risk, resulting in a balanced contractual approach to risk-sharing.
The Department will consider additional suggestions from the Design-Builder regarding the incorporation of Partnering into the coordination and cooperation required with third parties such as Subcontractors, Suppliers, Utility Owners, and railroads, or as otherwise desired by the Proposers.

**DB 103-3  REQUIREMENT OF CONTRACT BONDS**

At the time the Design-Builder returns the executed Contract to the Department, the Design-Builder shall furnish a Contract Labor and Materials Bond and a Contract Performance Bond as specified in Part 1 of the Appendix to the Form of Proposal. The Surety and form of the bond must be acceptable to the Department.
DB CONTRACT DOCUMENTS
PART 2

DB SECTION 104
SCOPE OF WORK
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| DB 104-2 | INTENT OF CONTRACT | 1 |
| DB 104-3 | CONTINGENCIES, EXTRA WORK, AND DEDUCTIONS | 1 |
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SECTION 104
SCOPE OF WORK

DB 104-1 WORK REQUIRED

Under the Contract, the Design-Builder shall be required to do all Work enumerated in Appendix I to the Agreement (Part 1) and the Contract and in addition to this shall be required to protect all properties, Utilities, and existing Highway facilities within or adjacent to the Right Of Way (ROW) and to repair or replace any such properties, Utilities, and facilities damaged or destroyed by it or any Employee through the construction operations, both within and adjacent to the ROW.

The Design-Builder shall be responsible for the coordination of the Work of its various Subcontractors. Their respective operation shall be arranged and conducted so that delays will be avoided. Where the Work of the Design-Builder or its Subcontractors overlaps or dovetails with that of other contractors, Materials shall be delivered and operations conducted so as to carry on the Work continuously in an efficient and workmanlike manner.

Delays or oversights on the part of the Design-Builder or its Subcontractors in getting any or all of their Work done in the proper way thereby requiring the cutting, removing, and replacing of Work already in place, shall not be the basis for a claim of extra compensation. Such Work will be performed at the cost and expense of the Design-Builder.

The Design-Builder shall provide preventive and corrective maintenance until Final Acceptance.

DB 104-2 INTENT OF CONTRACT

The intent of the Contract is to provide for the engineering, design, construction, and completion in every detail of the Work described, including necessary preliminary and construction surveys. The Design-Builder shall furnish all labor, Material, Equipment, tools, transportation, and supplies required to complete the Work in accordance with the terms of the Contract, except those Materials to be furnished by the Department in accordance with the provisions of the Contract.

The Design-Builder shall not rely on the description contained in the Contract to identify all of the Project components to be designed, constructed, and/or installed. The Design-Builder shall determine the full scope of the Project through thorough examination of the Request for Proposals (RFP) and the Project Site, and such other investigations as may be appropriate.

DB 104-3 CONTINGENCIES, EXTRA WORK, AND DEDUCTIONS

DB 104-3.1 Right to Issue Orders on Contract

Whenever the Commissioner determines that, from any unforeseen cause, the terms of the Contract should be altered to provide for changes, contingencies, or Extra Work, he/she may issue an Order on Contract or Supplemental Agreement, as appropriate, to the Design-Builder, who shall forthwith proceed with the performance of the Work and the designing and furnishing of the Material and Equipment necessary for its accomplishment in accordance with the pertinent Specifications.

No instructions, either written or verbal from any Department employee or agent shall be construed as an order for changes until receipt by the Design-Builder of written notification that an Order on Contract or Supplemental Agreement has been approved by the Department, or written notification from the Department’s Project Manager that changes in the Work are eligible and authorized for payment in accord
with DB Section 109[S or L]. Otherwise, payment for any unforeseen Work shall be made only if the Design-Builder complies or has complied with all of the provisions of DB Sections 104-4, 104-5, 104-6, 109[S or L]-10, and 109[S or L]-15, as applicable.

**DB 104-3.2 Significant Changes in the Character Of Work**

If the alterations to the scope of Work significantly change the character of the Work under the Contract, whether such alterations or modifications are in themselves significant changes to the character of the Work or because by affecting other Work they cause such other Work to become significantly different in character, an adjustment, excluding anticipated profit, shall be made to the Contract. The basis for the adjustment shall be agreed upon prior to the performance of the Work. If a basis cannot be agreed upon, then an adjustment shall be made either for or against the Design-Builder in such amount as the Department’s Project Manager may determine to be fair and equitable.

The term “significant change” shall be construed to apply only to the following circumstances:

A) When the changes modify the general definition of the Project or the design-build character of the Work; or

B) When the Department requires Work to be performed that is physically remote from the original Project and not necessary for completion of the original Project.

Alterations in the scope of the Work that are specifically contemplated by the Contract shall not be considered significant changes in the character of the Work. If the alterations to the scope of Work do not significantly change the character of the Work, the altered Work will be paid for as provided elsewhere in the Contract.

With respect to a significant change, the Design-Builder or the Department must make written notification to the other party of the “significant change” if that party wishes to adjust the Contract Price or the Contract Time. Such notice shall be given within 10 days of knowledge of the change.

**DB 104-4 CHANGES IN BASIC PROJECT CONFIGURATION; UTILITY RELOCATIONS; HAZARDOUS MATERIALS; ENVIRONMENTAL MITIGATION**

**DB 104-4.1 Changes in Basic Project Configuration**

The Department acknowledges and agrees that the Design-Builder’s Proposal was based on certain basic information presented by the Department regarding the nature of the Project to be constructed. This basic information is considered the Basic Project Configuration. Except as authorized by an Order on Contract, the Design-Builder shall not make any material change in Basic Project Configuration. DB Section 104-4.1.1 establishes the standard for determining whether a material change in the Basic Project Configuration has occurred (i.e., any lesser change shall not be considered material). Non-material Department-directed changes will be covered by an Order on Contract whether they are within the parameters of the Basic Project Configuration or not. Department-directed changes within the limits specified in this DB Section 104-4.4 may be ordered without any change in the Contract Price or extension of the Contract Time, provided the change is ordered prior to completion of the Definitive Design Review for the affected Design Unit(s).

**DB 104-4.1.1 Standard for Determining Materiality of Change in Basic Project Configuration**

*See DB Contract Documents, Part 1, Agreement, Appendix I, Project Scope.*
DB 104-4.1.2 Necessary Basic Project Configuration Change

Notwithstanding the fact that this Contract generally obligates the Design-Builder to undertake all Work necessary to complete the Project without changes in the Contract Price, this DB Section 104-4.1.2 provides for a change in the Contract Price to be made in conjunction with Necessary Basic Project Configuration Changes. If any Necessary Basic Project Configuration Change increases or decreases the cost of performing the Work, then the Department will issue an Order on Contract to adjust the Contract Price accordingly. If a Necessary Basic Project Configuration Change changes the time required for performance of the Work, the time adjustment will be covered by an Order on Contract. Furthermore, if the Design-Builder commences any construction Work affected by the change prior to delivery of appropriate notice of the change to the Department under this DB Section 104-4, the Order on Contract shall allow the Department a credit for the cost of any unnecessary Work performed and/or shall exclude any additional costs associated with redoing the Work already performed. The Order on Contract shall also account for any offsets from Orders on Contract previously issued.

In the event that the Department approves a Necessary Basic Project Configuration Change that reduces the Design-Builder’s costs, the Order on Contract shall note the amount of cost decrease available for future offsets.

DB 104-4.1.3 Relationship to VECP

If a Value Engineering Change Proposal (VECP) results in a material change in Basic Project Configuration, any cost savings from such VECP shall be shared in accordance with DB Section 104-13.

In such cases, savings resulting from reduction in quantities shall be shared per DB Section 104-13.

DB 104-4.1.4 Inaccuracies in Preliminary Design

The Design-Builder shall be responsible for any cost increases and/or delays which affect the duration of a Critical Path resulting from changes in requirements and obligations of the Design-Builder relating to the Project due to inaccuracies in the preliminary design which do not necessitate a material change in the Basic Project Configuration. In such event, no change in the Work shall be deemed to have occurred and no Order on Contract will be issued for any such cost increases and/or delays. Accordingly, any non-material changes in the Basic Project Configuration (other than non-material Department-directed changes following the Definitive Design Review) shall be the responsibility of the Design-Builder.

DB 104-4.1.5 Applicability of Orders on Contract

In general, the Design-Builder may implement non-material changes in the Basic Project Configuration without an Order on Contract, unless the change involves a circumstance for which an Order on Contract is specifically required hereunder. The Design-Builder acknowledges and agrees that constraints set forth in the Environmental Approvals and other Contract Documents, as well as the Site conditions and the planned ROW limits, will impact the Design-Builder’s ability to make non-material changes in the Basic Project Configuration.

DB 104-4.2 Changes Applicable to Utility Relocations

The following provisions govern entitlement to Orders on Contract with respect to Relocation of Utilities.
DB 104-4.2.1  Accuracy of Utility Information and Preliminary Design

See DB Contract Documents, Part 1, Agreement, Appendix I, Project Scope.

DB 104-4.2.2  Inaccuracy Resulting in an Increase in the Work

If any underground Utility requiring Relocation is not indicated at all in the Contract Documents, or if any underground Utility requiring Relocation is not accurately indicated therein (as specified in Appendix I to the Agreement), then the Design-Builder shall be entitled to an Order on Contract with respect to any increase in the Design-Builder’s costs of performing the Work that is directly attributable thereto. Notwithstanding the foregoing, the Design-Builder shall be fully liable for, and no Order on Contract shall be issued under this DB Section 104-4.2 with respect to, any such underground Utility that was known to the Design-Builder prior to the Proposal Due Date or that would have been known to the Design-Builder by undertaking a reasonable investigation prior to the Proposal Due Date, including any Utility as to which surface inspection of the area would have shown its existence or the likelihood of its existence in the correct location, size, and/or material, as applicable, by reason of the existence of above-ground facilities, such as buildings, meters, junction boxes, or identifying markers. If the Utility Relocation which was not indicated in the Contract Documents, or which was inaccurately indicated therein, does not increase the Design-Builder’s cost of performing the Work under this Contract, then no additional payment will be made to the Design-Builder.

DB 104-4.2.3  Inaccuracy Resulting in a Decrease in the Work

If any underground Utility identified in the Contract Documents as requiring Relocation is not accurately indicated therein (as specified in Appendix I to Part 1, DB Agreement) and if as a result it is not necessary to Relocate such Utility or there is a reduction in the Work necessary to Relocate such Utility, then the Department shall be entitled to an Order on Contract reducing the Contract Price to reflect the value of the reduction in the Work directly attributable to the correction of such inaccurate information.

DB 104-4.2.4  Changes in “Conflict/No Conflict” Status

Any change in “conflict/no conflict” status between information represented in the Contract Documents, Design Plans, and/or as-built conditions shall be grounds for an Order on Contract for a change in the Contract Price or the Contract Time (additions or subtractions) under this DB Section 104-4.2, provided the change in “conflict/no conflict” status is the result of inaccuracies (per Appendix I to Part 1, DB Agreement) in the locations of Utilities shown in the Contract Documents for which the Design-Builder is otherwise entitled to an Order on Contract pursuant to DB Section 104-4.2.

DB 104-4.2.5  Change in Allocation of Duties between the Design-Builder and the Utility Owner

Orders on Contract resulting from a reallocation of duties between the Design-Builder and the Utility Owner from that found in the Contract Documents shall be governed by this DB Section 104-4.2.5.

A) Change in Allocation of Duties from the Utility Owner to the Design-Builder. If the Contract Documents allocate to the Utility Owner the responsibility to perform design and/or construction for the Relocation of a particular Utility, and after the Proposal Due Date the Department gives notice to the Proposers or Design-Builder that all or part of such Work is being reallocated to the Design-Builder, then effective immediately upon the Design-Builder’s receipt of a proceed order to that effect, the scope of the Design-Builder’s duties for such Utility shall be expanded to include those duties specifically reallocated to the Design-Builder as described in said notice. The Design-Builder shall be entitled to an Order on Contract increasing the Contract Price to reflect the Design-
Builder’s additional costs incurred which are directly attributable to such additional duties. If the change in allocation of duties impacts the Baseline Progress Schedule Critical Path, an adjustment in time will be included in the Order on Contract.

B) Change in Allocation of Duties from the Design-Builder to the Utility Owner. If the Contract Documents allocate to the Design-Builder the responsibility to perform either design and/or construction for the Relocation of a particular Utility, and after the Proposal Due Date the Department gives notice to the Proposers or Design-Builder that all or part of such Work is being reallocated to the Utility Owner, then effective immediately upon the Design-Builder’s receipt of a proceed order to that effect, the scope of the Design-Builder’s duties with respect to such Utility shall be reduced to exclude those duties specifically reallocated to the Utility Owner as described in said notice. The Department shall be entitled to issue an Order on Contract reducing the Contract Price to reflect the value of the reduction in the Work directly attributable to such reduced duties. In the event that the parties cannot negotiate such value in advance, the amount of the Order on Contract shall be an amount equal to the actual cost to the Utility Owner of the Work reallocated to the Utility Owner plus a mark-up on such costs as described in DB Section 109-9.2.2(A)(6). If the change in allocation of duties impacts the Baseline Project Schedule Critical Path, an adjustment in time may be included in the Order on Contract.

DB 104-4.2.6 Change in Design

Inasmuch as the Design-Builder is both furnishing the design of and constructing the Project, the Design-Builder may have significant opportunities to reduce the costs of certain portions of the Work, which may increase the costs of certain other portions of the Work. In considering such opportunities, the Design-Builder shall at all times consider the impact of design changes on Relocations of Utilities with the overall goal of minimizing the necessity for Relocations of such Utilities to the extent practicable. Accordingly, if, as a result of a change made by the Design-Builder to the Department’s preliminary design, either (A) the costs of any Relocation of a Utility are reduced (including by avoiding Relocation of a Utility shown as requiring Relocation in the Contract Documents), or (B) new Relocations are required or Relocation costs are otherwise increased, then the following shall apply to any resulting cost increases or decreases affecting the Design-Builder and/or the Department:

A) The Design-Builder shall not be entitled to an Order on Contract for any such additional costs which it incurs, including both additional Relocation costs and the costs of any additional Work on other aspects of the Project undertaken in order to facilitate the avoidance or reduction of Relocation costs;

B) The Design-Builder shall reimburse the Department for any such additional expenses which the Department incurs; and

C) The Design-Builder shall not be obligated to provide a credit to the Department on account of reductions in the cost of the Work due to any such avoided or reduced Relocation.

DB 104-4.2.7 Delays

For information regarding delays caused by a Utility Owner’s failure to timely perform its duties as defined in this Contract, see DB Section 109[S or L]-10.4.
DB 104-4.2.8  Additional Restrictions on Utility-Related Orders on Contract

A) Avoidance of Relocations. Whenever the Design-Builder claims entitlement to an Order on Contract under this DB Section 104-4.2, the Design-Builder shall bear the burden of proving that the Utility Relocation could not reasonably have been avoided and of proving the amount of any costs and/or delays claimed by the Design-Builder.

B) Incremental Costs Only. In cases where the Design-Builder is entitled to an Order on Contract under this DB Section 104-4.2, the Order on Contract shall allow a price increase only for the Incremental Costs arising from the circumstances giving rise to such Order on Contract.

C) Coordination Costs. In no event will the Design-Builder be awarded any increase in the Contract Price for any increased costs of coordinating with the affected Utility Owner on account of any Utility Relocation for which an Order on Contract is merited under this DB Section 104-4.2.

D) Timing of Orders on Contract. In general, the parties anticipate that Orders on Contract for Utility Relocations will be executed as the changes occur. However, the Department and Design-Builder may agree to consolidate certain changes into a single Order on Contract. The Design-Builder’s mark-ups under DB Section 109-9.2.2(A)(6) shall be deemed to include compensation for all costs associated with any time differential between performance of the Relocation Work and the date of issuance of the Order on Contract.

E) No Orders on Contract for Utility Service Lines or Temporary Relocations of Utilities. The Design-Builder shall not be entitled to an Order on Contract for increased costs of the Work resulting from, or for any extension of time for, delays associated with the following:
   1) Any Relocation of any Utility service lines, and/or
   2) Any temporary Relocations of Utilities implemented for the convenience of the Design-Builder’s own construction operations.

DB 104-4.3  Hazardous Materials Order on Contract

Subject to the limitations contained in DB Section 109[S or L] of these Specifications, the Department shall be responsible for, and agrees to issue a Unit Priced Order on Contract with respect to, any increase in Hazardous Materials quantities from the estimated quantities stated in Form PC6(S) or (L) of the Pricing Documents. The Department shall be entitled to a credit Unit Priced Order on Contract if the actual quantities are less than the estimated amount. The Unit Prices for such Work are set forth in Form PC6(S) or (L) of the Price Proposal and are subject to equitable adjustment only in the event of a material variation in the actual aggregate (total) quantities from the original quantities set forth in Form PC6(S) or (L). The calculation of the variation in quantities shall exclude any increase in quantities due to any act or omission of the Design-Builder or of its Employees, agents, officers, Subcontractors, or any other Persons for whom the Design-Builder may be contractually or legally responsible. The equitable adjustment shall apply only in cases where the actual quantities have increased by more than 25% or have decreased by more than 25% by category of remediation from the estimates in Form PC6(S) or (L).

The Design-Builder shall utilize the services of previously qualified, trained, and/or appropriately certified personnel and Subcontractors for hazardous and contaminated substance remediation. No
training costs (or costs for physical examinations) will be allowed in any Orders on Contract for hazardous and contaminated substance remediation.

**DB 104-4.4 Changes in Environmental Mitigation Requirements**

Changes in environmental mitigation requirements may occur as the result of changes in Governmental Rules, as the result of changes in the Work directed by the Department or as the result of design decisions made by the Design-Builder or its construction methodologies. The Department shall issue an Order on Contract for changes in the scope of environmental mitigation requirements to be performed by the Design-Builder to the extent that they are directly attributable to changes in Governmental Rules or changes in the Work directed by the Department (including any assignment of mitigation requirements to the Design-Builder that were originally contemplated to be performed by the Department or others). The Design-Builder shall bear full responsibility for performance of any mitigation measures required as the result of its design decisions or construction methodologies. Furthermore, Design-Builder shall be entitled to compensation only for the incremental costs associated with compliance with the new requirements, and shall not be entitled to additional compensation for Work relating to such compliance that was included in its original scope, including any commitments made in Design-Builder’s Proposal.

**DB 104-4.5 General**

Changes under this DB Section 104-4 shall be governed by the notice, record keeping, and other requirements of DB Sections 104-16, 109[S or L]-9, and 109[S or L]-15. Additional compensation via Order on Contract shall be made for time related costs, if any, pursuant to DB Section 109[S or L]-10. For any increased costs of the Work resulting from a significant change in the character of the Work, payment shall be made pursuant to DB Section 109[S or L]-9.2 or DB Section 109[S or L]-9.3, but the Equipment compensation shall be governed and controlled by the provisions of DB Section 109[S or L]-9.2.2(A)(5).

Adjustment in Contract Time shall be included in the Order on Contract to reflect changes in the Critical Path for the Project.

The Design-Builder or the Department must make written notification to the other party of the existence of the apparent “significant change” if that party wishes to adjust the Contract Price or the Contract Time. Such notice shall be given within 10 days of the time at which the party had, or should have had, knowledge of an event, matter, or occurrence which results in a significant change in the character of the Work. Work which is substantially completed prior to the issuance of notice may not be considered for Contract adjustment.

Timely issuance of notice shall be a necessary requirement for consideration of Contract adjustment as provided in this Section.

**DB 104-5 DIFFERING SITE CONDITIONS**

During the progress of the Work, if subsurface or latent physical conditions are encountered at the Site differing materially from those indicated by the Department for specific locations where the Department’s tests were taken and to the degree of accuracy indicated in the Contract—or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract are encountered at the Site—the party discovering such conditions shall promptly notify the other party to the Contract in writing of the specific differing conditions within 10 Calendar Days of the discovery and before they are disturbed, or as soon as practicable thereafter, and before the affected Work continues.
A) A differing site condition exists when the information indicated in the geotechnical borings and/or tests provided by the Department are inaccurate at the specific location(s) of those borings or tests, to the extent that correct boring data would have resulted in accurate assumptions. The Department represents that, to the best of its knowledge, the information represented by the borings and tests taken by the Department are accurate at the location of the borings and tests. Any extrapolation of such information to other locations by the Design-Builder shall be at the Design-Builder’s risk. Furthermore, the Design-Builder is responsible for determining what additional geotechnical information is required to support its design and is responsible for obtaining such information and for the accuracy of such information;

B) Upon written notification, the Department’s Project Manager shall, within a reasonable time, investigate the Site’s conditions. If the Department’s Project Manager determines that the conditions materially differ from that which is identified in the Contract and cause an increase or decrease in the cost or time required for the performance of any Work under the Contract, an adjustment that excludes anticipated profit but includes cost of delays will be made, and the Contract will be modified in writing, in accordance with DB Section 109[S or L]-15. The Department’s Project Manager shall notify the Design-Builder of the determination and whether or not an adjustment of the Contract is warranted.

C) If the Design-Builder fails to provide the written notification in a timely fashion and the Department’s costs are increased as a result, the damage that could have been mitigated by timely notice will be calculated and the Contract adjustment will be reduced accordingly.

The notice requirements specified herein also apply to DB Section 104-4.2.

This DB Section 104-5 shall be governed by the notice provisions set forth above, and the recordkeeping and other requirements of DB Sections 104-16, 109[S or L]-9, and 109[S or L]-15. Additional compensation via Order on Contract shall be made for time related costs, if any, pursuant to DB Section 109[S or L]-9. For any increased costs of the Work resulting from the differing site condition, payment shall be made pursuant to DB Sections 109[S or L]-9, but the Equipment compensation shall be governed and controlled by the provisions of DB Section 109[S or L]-9.2.2(A)(5).

**DB 104-6 EXTRA WORK**

The Design-Builder shall perform Extra Work whenever it is deemed necessary or desirable in order to fully complete the Work as contemplated. Such Work shall be performed in accordance with the Specifications and will be paid for as provided under DB Sections 104-4 and 109[S or L]-9.

Pending final issuance of the applicable Order on Contract, the Design-Builder shall maintain a record of work authorized but not yet incorporated in the Contract using MURK 11a (DB-C) and/or MURK 11a (DB-D) (Appendix 109A), for changes under DB Section 104-4, Differing Site Conditions or other Extra Work ordered and/or agreed by the Department.

**DB 104-7 CLOSING OF HIGHWAY**

The legal closing of a Highway to public travel in the manner provided by Section 104 of the New York State Highway Law will be done by the Commissioner or by the county superintendent of highways when requested by the Department.
When a Highway is legally closed and public travel diverted there from, adequate warning, danger, and direction signs and lights shall be erected and maintained by the Design-Builder to properly protect and direct public travel by day and by night. Suitable barricades shall also be erected at the ends of such closed sections of Highways and large signs displayed indicating such closure. All signs, barricades, and other traffic control devices used shall conform to the Manual of Uniform Traffic Control Devices (M.U.T.C. D.), NYCRR, Title 17, Volume B.

**DB 104-8  RESTRICTED USE OF HIGHWAY**

With the Award of the Contract the Commissioner will, unless otherwise specified, designate the section of Highway identified as a part of the Project under the Contract a “restricted Highway” pursuant to Section 104A of the New York State Highway Law and Section 1625 of the New York State Vehicle and Traffic Law. Pursuant to those laws, the Commissioner has the authority to do the following:

A) Establish maximum and minimum speed limits at which vehicles may proceed along any such restricted Highway;

B) Establish weight and dimension limits of vehicles;

C) Regulate the use of such restricted Highway by pedestrians, equestrians, and animals;

D) Regulate parking, standing, stopping, and backing up of vehicles; and

E) Control Persons and Equipment engaged in Work on such Highway.

When used on such restricted Highways, all traffic control devices shall be considered as official traffic control devices and shall conform to the New York State M.U.T.C.D.

The Commissioner will cause signs indicating such restrictions to be placed at such points as he/she deems necessary for the safe use of the restricted Highway. The traveling public and Design-Builder must observe and comply with these restrictions, as posted, except that the Design-Builder may be allowed greater latitude with respect to size and weight of construction Equipment. The size and weight of construction Equipment used within the Project limits will be limited to that which is suitable and practical for the operation at hand so as not to injure or cause damage to the Work that is being done or to that portion of the old Highway that is to be retained as part of the completed Work. The Design-Builder may therefore utilize such Equipment which does not exceed the legal weights outlined in Section 385 of the New York State Vehicle and Traffic Law without specific approval. Loads in excess of the legal weights will not be permitted on any structure, on any new pavement, or on any resurfacing project, except as provided under DB Section 105-9.

**DB 104-9  MAINTENANCE AND PROTECTION OF TRAFFIC**

The Design-Builder shall develop an MPT Plan per Contract requirements and shall furnish, erect, and maintain barricades, warning signs, flaggers, and pilot cars in accordance with the New York State M.U.T.C.D.; the traffic control Plan(s), as subject to the Consultation and Written Comment of the Department’s Project Manager; and the requirements of these Specifications. Flaggers shall be provided with Equipment and training pursuant to requirements of the New York State M.U.T.C.D. The Equipment used by the flaggers shall be kept clean and in good repair by the Design-Builder at the Design-Builder’s expense. The Design-Builder shall take all steps necessary to either keep the existing roadway open with a minimum of inconvenience to the traveling public or provide an approved alternate route.

When requested by the Design-Builder and approved by the Department’s Project Manager, when directed by the Department’s Project Manager, or when shown on the RFP Plans, Sections of the Project may be opened to traffic prior to completion of the entire Contract. Such opening shall not constitute
Final Acceptance of the Work or any part thereof, or a waiver of any provisions of the Contract. For Sections not shown as subject to opening prior to completion of the entire Contract on the RFP Plans, written instructions from the Department’s Project Manager will state which Sections will be opened prior to completion of the Contract.

When a Section is opened in accordance with the Design-Builder’s MPT Plan and/or as a result of the Design-Builder’s request, the Design-Builder shall remain liable until Final Acceptance of the entire Project, and damage to the Highway occurring before that time shall be repaired by the Design-Builder at the Design-Builder’s expense, including the removal of earth or rock slides.

The Design-Builder’s Equipment shall enter and leave the traveled way only in the direction of public traffic. All movements on or across the traveled way shall be performed in a manner that will not endanger the traveling public.

The Design-Builder shall maintain the pavement surface of the lanes open to traffic adjacent to the Work zone within the limits of the Project traffic control.

The Department will be responsible for snow removal on all sections of roadway open to the traveling public. The Design-Builder shall be responsible for snow removal as required for the protection of the Work on all Sections of the Project not open to the traveling public.

If the Design-Builder fails to furnish warning devices; take protective measures as above provided; or complete shoulder work, drainage structures, or other features of the Work, the Department’s Project Manager, at his or her discretion, will notify the Design-Builder in writing of the defects along with a reasonable period of time in which the Work must be corrected or completed. If the Design-Builder fails to make a reasonable effort, in the sole opinion of the Department’s Project Manager, toward correction in this period of time, the Department’s Project Manager may then take such steps as the Department’s Project Manager deems necessary to correct the defects, or the Department’s Project Manager may terminate the Contract for default under DB Section 108-9.

The Design-Builder shall be liable and agrees to pay the Department for additional costs and expenses incurred by the Department in correcting the defect(s).

**DB 104-10 MAINTENANCE AND PROTECTION OF TRAFFIC FOR MOBILE OPERATIONS**

When shadow vehicles are required by the New York State M.U.T.C.D., the shadow vehicles shall meet the requirements of Part 9, Section 619-1.02N. No separate payment will be made for shadow vehicles. The cost thereof must be included in the Price Proposal.

**DB 104-11 RIGHTS IN AND USE OF MATERIALS FOUND ON THE WORK**

The Design-Builder may use on the Project such suitable stone, gravel, sand, or other Material as may be found in an excavation for accomplishing Work described by other items. The Design-Builder shall replace with other acceptable Material, at the Design-Builder’s own expense, all of the excavated Material so removed which would have been used for the construction of embankments or bridge approaches or for other purposes, provided that such Material is required to fulfill the intent of the Contract. No charge will be made against the Design-Builder for Materials so used. The Design-Builder shall not excavate or remove Material from within the ROW that is not within the grading limits as indicated by the slope and grade lines on the Design Plans, without written authorization from the Department’s Project Manager.
Unless otherwise provided, the Material from existing old structures may be used temporarily by the Design-Builder in the erection of the new structure. Such Materials shall not be cut or otherwise damaged, except with the written authorization of the Department’s Project Manager.

**DB 104-12 FINAL CLEANUP**

Before Final Acceptance, the roadway, all pit sites used by the Design-Builder, and all ground occupied or used by the Design-Builder in connection with the Work shall be cleaned of all rubbish, including, but not limited to, concrete and asphalt chunks, loose rock, excess Material, and temporary structures. All parts of the Work shall be left in an acceptable condition. If appropriate arrangements have been made with private property owners, removal of Equipment from private property shall not be required prior to Final Acceptance.

Borrow pits, surfacing pits, haul roads, and all ground occupied by the Design-Builder in connection with the Work shall be re-vegetated in accordance with the requirements of the Contract Documents. Haul roads or other areas may be excepted from these requirements when the Department’s Project Manager has accepted a letter of intent from the landowner for future use.

Borrow pits and surfacing pits, when indicated on the RFP Plans or Design Plans, shall be stripped, and the topsoil shall be stockpiled. After construction operations have been completed, stockpiled Material shall be placed uniformly over the stripped area to form a seedbed for planting. Stockpiled waste that is not covered by agreement shall be spread over the stripped area prior to the placing of topsoil. Unless a Contract Pay Item for the Work is included in the Proposal, stripping, stockpiling, replacement of topsoil, and spreading of stockpiled waste will be considered incidental to completion of the Work and no measurement or direct payment will be made.

Borrow pits and surfacing pits shall not change the general pattern of existing drainage and, where practicable, shall be well-drained, unless they are suitable for development as ponds or lakes, and notice in writing is received indicating that such development is planned by the property owner.

Upon completion of excavation, pits, except quarry pits, shall be contour-graded to blend with the natural topography of the surrounding area or as specified in the Contract Documents or agreements with the property owner(s).

Any salvaged Material not specified to be disposed of otherwise shall become the property of the Design-Builder and removed from the Site.

**DB 104-13 VALUE ENGINEERING CHANGE PROPOSAL**

**DB 104-13.1 Purpose and Scope**

It is the intent of this provision to share with the Design-Builder any substantial direct cost savings which may be generated as a result of a VECP offered by the Design-Builder and approved by the Department. The purpose is to encourage the use of the Design-Builder’s ingenuity and experience in arriving at alternative designs, methods, and procedures that result in a lower direct cost to accomplish a prescribed function with the intention of sharing in the resulting savings.

The VECP should produce direct cost savings to the Department and the public without, in the sole judgment of the Department, impairing essential functions and characteristics of the facility including, but not limited to, service life, economy of operation, ease of maintenance, desired appearance, and safety. The Design-Builder, when developing a VECP, must address the environmental permit requirements,
regulations, commitments made to the public to mitigate the impact of construction, and similar concerns as part of the VECP. Value Engineering Change Proposals are limited to changes that are within the design parameters, as defined by the Department, for the Project. Value Engineering Change Proposals may be developed by the Design-Builder or based on proposals from the Department or information contained in another Proposal submitted in response to the Request for Proposals (RFP).

For the purposes of this Section, “savings” means the difference between the total actual cost to implement and construct the VECP and the cost to construct the equivalent facility in accordance with the original Contract Documents.

Value Engineering Change Proposals that reduce the time to complete the Project, and only result in indirect cost savings, may be accepted based on the mutual benefit derived. These VECPs will be evaluated in accordance with DB Section 104-13.6.

The provisions of this Section will not apply unless the Design-Builder identifies the submission as a VECP.

**DB 104-13.2 Submittal of Conceptual VECP**

A conceptual VECP is required for all VECPs. The conceptual VECP should outline the general technical concepts associated with the VECP and the estimated savings which may result. The conceptual VECP will be reviewed by the Department and could result in one of the following actions:

A) Approval of the VECP;
B) Conceptual approval, and a request for the Design-Builder to submit a formal VECP;
C) A request for additional information; or
D) Rejection of the VECP.

The conceptual VECP should contain sufficient information to provide concept evaluation and review. The conceptual VECP will include the following, at a minimum:

1) Conceptual Plans;
2) An initial estimate of costs which should include sufficient information to determine the reasonableness of the conceptual VECP;
3) The most recently approved Baseline Progress Schedule showing the impact of the VECP on the Baseline Progress Schedule. The Baseline Progress Schedule shall include the time required to develop a formal VECP, if required; approve an Order on Contract to incorporate the required changes into the Contract; order, fabricate, and deliver long lead Material; and obtain any environmental permits or other required approvals. In addition, the Design-Builder must indicate the latest date that the conceptual VECP and the VECP Order on Contract must be approved to not affect the currently approved Baseline Progress Schedule. Should the Department find that insufficient time is available for review and processing, it may reject the conceptual VECP solely on such basis. If the Department fails to respond to the conceptual VECP by the date specified, the Design-Builder will consider the VECP rejected and will have no claims against the State as a result thereof.
4) A description of any previous use or testing of the conceptual VECP on another Department project or elsewhere and the conditions or results therewith. The Design-Builder shall submit the technical aspects of the conceptual VECP in
sufficient detail as to enable reviewers to determine the suitability of the VECP from an engineering perspective. If the technology is new, test information must be provided to the Department’s satisfaction. If the conceptual VECP was submitted previously on another Department project, indicate the date, contract number, and action taken by the Department.

An original and three copies of the conceptual VECP must be submitted to the Department’s Project Manager, plus any additional information requested by the Department. The Department may accept conceptual VECPs that require Contract Time extensions if sufficient cost savings or other benefits are anticipated, at the sole discretion of the Department. Baseline Progress Schedules for these conceptual VECPs must include all of the above information plus the new anticipated Contract completion date.

DB 104-13.3 Submittal of Formal VECP

Upon notification by the Department’s Project Manager that the conceptual VECP is approved and a formal VECP is necessary, the Design-Builder will submit an original and three copies of the following information with each formal VECP, plus any additional information requested by the Department:

A) A statement identifying the submittal as a cost reduction proposal of the difference between the existing Contract requirements and the proposed change and the comparative advantages and disadvantages of each, including considerations of service life, economy of operation, ease of maintenance, traffic flow, safety, desired appearance, and increase or reduction of environmental impacts;

B) A description of the performance of the Work under the existing Contract requirements and under the proposed changes;

C) An engineering analysis including Plans, computations, and other documents necessary for evaluation by the Department;

D) A listing of the Contract requirements that must be changed if the VECP is adopted, and a recommendation as to the manner in which the change(s) should be made;

E) A detailed estimate for performing the design and construction Work under the existing Contract and for performing it under the VECP. An estimate of the cost to the Design-Builder for developing and implementing the changes must also be included;

F) A listing of the Price Centers (PC) and activities affected by the VECP; and

G) An assessment of the effects that the adoption of the VECP will have on other costs to the Department, including future Right Of Way (ROW) acquisition, maintenance, and operations.

The Design-Builder may be required to conduct a technical presentation as a part of the review process.

In preparing VECPs, the Design-Builder must perform an independent examination of the affected Work Site. The Department shall rely exclusively upon the accuracy of the engineering data upon which the VECP is based. The Department is not required to perform additional investigations, cross checks, or Site examinations. Adoption of a Design-Builder’s VECP shall not be construed to alleviate or reduce the Design-Builder’s full and absolute liability if the VECP upon implementation fails to satisfactorily perform because of the Design-Builder’s use of inaccurate or incomplete engineering data or because of the Design-Builder’s failure to adequately investigate and examine the affected construction Site.
New York State Department of Transportation

**DB 104-13.4 Conditions**

The Design-Builder is cautioned not to base its Price Proposal on the anticipated approval of a VECP and to recognize that any VECP may be rejected. If this occurs, the Design-Builder will be required to complete the Contract in accordance with the Contract Documents. A VECP will be considered after the Contract is awarded and only when all the following conditions are met:

A) All VECPs, whether or not approved by the Department for use in this Contract, apply only to this Contract and become the property of the Department and will contain no restrictions imposed by the Design-Builder on their use or disclosure. The Department will have the right to use, duplicate, and disclose in whole or in part any data necessary for the utilization of the VECP. The Department retains the right to utilize any proposed VECP or part thereof on any other project without any obligation to the Design-Builder submitting the same.

B) The approval of the conceptual VECP in no way obligates the Department to accept the formal VECP. Furthermore, the Design-Builder shall have no claim against the Department as a result of the rejection of any such conceptual or formal VECP.

C) When the Department is in the process of making design and Specification revisions and a Design-Builder submits a VECP with these same revisions, the Department will reject the VECP and proceed to implementation without any obligation to the Design-Builder.

D) The Department will be the sole judge as to whether a VECP qualifies for consideration and evaluation. It may reject any VECP that requires excessive time or costs for evaluation or which is not consistent with the Department’s policies for the Project.

E) A VECP must provide the same service life or more, facilitate economy of operations and ease of maintenance, and achieve the desired appearance and safety. A VECP will not be allowed that changes the type and/or thickness of the pavement structure and Material or solely substitutes one Material for another. Examples of Material that fall into inappropriate substitution situations are drainage pipes, bridge coatings, and pavement markings. Also, elimination of Work does not necessarily constitute a VECP.

F) The VECP will not be experimental in nature, but must have been proven to the Department’s satisfaction under similar or acceptable conditions on another Department project or at another location acceptable to the Department.

G) A VECP will be considered only if equivalent options are not already provided in the Contract Documents.

H) The Department will be the sole judge in determining if the proposed VECP will result in a sufficient amount of direct or indirect savings to offset the Department’s effort to review the VECP.

I) If the Department requires any additional information to evaluate the VECP, this information must be provided in a timely manner. Unless mutually agreed to otherwise, failure to do so will result in the rejection of the VECP. An incomplete or a poor quality VECP which hinders the Department’s review may also result in the rejection of the VECP.

J) The Design-Builder shall encourage submission of VECPs from Subcontractors, provided that reimbursement is made by the Department to the Design-Builder and that the terms of payment to the Subcontractor are satisfactorily negotiated and accepted before the VECP is submitted to the Department. Subcontractors may not submit a VECP except through the Design-Builder.
K) The Design-Builder will receive written notification from the Department when the VECP is accepted. The Design-Builder will not order any Materials until it has received the acceptance.

DB 104-13.5 Payment

If the Department accepts the VECP, the changes and payment will be authorized through an Order on Contract. Reimbursement to the Design-Builder for the total cost of the revised Work will be paid in accordance with the payment provisions of DB Section 109[S or L]. When the actual net savings have been determined, a second Order on Contract providing for a lump sum payment of the Design-Builder’s share will be executed. Partial progress payments may be made on a schedule adopted by the Department’s Project Manager.

The Department’s share of the net savings and all costs incurred by the Department in implementing the adopted VECP, and in implementing the changes, will be deducted from the Contract Price.

The Department’s Project Manager will be the sole judge of the estimated net savings in construction cost resulting from the adoption of all or any portion of a VECP. The Design-Builder’s share of a VECP will be 50% of the actual net savings. However, if the VECP is based on information contained in another Proposal submitted in response to the RFP or on a proposal from the Department, the Design-Builder’s share shall be 25% of the actual net savings.

The Design-Builder’s share will be considered full compensation to the Design-Builder for effecting all changes pursuant to the Order on Contract stemming from the VECP.

In the event of the Department’s acceptance of a direct cost savings conceptual VECP, and the Design-Builder is directed to proceed with the VECP implementation steps, and acceptance of the formal VECP is not reached, reimbursement of the implementation costs will be limited to 50%. If “advance” written acceptance is given to proceed with the Work, procure the Material, and begin fabrication and rejection of the formal VECP occurs, the Work and fabrication costs will be reimbursed in accordance with DB Section 109[S or L]. Regarding Material, only those items not incorporated and unique to the Project (i.e., not restockable) will be evaluated for payment under DB Section 109[S or L].

There will be no reimbursement for any costs incurred prior to the acceptance of the conceptual VECP.

When multiple submittals are required to satisfy the basic information needs of the conceptual or formal VECP, and contract timing is negatively impacted before review and subsequent approval can be given by the Department, the VECP may be rejected. In such cases, there will be no claim by the Design-Builder for the development costs and loss of anticipated savings and/or profits.

DB 104-13.6 Time Savings

The Department will consider VECPs that result in time savings and at the same time increases the cost of the Project. The Department will be the sole judge as to whether the benefits of completing the Project or phase thereof before the scheduled completion date or Milestone offsets any increase to the cost of the Project. These submittals, while not constituting Value Engineering (VE), shall be reviewed using the VECP acceptance process. In addition to the information required in DB Sections 104-13.2 and 104-13.3 above, the Design-Builder shall also provide the Department sufficient information to enable the Department to calculate and evaluate the cost benefit of the savings in user delay.
DB 104-14 ALTERNATIVE METHODS AND EQUIPMENT

Where particular methods or Equipment are specifically required in these Specifications, the Design-Builder may apply in writing to the Department’s Project Manager to use alternate methods and Equipment to provide the same results. Such alternates may be used only after the written acceptance of the Department’s Project Manager. When, in the opinion of the Department’s Project Manager, satisfactory results are not being obtained using the Design-Builder’s alternate methods and Equipment, the methods and/or Equipment shall be immediately modified to produce satisfactory results.

DB 104-15 WARRANTIES AND GUARANTEES

The Design-Builder shall provide to the New York State Department of Transportation any manufacturer’s Warranties and guarantees normally given as customary trade practice.

See Part 5 Special Provision 104 for additional information on Warranties for this Project.

DB 104-16 RETENTION OF RECORDS

The Design-Builder shall retain all records for six years after final payment is made under the Contract. Required records shall include all accounts, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Design-Builder in connection with the Contract. Legible copies, including microfilm copies, are acceptable, provided they are so arranged, identified, and indexed that any individual document, or component of the records, can be located with reasonable facility.

The Design-Builder shall maintain records of all required payrolls and of the details that comprise the total Contract Price. These records shall be available at any time within six years following the date of final payment of the Project at the request of the Department for review and audit, if it is so deemed necessary by the Commissioner. In case all or part of such records are not made so available, the Design-Builder understands and agrees that any items not supported by reason of such unavailability of the records shall be disallowed, or if payment has already been made, the Design-Builder shall, upon demand in writing by the Commissioner, refund to the Department the amount so disallowed.
(Project Name)
DESIGN-BUILD PROJECT

PIN _____________

DB CONTRACT DOCUMENTS
PART 2

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SECTION 105
CONTROL OF WORK

DB 105-1 DEPARTMENT’S PROJECT ORGANIZATION AND AUTHORITY OF DEPARTMENT’S PROJECT MANAGER

See Special Provision 105A for a Project specific organization chart for the Department’s Project staff.

As designee of the Commissioner, the Department’s Project Manager has immediate charge of the Project. The Department’s Project Manager is responsible for the administration and satisfactory completion of the Project. The Department’s Project Manager will be delegated authority commensurate with that responsibility, including the authority to reject defective Material and construction and disapprove and reject design documents that do not comply with Contract requirements.

The Design-Builder is required to submit all issues related to the Project through the Department’s Project Manager. The Department’s Project Manager will decide all questions that may arise, including, but not limited to, the following topics:

A) Acceptability of design documents;
B) The quality and acceptability of Material furnished;
C) Work performed;
D) The rate of progress of the Work;
E) Interpretation of the Contract;
F) Acceptable performance of the Contract requirements; and
G) Administration of monthly progress payments.

The decision of the Department’s Project Manager of the aforementioned shall be in writing, and shall be delivered to the Design-Builder’s Project Manager as quickly as possible.

In addition to the authority to administer the Contract, modify the Contract by Order on Contract, and oversee and terminate the Contract as expressly provided in other Sections of the Contract, the Department’s Project Manager will have the authority to suspend the Work, wholly or in part, or withhold progress payments due to the following:

1) Conditions such that unsatisfactory Work might result;
2) Improper Material or procedures being used;
3) Unsafe conditions for the Workers or the general public as a result of the failure of the Design-Builder to correct those conditions;
4) The Design-Builder’s has failure to carry out provisions of the Contract;
5) The Design-Builder’s failure to carry out directions of the Department’s Project Manager;
6) The Design-Builder’s failure to comply with State or federal law or regulation;
7) The Design-Builder non-conformance with the Maintenance and Protection of Traffic (MPT) provisions of the Contract, causing serious disruptions to traffic operations; or
8) The Department’s Project Manager’s determination that suspension is necessary because of unsuitable weather.

The Department’s Project Manager may suspend Work if conditions exist that are potentially injurious to the Project, including Work being performed in the absence of Design Plans and Project Specifications accepted by Department’s Project Manager and/or Work being performed in the absence of the Design-Builders’ qualified Inspectors and/or sampling and testing personnel. No additional compensation will be paid to the Design-Builders because of such suspension. The Design-Builders shall not suspend Work without written authority from the Department’s Project Manager. See DB Section 109[S or L]-15.2 for more information on the Department’s Project Manager’s authority to suspend Work.

The Department’s Project Manager may also suspend the Work wholly or in part for other conditions or reasons beyond the control of the Design-Builders or not connected with the construction of the Project when deemed necessary in the public interest. Additional Work caused by such suspensions will be paid for by the Department pursuant to DB Section 104-3.

Any adjustment of Contract Time for suspension of Work shall be made as provided in DB Section 108-6.

See Special Provision 105A for duties of other Department staff.

DB 105-2 ORDERS TO FOREMAN

Whenever the Design-Builders or its superintendent is not present on any part of the Work where the Department may desire to give directions, orders will be given by the Department’s Project Manager, or the Design Compliance Engineer (DCE) or Construction Compliance Engineer (CCE), and shall be received and obeyed by the Design-Builders’ foreman who may have charge of the particular Work in reference to which the orders are given. All foremen shall speak English.

DB 105-3 DESIGN PLANS AND WORKING PLANS

See DB Section 111-1.

DB 105-4 CONFORMITY WITH DESIGN PLANS AND PROJECT SPECIFICATIONS

All Work performed and all Material furnished shall be in Reasonably Close Conformity with the lines, grades, cross sections, dimensions, and Material requirements, including tolerances, shown on the Design Plans or indicated in the Project Specifications.

In the event the Department’s Project Manager finds the Material, or the finished product in which the Material is used, not within Reasonably Close Conformity with the Design Plans and Project Specifications, but that reasonably acceptable Work has been produced, he/she shall then make a determination if the Work may remain in place.

In this event, the Department’s Project Manager will document the basis of his/her determination by Contract modification which will provide for an appropriate adjustment in the Contract Price for such Work or Material as he/she deems necessary to conform to his/her determination based on engineering judgment.

In the event the Department’s Project Manager finds the Material, the finished product in which the Material is used, or the Work performed are not in Reasonably Close Conformity with the Design Plans
and Project Specifications and have resulted in an inferior or unsatisfactory product, the Work or Material shall be removed and replaced or otherwise corrected by and at the expense of the Design-Builder.

All traffic control devices (signs, signals, markings, and devices placed by the authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic) shall be in conformity with the edition of the New York State Manual of Uniform Traffic Control Devices (M.U.T.C.D.) which is current on the date of Advertisement.

**DB 105-5  PROJECT RECORDS**

The Department’s Project Manager is required to keep his/her Project records in accordance with the requirements in the Contract Documents. In several instances (such as Force Account Work or application for approval of Subcontractors) the Design-Builder shall furnish such data and information on the forms as set up in the Contract. The Department’s Project Manager will furnish the appropriate forms.

**DB 105-6  TERMINATION CLAUSE**

The Commissioner may, by written notice, terminate the Contract or any portion thereof after determining that for reasons beyond either Department or Design-Builder control it is not feasible to proceed with or complete the Work originally contracted for, and that termination would therefore be in the public interest. Such reasons for termination may include, but need not be necessarily limited to, Executive Orders of the President relating the prosecution of war or national defense; a national emergency which creates a serious shortage of Material; orders from duly constituted authorities relating to energy conservation; restraining orders or injunctions obtained by third-party citizen action resulting from national or local laws or regulations, where the issuance of such order or injunction is primarily caused by acts or omissions of persons or agencies other than the Design-Builder; or where the orderly progression of the Project is interfered with or delayed by acts or omissions of persons or agencies other than the Design-Builder. The Design-Builder specifically understands that the issuance of such notice by the Commissioner shall be conclusive as to its necessity.

When the Contract, or any portion thereof, is terminated for any of the above mentioned reasons before completion of all items of Work in the Contract, payment will be made for the actual numbers of units for Unit Priced items or Work completed, or as mutually agreed for Work partially completed, but no claim for loss of anticipated profits on uncompleted Work shall be made by the Design-Builder nor shall the State be liable for the loss of anticipated profits for such uncompleted Work.

Acceptable Material, obtained by the Design-Builder for the Work that meets the Contract’s requirements, and that is not incorporated in the Work, shall be returned to the Supplier or Manufacturer whenever it is possible to do so at nominal or no cost. Where the Design-Builder returns such Material to its Supplier or Manufacturer, the State will pay the Design-Builder the actual documented costs connected with returning such Material to the extent such costs are reasonable as determined by the Department. In the event the Design-Builder is unable to return such Material at reasonable or no cost, and provides documentation satisfactory to the Department that such Material cannot be economically returned, the State shall be responsible for all such Material and shall either direct the manner of disposition or purchase such Material from the Design-Builder at actual cost as shown by receipted bills and actual cost records to the extent such costs are reasonable as determined by the Department, at such points of delivery as may be designated by the Department’s Project Manager.

Termination of the Contract or a portion thereof shall not relieve the Design-Builder of its responsibilities for the completed Work, nor shall it relieve its Surety of its obligation for and concerning any just claims arising out of the Work performed.
DB 105-7 STAKEOUT

The Design-Builder shall furnish, free of charge, all stakes, templates, standard subgrade testers, straight edges, approved paint and marking devices, and such temporary structures as may be necessary for marking and maintaining points and lines for the Work, and is to give the Department’s Project Manager such facilities, labor, and Material for giving the lines and points as he/she may require.

All property lines and survey monuments which may be disturbed during construction shall be properly tied to fixed points before being disturbed and properly re-set by the Design-Builder upon the completion of the Work.

DB 105-8 INSPECTION

The Design-Builder shall have the primary responsibility for Inspection of all Project Work through its QC Manager, Design QC Manager, and Construction QC Manager and their respective staffs. See DB Sections 112 and 113 of the Contract Documents for the specific Design-Builder Inspection and QC responsibilities.

DB 105-8.1 Department’s Inspection

The Department’s CCE shall be authorized to inspect all Work done and Material furnished, including all or any part of the Work and the preparation, fabrication, or manufacture of the Material to be used. Inspection shall include, but not be limited to, the Design-Builder's compliance with applicable safety requirements set forth in DB Section 107-7. The CCE is not authorized to either alter or waive the provisions of these Specifications or the Contract or to issue instructions contrary to the Design Plans and Project Specifications without written approval of the Department’s Project Manager or to act as foreman for the Design-Builder. However, he/she shall have the authority to reject unacceptable Work or Material. The Department’s Inspections and tests are for the sole benefit of the Department and do not constitute any of the following:

A) Relief of the Design-Builder’s responsibility for providing adequate QC measures;
B) Relief of the Design-Builder’s responsibility for damage to or loss of the Material before Final Acceptance;
C) Implication of Final Acceptance; or
D) Affectation of the continuing rights of the Department after Final Acceptance of the completed Work.

DB 105-8.2 Department’s Inspection of Work

All Material and each part or detail of the Work shall be subject to Inspection by the DCE, CCE, Design Compliance Monitor (DCM) or Construction Compliance Monitor (CCM), and the Department’s Project Manager. The Department’s Project Manager and staff shall be allowed full Work access and shall be furnished with necessary information and assistance by the Design-Builder to make a complete and detailed Inspection.

If the Department’s Project Manager requests it, the Design-Builder, at any time before Final Acceptance of the Work, shall remove or uncover such portions of the finished Work as may be directed. After examination, the Design-Builder shall restore said portions of the Work to the standard required by the Project Specifications. If the Work thus exposed or examined proves acceptable, the uncovering or removing and the replacing of the covering or making good of the parts removed may be paid for as Extra
Work under DB Sections 104-3 and 109[S or L]-9. But, if the Work so exposed or examined proves unacceptable, or if the Design-Builder failed to document its Work or complete and/or document its QC activities related to the Work, the uncovering or removing and the replacing of the covering or making good of the parts removed will be at the Design-Builder’s expense.

The Design-Builder shall provide at least a 24-hour notice, or such other notice to which the parties have agreed, before beginning Work on any item and before resumption of Work on an item after an extended suspension.

Work done or Material used without Inspection by an authorized Department representative may be ordered removed and replaced at the Design-Builder’s expense if the Department was not given the required notice that the Work was to be performed. When a unit of government, political subdivision, or railroad is to pay a portion of the cost of the Work covered by this Contract, its representative(s) shall have the right to inspect the Work. Such Inspection shall in no sense make the unit of government, political subdivision, or railroad a party to this Contract and shall in no way interfere with the rights of either party hereunder.

The above paragraphs shall not apply to concrete foundation for pavement or cement concrete pavement rejected as a result of core tests. Work so rejected shall be removed and replaced at the expense of the Design-Builder.

**DB 105-8.3 Removal of Unacceptable and Unauthorized Work**

All Work which does not conform to the requirements of the Contract shall be considered unacceptable unless otherwise determined acceptable under the provisions in DB Section 105-4.

Unacceptable Work, whether caused by poor Work, defective Material, damage through carelessness, or any other cause found to exist prior to the Final Acceptance of the Work shall be removed immediately and replaced in an acceptable manner irrespective of the presence of, or lack of, a CCM or a Department representative at the time the Work was originally completed. This clause shall have full effect regardless of the fact that the defective Work may have been done or the defective Material used with the full knowledge of the Department’s representative. The fact that the DCE, CCE, DCM or CCM, or Department’s Project Manager may have previously overlooked such defective Work shall not constitute an Approval or Final Acceptance of any part of it.

**DB 105-9 CONSTRUCTION EQUIPMENT**

It is the intent of these Specifications to permit the use of the most efficient Equipment that is consistent with conditions at the time of use. It is anticipated that seasonal or weather conditions combined with the nature of the terrain will often require the use of lighter and smaller Equipment than might be used under optimum conditions.

Construction Equipment or vehicles delivering Material or traveling to a Project from outside the Project limits shall have all required permits issued through the established Department vehicle permit system in accordance with Section 385 of the New York State Vehicle and Traffic Law [or 23 United States Code (USC) 127 for Federal-aid Projects on the Interstate system]. The permit will indicate the limits within which such Equipment with over-legal gross weights or axle loadings may operate, the frequency of such passages, and all other limiting factors.
Construction Equipment or vehicles operating within the Project limits having gross weights or axle loadings within the legal limits set by Section 385 of the New York State Vehicle and Traffic Law (or 23 USC 127 for Federal-aid Projects on the Interstate system) may operate without specific approval.

Prior to use of construction Equipment vehicles with over-legal gross weights or axle loadings on any structure, on any new pavement, or on any resurfaced pavement within the Project limits, the Design-Builder shall submit a written request to the Department’s Project Manager. The request shall be accompanied, upon request, by an appropriate analysis performed by a Professional Engineer, including the pertinent Equipment data, and shall demonstrate that the operations will not result in detrimental effects on the Highway or structure.

Use of over-weight construction Equipment or vehicles on portions of the Project other than listed above shall be subject to the Approval of the Department’s Project Manager. If it is determined that the use of construction Equipment or vehicles is having a detrimental effect or will result in detrimental effects on the finished Highway, the Department’s Project Manager will so notify the Design-Builder to modify or cease the operations.

**DB 105-10 WINTER EARTHWORK OPERATIONS**

Earthwork construction operations requiring compaction shall not be performed from November 1 to April 1 except with the written permission of, and under such special conditions and restriction as may be imposed by, the Department’s Project Manager.

**DB 105-11 MAINTENANCE DURING CONSTRUCTION**

The Design-Builder shall maintain the Work during and after construction until the Project is accepted, except as may be provided elsewhere in the Contract Documents. The maintenance shall constitute continuous and effective Work prosecuted day by day, with adequate Equipment and forces such that the roadway or structures are kept in satisfactory condition at all times.

In the case of a contract for the placing of a course upon a course or subgrade previously constructed, the Design-Builder shall maintain the previous course or subgrade during all construction operations, including when the Plan calls for placing traffic on the unfinished roadway.

All cost of maintenance Work during and after construction until the Project is accepted shall be included in the Price Proposal and the Design-Builder will not be paid an additional amount for such Work.

**DB 105-12 FAILURE TO MAINTAIN ROADWAY OR STRUCTURE**

If the Design-Builder, at any time, fails to comply with the provisions of DB Section 105-11, the Department’s Project Manager will immediately notify the Design-Builder of such noncompliance. If the Design-Builder fails to commence to remedy unsatisfactory maintenance immediately after receipt of such notice and prosecute the remedial action with diligence, the Department’s Project Manager may immediately proceed to maintain the Project, and the entire cost of the maintenance will be deducted from monies due or to become due to the Design-Builder.

**DB 105-13 DISPUTE RESOLUTION AND DISPUTED WORK PROVISIONS**

*See DB Section 109[S or L]-10.*
DB 105-14 DESIGN-BUILDER'S RESPONSIBILITY FOR WORK

The Design-Builder is responsible for carrying out the provisions of the Contract at all times, regardless of whether an authorized CCM or representative is present or not. Any Work or item that is, at any time, found to be out of Specification or not in compliance with the Design Plans shall remain the responsibility of the Design-Builder and shall be subject to such corrective measures that are approved in writing by the Design-Builder’s Designer and accepted in writing by the Department’s Project Manager.

DB 105-15 DEPARTMENT CONSULTATION AND WRITTEN COMMENT, APPROVALS, AND NON-CONFORMANCE REPORTS

Except for items specifically designated for “Approval” or “approval” in the Contract Documents, the Department’s Consultation and Written Comment regarding reviews, observations, and/or inspections regarding Design Documents, Working Plans, other required submittals and construction means and methods shall be considered and addressed by the Design-Builder. While the Design-Builder is not required to revise its Work in response to such comments, the Design-Builder shall provide a timely written response to the Department’s Project Manager regarding its disposition of Department’s comments. Any issues raised during Consultation and Written Comment by the Department, if not properly addressed by the Design-Builder, could affect the Department’s Final Acceptance of the Project.

Deficiencies, non-compliance, errors, and/or omissions will be documented by the Department in written Non-Conformance Reports (NCRs). The Design-Builder shall respond to and address issues covered by NCRs and shall bring the Work into compliance with Contract requirements.

Approvals will only be given by the Department for those submittals or Work specifically identified in the Contract Documents as for “Approval” or “approval”.

Consultation and Written Comments or Approval by the Department of Design Documents, Working Plans, other required submittals, activities/actions, construction means and methods, and/or the Design-Builder’s construction detail does not relieve the Design-Builder of the full responsibility for providing adequate Quality Control (QC) measures and does not relieve the Design-Builder of providing proper and sufficient Material, Equipment, and labor to complete the Work in accordance with the Contract, Design Plans, and Project Specifications.

DB 105-16 MEETINGS

The Design-Builder shall participate in meetings as indicated in this Section. The party leading the meeting shall record minutes of all meetings and distribute them within five days of the meeting. Meeting minutes shall clearly identify the following:

A) Action items and issues;
B) The party responsible for the action item;
C) The status of issues; and
D) Due dates for identified action items.

Action items and issues shall be retained on the minutes until the required action is completed and/or the issue is resolved.

DB 105-16.1 Pre-Work Conference
The Department’s Project Manager will consult with the Design-Builder and arrange and lead a meeting after Contract Award.

The Design-Builder shall be represented by all appointed key personnel. See DB Section 108-3 and Part 5 Special Provision 108B for information regarding the Design-Builder’s key personnel.

The meeting will take place at a location determined by the Department’s Project Manager in the Project vicinity.

The agenda of the meeting shall include the following items:

A) Submission of executed bonds, guarantees, Warranties, and insurance policies and certificates, if not already provided;
B) Planned activity for the first 60 days after NTP;
C) Submission of the list of intended Subcontractors; and
D) Submission of the Plans required under the Contract.

The Department’s Project Manager or the Design-Builder may add other items to this agenda.

**DB 105-16.2 Value Engineering and Proposal Concepts Evaluation Meetings**

The Department’s Project Manager will consult with the Design-Builder and arrange and lead meetings within 30 days of Notice to Proceed (NTP) to complete the following:

A) Review initial Value Engineering Change Proposals (VECPs) (see DB Section 104-13) submitted by the Department or the Design-Builder; and
B) Discuss the concepts and ideas contained in other Proposals that may be incorporated into the Contract.

If requested by the Department’s Project Manager, the Design-Builder shall prepare an estimate of effects (time and cost) for VECPs or to incorporate concepts included in other Proposals into the Contract.

Attendance at the meetings and the preparation of the estimate of effects shall be at no increase in the Contract Price to the Department.

Other VE meetings may be called by the Design-Builder or the Department, as necessary, to discuss and evaluate additional VECPs that may arise.

**DB 105-16.3 Design Mobilization Meeting**

The Design-Builder’s Project Manager will consult with the Department’s Project Manager and will arrange and lead a meeting at the Designer-Builder’s Project office prior to the Design-Builder’s initiating design Work.

The agenda shall be developed in consultation between the Department’s Project Manager and the Design-Builder and prepared by the Design-Builder and shall include the following:

A) Organization for design;
B) Review of qualifications of design QC staff;
C) Design workshop agenda (see DB Section 111-16);
D) Location of design personnel;
E) Design schedule and time allocations for Design Reviews; and
F) Design QC and Quality Assurance (QA).

DB 105-16.4 Site Mobilization Meeting

The Design-Builder’s Project Manager will consult with the Department’s Project Manager and arrange and lead a meeting at the Design-Builder’s office prior to the Design-Builder’s occupying any part of the Site. The Design-Builder’s key personnel who will be responsible for activities on the agenda shall attend the meeting. See DB Section 108-3 and Part 5 Special Provision 108B for more information on the Design-Builder’s key personnel.

The agenda shall be developed in consultation between the Department’s Project Manager and the Design-Builder and prepared by the Design-Builder and shall include the following items:

A) Use of premises by the Department and the Design-Builder;
B) Department requirements;
C) Temporary Utilities and facilities;
D) Security and “housekeeping;”
E) Right of Way (ROW) and construction survey;
F) Schedule for establishing Work areas, temporary facilities, and facilities and Equipment for Department staff;
G) Temporary works; and
H) Plans for early construction, if any.

DB 105-16.5 Progress Meetings

Progress meetings shall be held at least weekly throughout the progress of the Project. The Design-Builder shall prepare the agenda in consultation with the Department’s Project Manager and distribute copies together with draft minutes of the previous meeting to all planned participants at least five Calendar Days prior to the meeting. The Design-Builder shall lead the meetings.

The Design-Builder’s key personnel shall attend the progress meetings. See DB Section 108-3 and Part 5 Special Provision 108B for more information on the Design-Builder’s key personnel.

A typical agenda shall include the following items:

A) Confirmation of minutes of the previous meeting and matters arising at the previous meeting;
B) Review of Work progress;
C) Design problems and decisions;
D) Field observations, problems, and decisions;
E) Identification of issues affecting planned progress;
F) Planned activities (design and construction) for the coming two week period;
G) Maintenance of quality and Work standards;
New York State Department of Transportation

H) Safety;
I) Environmental issues;
J) Schedule updates (monthly);
K) Maintenance and Protection of Traffic; and
L) Status of Orders on Contract, if any.

DB 105-16.6 Special Meetings

The Department’s Project Manager may require special meetings at any time and that all or specified Design-Builder key personnel attend. See DB Section 108-3 and Part 5 Special Provision 108B for more information on Design-Builder’s key personnel.
(Project Name)
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CONTROL OF MATERIALS
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SECTION 106
CONTROL OF MATERIAL

DB 106-1 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS

All Material used in the Work shall meet the quality requirements described in Section 700 of Standard Specifications, Construction and Materials, Part 9, as amended, unless the same are altered by Special Provision, by the Design-Builder’s Proposal or Alternate Proposal, or elsewhere in the Contract. To the extent the information is known at Award of the Contract, the Design-Builder shall, within 30 days of NTP, document, in writing, in the QC documentation file with a copy to the Department’s Construction Compliance Engineer, the sources of supply, types of all items, and kinds of Material that will be used in the Work. The documented sources of supply shall be updated as the Design-Builder updates its sources of supply, and a copy of the updated documentation shall be provided to the Department’s Construction Compliance Engineer.

As soon as the information is known to the Design-Builder, it shall notify the Department’s Construction Compliance Engineer of the name and address of the Fabricator of all structural steel. This notification shall list the specific shop or shops in which the steel will be fabricated. It shall be the responsibility of the Design-Builder to advise the Department’s Construction Compliance Engineer of the sources of proposed Material sufficiently in advance of their use to allow the Department to conduct any QA activities in a timely manner.

The Design-Builder shall place in the QC documentation file, with a copy to the Department’s Construction Compliance Engineer, an MSDS meeting current requirements of 29 CFR 1926 for Material to be used in the Work before each Material is first used in the Project. The requirement to provide an MSDS shall apply to all Material to which Workers are exposed, to the extent that 29 CFR 1926.59 requires an MSDS for that Material. This applies to the Material brought to the job Site to be incorporated into the Work, as well as to all Material that is encountered at the job Site as a result of the use or incorporation of the other Material. This requirement may be waived for commonly used generic construction Material such as Portland cement and asphalt cement by the Design-Builder submitting a list of generic construction Materials to the Department’s Construction Compliance Engineer and requesting a waiver. Such waiver, however, does not relieve the Design-Builder from the responsibility to maintain a copy of the MSDS for each Material to which the Design-Builder's Workers will be exposed, as required by 29 CFR 1926.

All costs of exploring and developing sources shall be borne by the Design-Builder. When the Design-Builder elects to develop new, noncommercial Material sources, the requirements for environmental acceptability shall apply, and the Design-Builder shall conduct, document in the QC documentation file, and submit to the Construction Compliance Engineer, all environmental resource studies and Cultural Resource studies in accordance with DB Section 107-9. If the Design-Builder purchases Material, the requirements for environmental acceptability shall not apply. However, if the Design-Builder negotiates with an owner of a commercial source to establish a Material source within the boundaries of an existing commercial source, and if the Design-Builder obtains the Material from the source with the Design-Builder’s Employees, then the environmental acceptability requirements identified for a noncommercial source shall apply. In addition, the Department may determine that certain commercial sources or specific areas within commercial sources known to have sensitive environmental, social, or cultural concerns may not, as a matter of public interest, be approved for use. This information, if available to the Department, shall be stated in the Contract. If this information is not available until after the Proposal
Due Date, and the Department does not approve a commercial source or use of a specific area within a commercial source that was used by the Design-Builder to prepare its Proposal, then the requirements of DB Section 104-4 shall apply. If the Design-Builder purchases Material from a Material source established for another project by another contractor working under contract to the Department, and if the Material source must be expanded beyond the area where environmental and Cultural Resource approvals have previously been obtained pursuant to DB Section 107-9, then the requirements for environmental acceptability shall apply to the additional area and the requirements of DB Section 107-9 must be completed.

In documenting Contract compliance, the Design-Builder shall include in the QC documentation file the following for each material source of supply:

A) Location;
B) All lease agreements, purchase orders, or pit agreements made between parties involved with the pit owner or Supplier and the Design-Builder;
C) Environmental acceptability. Environmental acceptability includes completing the environmental and cultural resource requirements of DB Section 107-9, including the Department’s written Cultural Resource approval. The Department’s Construction Compliance Engineer shall notify the Design-Builder when the requirements under DB Section 107-9 have been met. It may take 30 days from the date copies of documentation are delivered to the Department’s Construction Compliance Engineer to obtain such notice. The requirements of DB Section 104-4 shall apply if the time needed to obtain regulatory approval exceeds statutory requirements.
D) Plans for restoration after use of acceptable standards of contouring and revegetation; and
E) Laboratory testing.

DB 106-2 SUPPLIER PLANT INSPECTION

Under QC, the Design-Builder is responsible for all Inspection of Material at the source, which is included in the Quality Plan. As part of the Department’s QA responsibilities, the Department’s Construction Compliance Engineer may undertake QA activities at the source. If Supplier plant QA activities are undertaken by the Department, the following conditions shall be met:

A) The Department’s Construction Compliance Engineer shall have the cooperation and assistance of the Design-Builder’s QC Manager and the producer with which the Design-Builder has contracted for Material;
B) The Department’s Construction Compliance Engineer shall have full entry at all reasonable times to such parts of the plant as may concern the manufacture or production of the Material being furnished;
C) When required by the Department’s Construction Compliance Engineer, the Design-Builder shall arrange for such facilities as are necessary to adequately inspect the production or fabrication of the Material; and
D) Adequate safety measures shall be provided and maintained.

As part its QA responsibilities, the Department reserves the right to retest any Material before or during incorporation into the Work which had been tested and accepted by the Design-Builder at the source of supply, after the same has been delivered, and to provide Consultation and Written Comments and/or
Non-Conformance Reports on any Material that, when retested, does not meet the requirements of this Contract.

**DB 106-3 SAMPLES, TESTS, AND CITED SPECIFICATIONS**

All Material and products proposed to be used in construction shall be inspected, sampled, and tested by the Design-Builder, as described in DB Section 112 and Appendices 112A and 112B to DB Section 112 and as indicated by the Contract Documents. Whenever any Specification provides for “certification” or “approved list” as a basis of Final Acceptance, the Department reserves the right to conduct QA sampling and/or testing of Material in any shipment prior to incorporation in the Work.

Test specimens shall be removed from sampled items, prepared for testing, and shipped to the Design-Builder’s laboratory in accordance with the Quality Plan. The cost of all samples, and any other expenses incurred in making Material or products ready for Inspection, sampling, and/or testing shall be included in the Contract Price. Where testing methods are not described in the Specifications, details of test methods may be obtained from the Department.

The expense of all Design-Builder performed reviews, Inspections, sampling, and testing shall be borne by the Design-Builder.

The expense of all Department QA activities: reviews, Inspection, sampling, and testing performed in the 48 contiguous states of the US and the provinces of Canada, including the shipment of samples by the most economical means, shall be paid for by the Department unless specifically excluded elsewhere in the Contract Documents. The expense of all Department-performed QA activities: reviews, Inspection, sampling, testing and oversight of qualification of plants and Manufacturers or Fabricators, performed in conjunction with the QC activities of the Design-Builder, outside of the contiguous 48 states of the US and the provinces of Canada shall be borne by the Design-Builder, and the Design-Builder shall provide the Department’s Construction Compliance Engineer sufficient notification of the planned inspections. These expenses shall include the costs of wages and benefits, travel, meals, lodging, communication, and all other direct costs of reviews, Inspection, sampling, and testing paid by the Department to perform these services using Department employees or designated representatives under contract to the Department. These expenses, which exclude the costs of tests performed in the Department’s laboratory, shall be taken into account by the Design-Builder in the preparation of its Proposal. Reimbursement to the Department shall be made in the form of a deduction from payments due the Design-Builder. The shipment of samples to the Department laboratory from outside of the 48 contiguous states of the US and the provinces of Canada shall be a direct cost borne by the Design-Builder or its agent and all such shipments shall be made under provisions established by the Department to ensure identity and security of the sample. The location of Inspection, sampling, and/or testing Material and products manufactured, produced, and/or fabricated outside of the contiguous 48 states of the US and the provinces of Canada shall be performed at the site of manufacture, production, and/or fabrication or at a site within the contiguous 48 states of the US and the provinces of Canada, designated by the Design-Builder and approved by the Department.

Material and products manufactured, produced, and/or fabricated outside of the contiguous 48 states of the US and the provinces of Canada and designated in the Quality Plan to require QC Inspection, sampling, and/or testing at the site of manufacture, production, and/or fabrication shall be subject to qualification of the plant and Manufacturer or Fabricator prior to the required QC Inspection, sampling, and/or testing during manufacture, production, and/or fabrication. The Design-Builder shall be responsible for activities, including Inspection and documentation, necessary for qualification. These Materials and products include fabricated structural steel for bridges, precast concrete slabs, beams and
piles, and any other item specified in the Contract Documents and/or Quality Plan to require such services outside of the contiguous 48 states of the US and the provinces of Canada. The Design-Builder shall allow sufficient time and notification to the Department in advance of beginning the Work in any mill, plant, shop, or other manufacturing location to allow time for scheduling the QC and QA activities of qualification Inspection and subsequent Inspection, sampling, and/or testing during the Work. See also DB Sections 106-12 and 106-13 for other requirements that apply to structural steel.

Material and products manufactured, produced, and/or fabricated outside of the contiguous 48 states of the US and the provinces of Canada whose conformance with the requirements of the Contract Documents may be determined, in the judgment of the Design-Builder, with concurrence of the Department’s Construction Compliance Engineer, by visual Inspection and tests of specimens may be presented within the contiguous 48 states in specifically defined lot quantities for QC and QA, as required, Inspection, sampling, and testing subsequent to manufacture, production, and/or fabrication. Such Material or products shall be inspected not less than 30 Days prior to their intended shipment to the Project. All communications with the Design-Builder and the Department, written or verbal, shall be in English. The instructions for the use of all Material and products, as well as all identifying information required by the Specifications (i.e., labels, tags, and certifications) shall be in English. Mechanical property measurements, dimensions, and all other numerical data shall be in SI units consisting of meters, kilograms, and seconds. All references to costs, charges, and prices shall be in US dollars. No Material shall be used until the Design-Builder has provided documentation to the QC documentation file that the Material meets Contract requirements and such Material shall be used only so long as the quality continues to meet Contract requirements. This initial Consultation and Written Comment regarding a Material shall in no way preclude further examination and testing of that Material at any time the Department’s Construction Compliance Engineer suspects that the Material is no longer properly represented by the initial sample. Consultation and Written Comments by the Department at any time regarding any Materials shall not bar its future rejection if it is subsequently found to be defective in quality or uniformity.

The Design-Builder shall furnish the names of companies from which it purchases Material which is inspected at manufacturing plants with the item number, the contract number, and the destination for each shipment of Material so ordered. If any part of the Contract is sublet, the Subcontractor shall also conform to the foregoing requirements.

Unless otherwise designated, when a reference is made in these Specifications to a specification or test designation either of the A.A.S.H.T.O., A.S.T.M., federal Specifications, or any other recognized non-proprietary national organization, it shall mean the specification or test method (including Provisional A.A.S.H.T.O. and Tentative A.S.T.M.) which is current on the date of Issuance of the RFP.

Where plant Inspection is not maintained by the Department, the method and procedure for QC sampling, inspecting, and reporting shall conform to that established by the Department, in DB Section 112 and its Appendices. The US Standard Screen Sieves meeting A.S.T.M. E11, shall be used on all Material requiring gradation tests.

**DB 106-4 CERTIFICATE OF COMPLIANCE**

The Design-Builder, as part of QC activities and documentation, shall provide Material certificates of compliance in the QC documentation file covering Material for all Contract Items. The Design-Builder shall submit all Material certificates of compliance in the QC documentation file before starting Work for that item.
As part of the Material certification, the Design-Builder’s QC Manager or Engineer of Record will be certifying compliance with the following statements:

A) That the Material described on the document complies with the requirements defined in the Contract;

B) That mill test reports, Manufacturers’ certificates of compliance, and other pertinent documents are made available to Department personnel upon request; and

C) That, when required, all manufacturing processes associated with the production of steel and iron Material complies with DB Sections 106-12 and 106-13 of these Specifications, or that special waivers have been granted.

Electric items meeting UL approval, and underground Utility Material meeting A.S.T.M. or A.W.W.A. specifications, and so certified or stamped on the product, will require no further certification, unless requested in writing by the Department’s Construction Compliance Engineer.

Material that appears on the Department’s “approved list” (see DB Section 112-10) will require the Manufacturer’s certification, literature, and shop drawings before fabrication and installation.

Material inspected and stamped during the manufacturing process by a representative of the Design-Builder’s QC Manager will require no further certification.

Material that is not permanently incorporated into the Project will not require a certificate of compliance, unless otherwise stated in the Contract. The Design-Builder shall supply Material meeting the requirements of the Specifications even though a Material certificate of compliance is not required.

The Design-Builder may furnish Material purchased in bulk or left over from previous projects by documenting in the QC documentation file Material certificates of compliance for the current Project.

All Material damaged in transit or during handling shall be replaced or repaired by the Design-Builder at no additional cost to the Department.

**DB 106-5 PLANT ACCEPTED MATERIAL**

Any Material which has been plant inspected and accepted by the Design-Builder for this Contract shall not be shipped to other Work unless authorized by the Department.

**DB 106-6 REJECTION**

Material, which has either been rejected on the results of Design-Builder tests or as the result of a Department’s Non-Conformance Report, will not be re-sampled or retested unless otherwise agreed to by the Department. Rejected Material shall be removed immediately from the Site of the Work by the Design-Builder at its expense unless otherwise agreed to by the Department’s Construction Compliance Engineer. No rejected Material, the defects of which have been subsequently corrected, shall be used until agreed to in writing by the Department has been received by the Design-Builder.

**DB 106-7 STORAGE OF MATERIALS**

Material shall be so stored as to ensure the preservation of its quality and fitness for the Work. Stored Material, even though accepted before storage, shall be inspected prior to its use in the Work and shall meet the requirements of the Contract at the time of its use.
The Design-Builder shall be responsible for the protection of the stored Material and for the replacement or repair of Material affected by inadequate protection. Upon written Approval of the Department’s Construction Compliance Engineer, portions of the ROW may be used for storage purposes and for the placing of the Design-Builder’s plant and plant Equipment. However, additional space must be provided by the Design-Builder at its sole expense and liability. The Design-Builder, at its own expense, shall restore the storage sites to their original condition.

**DB 106-8 TRANSPORTATION OF MATERIAL**

Railroad cars, barges, and other containers used for the transportation of Material shall be clean when any Material is deposited therein.

All Material shall be handled in such a manner as to preserve its quality and fitness for the Work. Aggregates shall be transported from the storage site to the Work Site in vehicles constructed and operated to prevent loss or segregation of Material after loading so there will be no inconsistencies in the Material intended for incorporation in the Work as loaded and actually received at the place of operations. All Material shall be transported in such a manner as to fully comply with all State and federal regulations, including the prevention of leakage or scattering of Material or damage to Material in any fashion.

**DB 106-9 DEPARTMENT-FURNISHED MATERIAL**

The Design-Builder shall furnish all Material required to complete the Work, except those specified to be furnished by the Department.

Material furnished by the Department will be delivered or made available to the Design-Builder at the times specified in the Contract.

The cost of handling and placing all Material after it is delivered to the Design-Builder shall be considered as included in the Contract Price for the item in connection with which it is used. The Design-Builder will be held responsible for all Material delivered to the Design-Builder, and deductions will be made from monies due to the Design-Builder to make good on shortages and deficiencies from any cause whatsoever, for damage which may occur after such delivery, and for demurrage charges.

**DB 106-10 RESERVED**

**DB 106-11 FIELD LABORATORY AND FIELD OFFICES**

The Design-Builder shall furnish field laboratories and field offices in accordance with the Quality Plan as approved by the Department.

**DB 106-12 BUY AMERICA**

**DB 106-12.1 General Buy America Bid Requirement and Definition**

In accordance with 41 United States Code (USC) 10a, *et. seq.*, and Section 146 of the New York State Finance Law, as amended, all permanently incorporated steel and/or iron Material shall be domestically produced regardless of the percentage they comprise in a manufactured product or form they take. The
Design-Builder must submit a Proposal based on permanently incorporating only domestic steel and/or iron Material in the construction of the Project.

The Design-Builder may also submit a Proposal based on being allowed to permanently incorporate foreign steel and/or Material into the Work under the Contract. If the Design-Builder chooses to submit a Proposal based on the use of foreign steel and/or iron Material, the Design-Builder should identify such Proposal by legibly printing in ink on the Proposal cover “PROPOSAL BASED ON USING FOREIGN STEEL AND/OR IRON MATERIAL.”

When Proposals are submitted based on domestic and foreign steel and/or iron Material, both Proposals are to be submitted in the same envelope.

To qualify as domestic, all manufacturing process, including manufacture, fabrication, grinding, drilling, welding, finishing, coating, and assembly of any product containing steel and/or iron Material must have been performed in the United States (US). To further define the coverage, a domestic product is a manufactured construction Material that was produced in one of the 50 states, District of Columbia, Puerto Rico, or territories and possessions of the US. Raw Materials used in the steel and/or iron Material may be imported. Raw Materials are Materials such as iron ore, limestone, and waste products, which are used in the manufacturing process to produce the steel and/or iron Material products. Waste products would include scrap (i.e., steel no longer useful in its present form from old automobiles, machinery, pipe, and railroad tracks). Also steel trimmings from mills or product manufacturing are considered waste. Extracting, crushing, and handling the raw Material which is customary to prepare them for transporting are exempt from Buy America requirements. The use of foreign source steel or iron billets is not acceptable under this Section.

In the event that the Contract is awarded based on being allowed to permanently incorporate foreign steel and/or iron Material in the Work, the Design-Builder may supply either domestic or foreign steel and/or iron Material and will be paid the Contract Price based on its Proposal containing the use of foreign steel and/or iron Material. If the Contract is awarded based on the Proposal containing the domestic steel and/or iron Material, the Design-Builder may permanently incorporate into the Work under this Contract a minimal amount of foreign steel and/or iron Material if the combined cost of such Material does not exceed .1% of the total Contract Price or $2,500.00, whichever is greater. The combined cost of foreign steel and/or iron Material will be that shown to be the value of the steel and/or iron products as they are delivered to the Project.

DB 106-12.2 Control of Material

All items, regardless of origin, shall comply with the requirements found in the Contract Documents. In the event the Contract is awarded based on using only domestic steel and/or iron Material, the Design-Builder must supply only domestic steel and/or iron Material and will be paid based on the Contract Price based on using only domestic steel and/or iron Material. The Design-Builder will be responsible for ensuring that the domestic steel and/or iron Material is supplied in conformance with the above referenced laws. Such responsibility extends to informing all affected Subcontractors and Material Suppliers of the requirements set forth in this Section and ascertaining that steel and/or iron Material being supplied is in conformance with these Specifications.

DB 106-12.3 Buy America Waivers

In addition to the Award of a Contract based on foreign steel and/or iron Material, waivers to the requirements of this Section may be requested by the State to the Federal Highway Administration.
(F.H.W.A.) if it can be demonstrated that the use of domestic steel and/or iron Material would be inconsistent with the public interest, such Material and products are not produced in the US in sufficient and reasonably available quantities and of satisfactory quality.

Provided one or more of the above requirements are met, Proposers, if before or during the Proposal preparation process, or the Design-Builder may submit a request for a waiver to respectively, the Department or the Department’s Construction Compliance Engineer. The request shall include copies of all documentation verifying the unavailability of the Material or product and or justification of the application for a waiver.

For Federal-aid contracts, final approval of the waiver request will be made by the F.H.W.A. and concurred with by the Department. For non-Federal-aid contracts, upon final approval of the affected Department program areas, notification and approval of the waiver will be made by the Department. If approval of the waiver occurs prior to the Proposal Due Date or the final Proposal Revision, an Addendum will be issued to the RFP. If approval of the waiver occurs after award or Contract execution, the waiver may be incorporated into the Contract by respectively, negotiations prior to Award or an Order on Contract.

The following is a list of Material or products, which have been granted waivers or exclusions from these Buy America provisions:

A) Hollow “I” shaped, steel extrusions.
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SECTION 107
LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

DB 107-1  LAWS, PERMITS, AND LICENSES

The Design-Builder shall observe all federal, State, and applicable local laws and regulations. The Design-Builder shall protect and indemnify the State and its representatives against claims or liability arising from or based on the violation of such laws and regulations, whether by the Design-Builder itself or its Employees.

Prior to the commencement of any construction Work on this Project, the Design-Builder shall contact the municipal or State agency responsible for air, noise, and water quality control regulations to determine the standards that shall be adhered to during construction operations.

Attention is directed to the regulations of federal and State agencies in regard to agricultural insects and diseases. In particular, the Design-Builder’s attention is directed to federal and State Department of Agriculture regulations for plant pest control which require that Equipment operating in infested areas be thoroughly cleaned before moving to non-infested areas.

In addition, the Design-Builder agrees to procure all necessary licenses and permits.

DB 107-2  RESTORATION OF SURFACES OPENED BY PERMIT

The right to construct or reconstruct Utility services in the Highway or to grant permits for the same, at any time, is hereby expressly reserved by the Department for the proper authorities of the municipality or county in which the Work is done, and the Design-Builder shall not be entitled to damages for the digging up on the Highway.

Individuals, firms, or corporations wishing to make an opening in the Highway surface must secure a permit from the Department. The Design-Builder shall allow parties bearing said permits, and only those parties, to make openings in the Highway.

When ordered by the Department’s Project Manager, the Design-Builder shall make, in an acceptable manner, all necessary repairs due to such openings and such necessary Work will be paid for as provided in DB Sections 104-3 and 109[S or L]-9.

DB 107-3  PATENTED DEVICES, MATERIAL, AND PROCESSES

It is mutually understood and agreed that the Contract Price is to include all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work. Whenever the Design-Builder is required or desires to use any design, device, Material, or process covered by letters, patent, or copyright, the Design-Builder shall indemnify and save harmless the State from any and all claims for infringement by reason of the use of any such patented design, device, Material, or process to be performed under the Contract, and shall indemnify the State for any costs, expenses, and damages which it may be obliged to pay by reason of any such infringement at any time during the prosecution of, or after the completion of, the Work.

DB 107-4  FEDERAL-AID

In all contracts in which the federal government participates financially, which contracts are designated as Federal-Aid contracts, the Design-Builder shall conform in all respects in accordance with the true intent
and meaning of each and all of the federal requirements contained in the Contract Documents. When any of such federal provisions may be in conflict with any other provisions of the Contract, the federal provisions shall prevail and take precedence and be of force over and against any said conflicting provisions of said Contract. (See DB Section 102-2.)

Any Work performed under a Federal-Aid contract shall be subject to inspection by the appropriate federal agency. Such inspection shall in no sense make the federal government a party to this Contract and will in no way interfere with the rights of either party hereunder.

**DB 107-5 COMPLIANCE WITH PAYMENT OF TAXES**

The Design-Builder is required to observe and comply with all laws regarding the payment of taxes imposed by the State or by other lawful political entities.

The Design-Builder, upon return of the executed Contract, will provide to the Department both its federal and state tax identification numbers. If either or both of such numbers are unavailable, the Design-Builder must submit a letter of explanation. The Contract will not be fully executed by the Department until both numbers or a satisfactory letter of explanation are obtained.

**DB 107-6 SANITARY CODE**

The Design-Builder shall comply with the provisions of the State sanitary code relating to camps and obtain from the local health officers permits for the construction, maintenance, and operation of labor camps, if used.

The Design-Builder shall provide and maintain, in a neat and sanitary condition, such accommodations for the use of the Design-Builder’s and Department’s employees as may be necessary to comply with the requirements of the State and local boards of health or of other bodies having jurisdiction.

**DB 107-7 SAFETY AND HEALTH REQUIREMENTS**

The Design-Builder shall perform all Work in the Contract in a skillful manner with due regard to the safety and health of its Employees and of the public. The Design-Builder shall comply with 29 CFR 1926 regarding the safety and protection of persons employed in construction and demolition Work.

**DB 107-7.1 Occupational Safety and Health**

In accordance with OSHA regulations, the Design-Builder’s Employees shall be required to wear protective helmets (hard hats) when there is a possible danger of head injury from impact, from falling or flying objects, or from electrical shock and burns. Additionally, all Employees working within an active Highway ROW must wear protective helmets at all times. Helmets are not required for Employees within a completely enclosed cab constructed of steel frame and glass or inside an automobile. Helmets must meet current OSHA standards for impact, electrical shock, and burn protection. The Design-Builder’s Employees will be considered to include everyone on its payroll, Subcontractors, Material Suppliers, and other personnel on the Project Site under the direction of the Design-Builder.

It shall be the responsibility of the Design-Builder to perform all necessary planning, supervision, and training activities to ensure that all of the requirements of 29 CFR 1926 are fully met for all Workers employed in the construction of the Project. The Design-Builder shall provide to the Department prior to the start of Work satisfactory evidence that all current requirements of 29 CFR 1926 will be adequately addressed.
DB 107-7.2 Safety and Protection

A) The Design-Builder shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. It shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to, the following:

1) All Employees on the Work and other persons who may be affected thereby;
2) All the Work and all Equipment and Material to be incorporated therein, whether in storage on or off the Site; and
3) Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and Utilities, except as designated for Relocation, removal, or replacement as part of the Work.

B) Immediate action shall be taken after an accident to correct the Work Methods and conditions that are the apparent cause of the accident.

C) The Design-Builder’s duties and responsibilities for the safety and protection of the Work shall continue until such time as the Project is completed and Final Acceptance has been made. The Design-Builder shall coordinate its Work with the Department’s safety staff.

D) The Design-Builder shall comply with the following:

1) Conduct the Work with due regard for the protection of public and private property and the health, welfare, mobility, safety, and convenience of the public, particularly with regard to disabled persons and pedestrians;
2) When the Work involves use of public ways, provide necessary flaggers and traffic control devices and install and maintain means of reasonable access to all fire hydrants, service stations, warehouses, stores, houses, garages, and other property. Private residential driveways shall be closed only within the specified constraints and requirements for notice contained in the Contract Documents;
3) Allow the public’s travel over any public Highway, street, or sidewalk without obstruction or interference except as specified in the Contract Documents. Do not obstruct drainage in roads or natural or constructed drainage ways;
4) Comply with all instructions received from the Department or local authorities regarding protection of public and private property and the health, welfare, mobility, public safety, and convenience of the public;
5) Provide reasonable access to the Work area at all times for emergency traffic, such as police, fire, and ambulance units; and
6) Give notice and describe upcoming construction to agencies, owners, tenants, and residents in accordance with the Contract Documents.

DB 107-7.3 Emergencies

In emergencies affecting the safety of persons or the Work or property at the Site or adjacent thereto, the Design-Builder, without special instruction or authorization from the Department, is obligated to act at its discretion to prevent threatened damage, injury, or loss. The Design-Builder shall give the Department prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby.
**DB 107-7.4  Design-Builder’s Safety Obligations**

The Design-Builder shall perform all actions necessary for safety and be solely and completely responsible for conditions on the Site, including safety of all persons and property on the Site during the Contract. This requirement shall apply continuously for the duration of the Contract and shall not be limited to normal business hours or other time constraints or be reduced or diminished in any way because the Design-Builder is not given sole possession of the Site. The Design-Builder is fully responsible for the safety of Workers engaged upon the Project and all other persons working at or visiting the Site and the protection of the public in the vicinity.

**DB 107-7.5  Design-Builder’s Safety Plan**

The Design-Builder shall submit a written Project-specific Safety Plan which documents the Design-Builder's safety policy and which identifies and addresses specific health and safety concerns to be encountered on the Project to the Department for review and approval. Before the Work begins, and periodically throughout the Project, the Design-Builder's Project supervision staff shall meet with the Department’s Project Manager to review and discuss the status of safety issues on the Project. An appropriate notice shall be posted at the job Site that the Project’s Safety Plan is available for examination by any Worker employed on the Project.

The Design-Builder shall implement, review, and update the Safety Plan and introduce a program for assuring that the Safety Plan is followed at all times. The Design-Builder shall coordinate with all authorities and relevant entities as necessary to ensure compliance with the Safety Plan.

The Department will monitor and audit the Design-Builder’s safety performance.

The Design-Builder’s Safety Plan shall provide for the following:

- **A)** Planning, management, and design to avoid hazards;
- **B)** Detection of potential hazards;
- **C)** Timely correction of hazards;
- **D)** Dedication to the protection of the public and the Workers;
- **E)** Active participation of all persons involved with the Contract;
- **F)** Dedicated safety staff;
- **G)** Liaison with the Department’s safety monitoring staff; and
- **H)** Safety training and safety meetings.

The Design-Builder shall ensure that all its Employees and those of the Subcontractors of any tier (including labor-only) are under an obligation at all times to fully conform to the provisions of the Safety Plan. In the event that the Design-Builder’s Employees or its Subcontractors fail to conform to the provisions of the Safety Plan, the Design-Builder shall take appropriate disciplinary measures. Such measures shall include suspension, removal of offending Employees from the Site, and dismissal. The obligations and requirements of this DB Section 107-7 shall be included in the terms and conditions of employment of all Employees of the Design-Builder and all Subcontractors of any tier, including labor-only Subcontractors.
DB 107-7.6  **Content of the Safety Plan**

The Safety Plan shall be comprehensive and include all required actions, activities, rules, and mitigation relative to the safety of the Work. It shall include the following items:

A) Policy statement indicating the Design-Builder’s commitment to safety, goals stated as maximum lost hours, and no loss of life goals;

B) Identification of Department and Design-Builder safety officers, including responsibility definitions, an organization chart, reporting procedures, safety inspection procedures, and audit programs;

C) References to all applicable Governmental Rules;

D) An education and training plan for required training for all Workers, including a separate program and Hazardous Materials communications Plan for Workers involved with hazardous and contaminated substances remediation, required toolbox meetings, and required posting of information;

E) Procedures to address Project health and safety concerns, including housekeeping, Material handling and storage, personal protective Equipment, wall and floor openings, scaffolds, ladders, welding, flame cutting, electrical Equipment, lock-out or tag-out, motor vehicles, heavy Equipment, small tools, concrete forms, steel erection, cranes and hoisting, Work platforms, fire prevention and protection, sanitation, confined space entry, blasting and explosives, and other items;

F) Industrial hygiene, including respiratory protection, noise, Hazardous Materials, MSDS, and lists of hazardous chemicals present;

G) Fire protection and prevention;

H) Emergency and rescue procedures, including detailed procedures for all types of emergencies, such as, medical, fire, chemical spill, property damage, bomb threat, severe weather, flooding, explosion, and earthquakes;

I) Incident investigation, reporting, and record keeping;

J) Policy for substance abuse;

K) Security provisions;

L) Safety requirements and procedures for surveyors and engineering personnel conducting Site investigations and Verification Sampling and Testing; and

M) Procedures for compelling Worker compliance with health and safety requirements.

The Safety Plan shall contain a list of the detailed safety procedures to be followed. Safety procedures shall be prepared separately for individual activities and these detailed procedures shall be appendices to the Safety Plan.

Certain of these items may be submitted in the format of the Design-Builder’s health and safety program, with the Project’s Safety Plan limited to Project-specific issues.

The Design-Builder shall be responsible for ensuring that each Subcontractor employed on the Project complies with this requirement. The Design-Builder shall provide to the Department a Project Safety Plan covering all Work to be done by a specific Subcontractor prior to that Subcontractor starting Work. As an alternate, the Design-Builder may provide a certification that all activities performed by, and Workers
employed by, Subcontractors will be subject to the Design-Builder's Project Safety Plan. Submission of the required Project Safety Plan by the Design-Builder and its acceptance by the Department shall not be construed to imply approval of any particular method or sequence for addressing health and safety concerns or to relieve the Design-Builder from the responsibility to adequately protect the health and safety of all Workers involved in the Project as well as any members of the public who are affected by the Project.

**DB 107-7.7 Submittal of the Safety Plan**

Prior to the start of any field Work or construction, the Design-Builder shall submit its Safety Plan to the Department’s Project Manager for written approval. Upon receipt of approval, the Design-Builder shall issue the complete Safety Plan, which will be based on the Design-Builder’s Safety Plan information contained in its Proposal along with the incorporated comments of the Department’s Project Manager and any other required updating. The Safety Plan shall be a controlled document to be issued by the Design-Builder to, at least, the following persons:

A) The Department’s Project Manager;  
B) The CCE;  
C) The Department’s safety monitoring coordinator;  
D) The Design-Builder’s Project Manager;  
E) The Design-Builder’s safety manager; and  
F) Subcontractors of any tier, including labor-only Subcontractors.

Other controlled copies shall be distributed as determined by the Design-Builder and the Department’s Project Manager. Uncontrolled copies shall be issued as considered necessary by the Design-Builder.

The Design-Builder shall maintain a traceable record of the issuance of the controlled copies including numbering and acknowledgement of receipt. Revisions of the Safety Plan shall be issued to all recipients of the controlled copies and managed in the same way as the controlled copies.

**DB 107-7.8 Revisions to the Safety Plan and Procedures**

The Department’s Project Manager may require a revision to the Safety Plan or any safety procedure in order to ensure compliance with the Contract. The Design-Builder shall, following discussion with the Department’s Project Manager, issue such revision within 30 days of receipt of the instruction. A revision shall include an addition, omission, or revision, as applicable.

The Design-Builder shall review the Safety Plan and any safety procedure in order to revise it in accordance with activities and experiences on the Site. Such revision, from time to time, shall enhance the standards of safety being implemented on the Site. At the very least, procedures shall be reviewed and new procedures issued whenever the character or extent of any activity is changed or a new activity of a different nature is introduced which necessitates such revision.

In addition to such revision, the Design-Builder shall make a formal review of the Safety Plan once every 12 months on or near the anniversary of NTP. Such formal review shall consider all matters pertaining to safety planning and implementation, including accident reports, inspections, audits, suggestions from meetings, and other sources, such as, the Department’s Project Manager and hazard analysis reviews. Within seven days of finishing this review, the Design-Builder shall issue a review report to the
Department’s Project Manager, giving the conclusions of the review and identifying the revisions to be made to the Safety Plan.

Within 30 days of the issue of the review report, the Design-Builder shall issue a revised Safety Plan for review and written Approval by the Department’s Project Manager.

**DB 107-7.9  Compliance with Laws and Regulations**

The Safety Plan and its implementation shall comply in all respects with all applicable federal, State, and local laws, regulations, and Governmental Rules.

**DB 107-7.10  The Design-Builder’s Safety Organization**

The Design-Builder shall designate a member of its board of directors, if it is a corporation or a joint venture, or a principal of its organization who shall be responsible and directly accountable to the Department in all matters concerning safety. The Design-Builder shall also require the Design-Builder’s Project Manager to be responsible and directly accountable to this designated safety board member or principal in all matters concerning construction safety.

The Design-Builder shall appoint, within 30 days of NTP, a safety manager whose Project duties shall be solely connected with the safety aspects of the Project and who shall report directly to the designated safety board member or principal. Such an appointment shall be subject to written acceptance by the Department’s Project Manager. The safety manager shall be suitably qualified and experienced as identified in Part 5 – Special Provisions, Special Provision 108 B. The safety manager shall implement, maintain, and monitor compliance with the Safety Plan and all safety procedures, and be based full-time at the Site.

The Design-Builder shall provide and maintain an organizational structure that shall ensure the effective control of the Project’s safety assurance tasks by the Design-Builder’s safety staff. Such staff shall be engaged solely in safety assurance. Responsibilities and task subdivision shall be clearly identified in the Safety Plan, and shall show direct lines of communication and reporting between the Design-Builder’s safety manager and the designated safety board member or principal and between the Design-Builder’s safety manager and the Design-Builder’s Project Manager.

The Design-Builder shall not remove the appointed safety manager without the prior written consent of the Department’s Project Manager. The Design-Builder shall nominate any replacement at the same time consent is sought.

If the safety manager is removed under DB Section 102-4, a suitably qualified and immediately available replacement shall be proposed to the Department’s Project Manager within 14 days of receipt of the notice requiring the removal.

The Design-Builder shall provide adequate numbers of supporting staff for the safety manager, including a deputy to act in his/her absence.

The Design-Builder shall not commence any Work on the Site until the safety manager has been appointed and accepted by the Department’s Project Manager and has commenced duties on the Site.

The Design-Builder shall ensure that all Subcontractors of any tier whatsoever, including labor-only Subcontractors, shall provide adequate safety staff.
Each Subcontractor of every tier, including labor-only Subcontractors, shall have a safety supervisor who shall have appropriate experience and training. Each Subcontractor safety supervisor shall be responsible for implementing and maintaining its respective safety plan. Subcontractor safety supervisors shall devote a substantial amount of their time to such duties. All Subcontractor safety plans shall at all times conform to the Design-Builder’s Safety Plan.

Breaches of the Design-Builder’s Safety Plan or other conduct prejudicial to safety may be cause for the Department’s Project Manager to require the removal of any Employee, including the Design-Builder’s Project Manager or safety manager, from the Site.

The Design-Builder shall give authority to the safety manager and safety staff to issue stop orders that instruct Employees of the Design-Builder and its Subcontractors of any tier, including labor-only Subcontractors, to cease operations and take urgent and appropriate action to make the Site safe and prevent unsafe working practices or other infringements of the Safety Plan or breach of any Governmental Rules.

The Design-Builder shall require its safety manager to verify by Inspection that the requirements of this DB Section 107-7 and the Design-Builder’s Safety Plan and safety procedures are being strictly complied with. In the event of any non-compliance, the safety manager shall forthwith issue an instruction to stop Work until the non-compliance is rectified. If the Design-Builder considers the non-compliance to be of a minor nature implementation may be delayed 24 hours, with the Department’s consent. If the Department’s Project Manager states that such delay is acceptable, the Design-Builder may suspend implementing the instruction for 24 hours and resume working. During the 24-hour period, the Design-Builder shall rectify the non-compliance.

No Work shall be performed on Site unless the Design-Builder’s safety manager or designated deputy is on Site. Work shall not be performed at the Site unless the specified safety supervisors are on the Site.

The Design-Builder shall provide sufficient licensed EMTs to provide adequate emergency medical care to personnel working on the Site. The Design-Builder shall also provide appropriate medical treatment facilities and an appropriate emergency response vehicle to meet the needs of the Project.

**DB 107-7.11 Safety Considerations in Design**

The Design-Builder shall identify and analyze the hazards and risks associated with the Work, including during construction and its ultimate use, and shall design the Work so as to eliminate, mitigate, or control such hazards.

**DB 107-7.12 Inspections**

The Design-Builder shall notify the Department’s Project Manager of any Inspections to be conducted on the Project by USDOL, OSHA, NYSDOL, or other health and safety agencies, and of any resulting closing conference, and provide the Department’s Project Manager with the opportunity to be present at such Inspections and closing conference. The Design-Builder shall notify the Department in writing of the results of any health and safety Inspections conducted on the Project by representatives of USDOL OSHA, NYSDOL, or other health and safety agencies, within one business day of the completion of the closing conference resulting from such Inspections. If any citations are issued for alleged violations of 29 CFR 1926, a copy shall be provided to the Department’s Project Manager within one business day of their receipt by the Design-Builder, and a copy of the final disposition of such citations shall also be provided to the Department’s Project Manager within one business day of their receipt by the Design-Builder. In addition, the Design-Builder shall notify the Department in writing within 24 hours of the details relative
to any accident or incident occurring at the Project Work Site involving any Worker employed under the Contract or delivering Material, Equipment, or supplies to the Project, provided that the following criteria are met:

A) The accident or incident occurs within the confines of the Project; and

B) The accident or incident results in the death of the Worker, or requires that the Worker is hospitalized overnight for treatment of the injury; or

C) The accident otherwise meets the notification requirements of OSHA.

DB 107-7.13 Reports

The Design-Builder shall submit a safety report using Form SAF (Appendix 108A) with the monthly progress report (DB Section 108-1.3).

DB 107-7.14 Drilling and Blasting

A Project meeting relative to the method, manner, and procedure of blasting operations shall be held at the Site with the Department’s Project Manager, the Design-Builder, the Project’s blasting contractor or Subcontractor, and representatives of all interested agencies including a New York State Department of Transportation engineering geologist, prior to the commencement of drilling and blasting operations.

Whenever explosives are used, they shall be of such character and strength and in such amounts as are permitted by the State and local laws and ordinances and all respective agencies having jurisdiction over them. In special cases the right is reserved for the Department’s Project Manager and those agencies to specify the maximum size of the charges.

Blasting shall be done only at such time as the Department’s Project Manager and those agencies shall approve and under such restrictions as they may impose.

The Design-Builder shall employ only experienced supervisors and Workers in the handling, loading, and firing of the explosives. The Design-Builder’s attention is directed to the requirements of Industrial Code Rule 39 of NYSDOL’s Board of Standards and Appeals, the applicable sections of the New York State Labor Law (including Section 452 through 460), and 29 CFR 1926 which, together with the conditions indicated herein, shall provide for the possession, handling, storage, and transportation of all explosives used at the Site.

All explosives shall be stored in a secure manner in compliance with all laws and ordinances, and all such storage places shall be clearly marked. Where no local laws or ordinances apply, storage shall be provided in a manner satisfactory to the Department’s Project Manager and, in general, not closer than 305 m from roads, buildings, camping areas, or places of human occupancy.

DB 107-7.15 Explosives in Demolition

Demolition Work shall not be performed by the use of explosives unless approved by the Department’s Project Manager.

DB 107-7.16 Excavation or Blasting Near Combustible Gas Pipes

A) No Person shall discharge explosives in the ground, nor shall any person other than a State, county, city, town, or village employee regularly engaged in the maintenance and repair thereof excavate in any then existing street, Highway, or public place, unless notice
thereof in writing shall have been given at least 72 hours in advance to the Person, corporation, or municipality engaged in the distribution of gas, electricity, steam, or water, or the provision of telephone or telegraph service in such territory. The person having direction or control of such Work shall give such notice and, further, he/she shall ascertain whether there is, within 30 m in such street, Highway or public place, or in the case of a proposed discharge of explosives, within a radius of 60 m of such discharge, any pipe of any other Person, corporation, or municipality conveying combustible gas, and if there be any such pipe he/she shall also give such notice to any such other Person, corporation, or municipality. Provided, however, that in any emergency involving danger to life, health, or property it shall be lawful to excavate without using explosives if the notices prescribed herein are given as soon as reasonably possible, and to discharge explosives to protect a Person or Persons from an immediate and substantial danger of death or serious personal injury if such notices are given before any such discharge is undertaken. Any such Work shall be performed in such manner as to avoid damage to any Utility facilities.

B) If, in the course of any such excavation, blasting, or other Work, damage or the potential thereof is occasioned to any Utility facility used in the transmission or distribution of gas, electricity, water, steam, telephone, or telegraph, whether by direct contact, undermining of soil or other support thereof, or otherwise, the person having direction or control of such Work shall promptly take all reasonable measures necessary to protect individuals and the public from loss or the potential thereof and shall immediately notify the Person, corporation, or municipality owning or operating such Utility of such damage or potential damage to its facilities. Neglect on the part of the Person having direction or control of such Work and responsible for any damage or potential damage to such facilities (1) to take such safety precautionary measures as are necessary or reasonably required promptly or (2) to immediately notify the owner or operator of the Utility facility involved of damage or potential damage to its facilities, occasioned by such Person or under its direction or control, shall be a violation of this Section. Nothing herein contained shall preclude or prevent recovery of monetary damages by the owner or operator of the Utility facility involved or by any other Person suffering damage from the disruption of Utility services occasioned by excavation, blasting, or other Work in the vicinity thereof.

C) Pursuant to the Laws of New York, Chapter 957, the New York State Public Service Commissioner has the power, through Inspectors or duly authorized employees of his/her department, to examine and inspect excavation and demolition methods used by any Person within 4.57 m in any direction of an underground pipeline used for conveying natural gas and to order compliance with the standards for excavation and demolition near underground gas pipelines contained in regulations issued or applied pursuant to Section 119-b of the New York State Public Service Law and 16 NYCRR Part 753.

The Design-Builder shall provide the New York State Public Service Commission’s Inspector access to the Project.

**DB 107-7.17 Guarding and Protection**

The Design-Builder shall be responsible for guarding and protecting open and unattended excavations and other potentially hazardous locations in and adjacent to areas lawfully frequented by any person. Such guarding and protection shall consist of any one, or a combination of, the following:

A) A substantial fence or barricade, not less than 1.2 m in height and mounted on satisfactory supports spaced at intervals of not more than 3 m. Warning signs reading
“DANGER-KEEP OUT” shall be mounted on the fence or barricade, as required by the Department’s Project Manager, at no more than 30 m intervals. The signs shall be 610 mm wide by 406 mm high. The lower portion of the sign shall be white and shall bear the words “Keep Out” in 127 mm black letters. The upper portion shall be predominantly red with 127 mm white lettering spelling out the word “Danger.” The lettering shall be enclosed by an approximately elliptical, white ring and the entire sign bordered in black. All barricades and warning signs shall be furnished, erected, relocated, maintained, and removed as required.

B) A 219 mm extension of the trench sheeting above the ground surface adjacent to the excavation.

C) A substantial covering over the excavation. Where it is possible that vehicles will move over such covering, the covering shall be of sufficient strength to withstand the loading.

DB 107-7.18 Emergency Contact Person

The Design-Builder shall designate someone to be available to respond to emergency calls. The name of the person and the telephone number at which he/she can be reached at any time shall be given to the Department’s Project Manager and all police agencies in the area. Such person shall have full authority and capability to mobilize forces promptly as required to respond to an emergency and protect the public.

DB 107-7.19 Equipment Involving Radioactive Materials

The use of Equipment involving radioactive Materials, including, but not limited to, nuclear density gauges, shall adhere to all applicable regulations, including US Nuclear Regulatory Commission regulations, related US DOT regulations concerning transportation of radioactive material, and 12 NYCRR Code 38. As a part of the Project’s Safety Plan, the Design-Builder shall include in its submittal to the Department’s Project Manager a section regarding radiation safety if such Equipment will be used on the Project. The Safety Plan shall address in detail transportation and storage of the Equipment and operating and emergency procedures. It shall provide the name and address of the Design-Builder's radiation safety officer. A copy of the owner’s license to possess the radiation source, issued by NYSDOL shall also be provided. All operators of the Equipment shall be certified by a gauge Manufacturer as to having completed training on the safe use of the Equipment. A copy of the certification shall be provided to the Department’s Project Manager for each operator prior to their Work on the Project.

DB 107-8 SITE SECURITY

DB 107-8.1 Requirements

The Design-Builder shall be responsible for the security of the Site and the Work, including the facilities provided by the Design-Builder for the Department, from the date the Project is released to the Design-Builder until Final Acceptance. This shall include the protection of offices, workshops, Equipment, Material, and the Work from damage by vandalism, flood, earthquake, storm, fire, and theft.

The Site shall be adequately protected at all times to prevent unauthorized access onto the Site, particularly to areas of high safety risk. This protection shall include security fencing at areas of high safety risk to the public as well as areas with high risk of vandalism and other areas where necessary for the Design-Builder to fulfill obligations under the Contract. All necessary access for the public through the Site shall be adequately protected.
The Design-Builder shall provide adequate lighting and guarding at main security areas, such as, offices, facilities for the Department provided by the Design-Builder, Work areas, and storage yards.

The Design-Builder shall establish and maintain a system and people to control and guide visitors to and around the Site.

**DB 107-8.2 Site Security Plan**

The Design-Builder shall prepare and submit to the Department’s Project Manager, for written approval, a Site Security Plan within 60 days of NTP, describing the Design-Builder’s procedures for securing the Site. The Site Security Plan shall include the security requirements described in DB Section 107-08.1. If the Department’s Project Manager objects to the Site Security Plan, it shall be amended so as to resolve all objections. The Design-Builder shall review and update the Site Security Plan on a regular basis, and provide copies of any changes to the Department’s Project Manager for written approval.

**DB 107-8.3 Reports**

The Design-Builder shall submit a security report, reporting any security-related incident, with the monthly progress report (DB Section 108-1.3).

**DB 107-9 ENVIRONMENTAL AND CULTURAL RESOURCES**

Before construction, the Department shall obtain the environmental and Cultural Resource approvals for the Project area included in the Contract Documents. Special environmental and Cultural Resource requirements developed to protect resources shall be described in the Contract Documents. The Design-Builder shall abide by all environmental and Cultural Resource management requirements. The Department’s Project Manager and environmental staff are available to assist the Design-Builder in the area of environmental and Cultural Resource management.

**DB 107-9.1 Environmental and Cultural Resource Discoveries**

If the Design-Builder encounters an environmental or Cultural Resource that is not included in the Contract Documents, the Design-Builder shall terminate all further operation in the immediate area until the Department’s Project Manager determines that appropriate Department environmental staff and regulatory authorities have had the opportunity to review the location and complete appropriate mitigation actions. This termination shall not preclude continuation of the Work in other areas.

**DB 107-9.2 Responsibility for Damage to Environmental and Cultural Resources**

The Design-Builder shall repair, at its expense, all damage to environmental or Cultural Resources caused by failure to abide by requirements included in the Contract Documents to protect resources identified during the environmental and Cultural Resources evaluation. The extent of such an action shall be determined in coordination with the Design-Builder, Department representatives, and the regulatory authorities with management jurisdiction over the subject resources.

The Design-Builder shall be responsible for time and cost impacts of any delays resulting from the Design-Builder’s non-compliance with Governmental Rules or other Contract requirements related to environmental and Cultural Resources issues.

**DB 107-9.3 The Design-Builder’s Responsibility for Environmental and Cultural Resources Approval**
Before beginning soil-disturbing activities at areas such as camp sites, plant sites, crusher sites, stockpile sites, Equipment yards, borrow pits, and surfacing pits, as well as for any construction area obtained by the Design-Builder that is not included in the Contract Documents, the Design-Builder shall employ a qualified environmental scientist and Cultural Resource professional to conduct an environmental and Cultural Resources study. The environmental scientist and Cultural Resource professional must have appropriate resource study permits and meet the professional qualifications established by regulatory authorities to conduct the required studies. The documentation prepared must meet the standards of the Department and regulatory authorities. The documentation must also meet the standards of State, tribal, or federal land managing agencies if the proposed activity is located on land under their jurisdiction. The studies are required regardless of land ownership, and they must be in conformance with the requirements included in NEPA and the National Historic Preservation Act.

The Cultural Resources review must meet standards established by the State Historic Preservation Officer (the Commissioner of Parks, Recreation and Historic Preservation) and, if applicable, the appropriate land-managing agency. A State, tribal, or federal agency with jurisdiction over the property may also establish other environmental and Cultural Resources study requirements. The documentation prepared for the environmental and Cultural Resources studies shall be submitted to the Department’s Project Manager and, if required, to other regulatory authorities with jurisdiction over the land or resources that are present. Copies shall also be submitted to the Department’s appropriate environmental staff. The Department’s environmental staff shall submit the Cultural Resources studies to SHPO (the New York State Office of Parks, Recreation and Historic Preservation). The Design-Builder shall complete any other coordination required by environmental regulations. The Department’s Project Manager shall notify the Design-Builder when Cultural Resources approval from the Department’s environmental staff and SHPO has been obtained. The coordination may take 30 days from the date it is delivered to the Department’s environmental staff.

The Department shall be responsible for any delay costs and expenses due to the Department or Design-Builder encountering environmental or Cultural Resources that are not identified in the RFP or the Contract Documents. The Design-Builder is responsible for all costs and expenses, including delay costs and expenses, for all environmental or Cultural Resources that are identified in the RFP or the Contract Documents.

Approval of the State, tribal, or federal land-managing agency, if applicable, and coordination with regulatory authorities and the State Historic Preservation Officer must be completed before the Design-Builder initiates any soil-disturbing activities at the locations subject to this requirement. In addition, the Design-Builder shall abide by all environmental and Cultural Resource requirements for protection of resources identified during the environmental and Cultural Resources studies.

A) Previously completed environmental and Cultural Resources investigations. Environmental and Cultural Resources investigations previously completed by others for the same location to be used by the Design-Builder can be used for the environmental and Cultural Resources requirements described in this Section so long as those previously completed investigations meet the standards identified here. The Design-Builder shall obtain copies of the environmental and Cultural Resources documentation and submit them to the Department’s Project Manager and, if required to do so, to other regulatory authorities with jurisdiction over the land or resources that are present. Copies shall also be submitted to the appropriate Department environmental staff. The Department environmental staff and the Department’s Project Manager shall determine if the documentation meets the standards identified in this Section and is acceptable. If the previously completed studies do not meet the referenced standards, then new environmental and Cultural Resources studies must be completed.
B) Parking Equipment in Highway ROW. Environmental and Cultural Resources inventories may not be completed by the Department for some projects when construction is confined to the existing paved surface of the road. In these situations, as shall be noted in the Contract Documents, and the Design-Builder shall identify all locations along the Project corridor where Equipment shall be parked during construction. The environmental and Cultural Resources requirements of this Section must be completed by the Design-Builder if any of the designated locations are in areas where previously undisturbed soils are present.

See also Part 4 of the Contract Documents for a discussion of the Design-Builder’s role in environmental compliance and monitoring.

DB 107-10 SOIL EROSION

The Design-Builder shall schedule and conduct its Work to minimize soil erosion and to minimize silting and muddying of streams, rivers, irrigation systems, impoundments (lakes and reservoirs), and lands adjacent to or affected by the Work. Construction of drainage facilities and performance of other Work which will contribute to the control of erosion and sedimentation shall be carried out in conjunction with earthwork operations or as soon thereafter as practicable. The area of bare soil exposed at any one time by construction operations shall be kept to a minimum. Prior to the start of the applicable construction, the Design-Builder shall submit to the Department’s Project Manager for acceptance schedules for accomplishment of temporary and permanent erosion control Work as are applicable for clearing and grubbing, grading, bridges and other structures at watercourses, construction, and paving. In addition, it shall also submit for acceptance at the same time its proposed method of erosion control on haul roads and borrow pits and its Plan for disposal of surplus excavated Material. No Work shall be started until the erosion control schedules and methods of operation have been accepted by the Department’s Project Manager. If conditions change during construction, the Design-Builder may be required to submit a revised schedule for acceptance as directed by the Department’s Project Manager. Whenever the Design-Builder’s operations, carried out in accordance with the accepted erosion control schedule, result in a situation where appropriate temporary erosion control measures are not shown on the Design Plans, the Design-Builder shall conduct the Work in accordance with the provisions in Part 9, Section 209. In carrying out the control measures under this Section, the Design-Builder will be guided by, but not limited to, the following controls:

A) When borrow Material is obtained from other than commercially operated sources, erosion of the borrow site shall be so controlled both during and after completion of the Work that erosion will be minimized and minimal sediment will enter waterways, impoundments, or adjacent properties. Waste or spoil areas and construction roads shall be located, constructed, and maintained in a manner that will minimize sediment entering waterways and impoundments. The Design-Builder shall submit grading Plans for all borrow pits or areas or spoil or waste areas to the Department’s Project Manager for acceptance prior to the start of Work on, or the use of, such areas. The grading Plans shall indicate the sequence of operations, temporary slopes, and other factors which may have an influence on erosion control;

B) When Work areas or gravel pits are located in or adjacent to live waterways and impoundments, such areas shall be separated from the rest of the waterway or impoundment by a dike or other barrier to minimize sediment entering a flowing waterway or impoundment. Care shall be taken during the construction and removal of such barriers to minimize the muddying of a waterway or impoundment; and
C) Water from aggregate washing or other operations containing sediment shall be treated by filtration, settling basin, or other means sufficient to reduce the turbidity so as not to cause a substantial visible contrast to natural conditions.

No payment will be made for any labor, Material, or Equipment needed for soil erosion abatement as described above.

When it becomes necessary, the Department’s Project Manager will inform the Design-Builder of unsatisfactory construction procedures and operations insofar as erosion control is concerned. If the unsatisfactory construction procedures and operations are not corrected promptly, the Department’s Project Manager may suspend the performance of any or all of other construction until the unsatisfactory condition has been corrected.

**DB 107-11 WATER QUALITY**

The Department shall apply for and obtain any and all permits required for construction involving waters of the US as defined by the US Army Corps of Engineers. It shall be assumed that construction affecting a live stream shall require a permit from the US Army Corps of Engineers. All construction activities occurring within regulated waters of the US shall be completed in full compliance with the permit obtained for said construction, and the Design-Builder shall be fully liable for all consequences arising as a result of the Design-Builder’s failure to comply with all requirements and conditions of the permit. A copy of the permit shall be provided in the Contract Documents.

All Work in the vicinity of live streams, water impoundments, wetlands, or irrigation supplies shall be completed in such a manner as to minimize vegetation removal, soil disturbance, and erosion. Crossing of live streams with heavy Equipment shall be minimized, as determined by the Department’s Project Manager. Therefore, temporary bridges or other structures shall be used wherever an appreciable number of waterway crossings are necessary. Unless otherwise accepted in writing by the Department’s Project Manager, mechanized Equipment shall not be operated in live waterways.

All waterways shall be cleared as soon as practicable of falsework, piling, debris, or other obstructions placed during construction operations and which are not a part of the finished Work.

Ditches which are filled, or partly inoperative, shall be cleaned and made operative before the Design-Builder stops Work for any day, and shall be maintained in a condition satisfactory to the Department’s Project Manager for the duration of the Contract.

Equipment refueling and maintenance and concrete dumping in the vicinity of water courses is strictly prohibited. These activities shall be performed in proper containment areas. Pollutants such as fuels, lubricants, bitumens, raw sewage, and other harmful materials shall not be discharged into or near waterways and impoundments or into natural or manmade channels leading to them.

The Design-Builder is responsible for compliance with applicable Clean Water Act permits and regulations, all applicable regulations of fish and wildlife agencies, and statutes relating to the prevention and abatement of pollution.

No payment will be made for any labor, Material, or Equipment needed for water pollution abatement as described above.

When it becomes necessary, the Department’s Project Manager will inform the Design-Builder of unsatisfactory construction procedures and operations insofar as water pollution abatement is concerned.
If the unsatisfactory construction procedures and operations are not corrected promptly, the Department’s Project Manager may suspend the performance of any or all of other construction until the unsatisfactory condition has been corrected.

DB 107-11.1 Protection of Streams, Lakes, and Reservoirs and the NPDES

The Design-Builder shall be responsible for obtaining and complying with the requirements of NPDES and SPDES permits. In carrying out Work along or adjacent to live streams, the Design-Builder shall comply with the regulations and requirements of the relevant regulatory authorities as set forth in the Plans and Special Provisions.

DB 107-12 AIR QUALITY AND DUST ABATEMENT

The Design-Builder shall schedule and conduct activities to minimize impacts to air quality and to prevent hazardous or objectionable air quality conditions within the Project limits and in areas adjacent to or affected by the Work. The Department’s Project Manager will suspend the performance of any construction activity that creates hazardous or objectionable air quality conditions until the unsatisfactory condition has been corrected.

A) Dust
   The Design-Builder shall apply pro-active measures to prevent discharge of dust into the atmosphere that unreasonably interferes with the comfortable enjoyment of life and property or is harmful to plants or animals.

B) Burning
   Any material generated by any activity for the development, modification, and construction of any transportation facility shall not be burned on the Project Site. This shall include, but not be limited to, products of land clearing and demolition.

C) Prevention
   The Design-Builder shall employ appropriate protection techniques and/or systems to prevent hazardous or objectionable air quality conditions, particularly when conducting drilling, cutting, grinding, abrasive blasting, or similar operations that impact air quality.

DB 107-13 NOISE ABATEMENT

In urban or populated rural areas where quiet conditions normally prevail, no Equipment that emits noise above 70 DBA measured at a distance of 15.2 m, shall be operated during nighttime hours unless such Work is specified in the Contract Documents. The Department’s Project Manager may authorize nighttime Work under special circumstances or emergency conditions. County or municipal ordinances shall apply if they are more stringent than the requirements in the Specifications.

DB 107-14 CONSTRUCTION AND DEMOLITION DEBRIS (NOT APPLICABLE IN NASSAU AND SUFFOLK COUNTIES)

The New York State Department of Environmental Conservation regulates solid waste management facilities under 6 NYCRR Part 360. Its various subparts define solid waste, including construction and demolition debris, and regulate the disposal of those wastes.

In accordance with 6 NYCRR Part 360-7, the disposal of the below specified construction and demolition wastes in landfills outside of Nassau and Suffolk Counties is exempt from regulation under 6 NYCRR Part 360. If operation are undertaken only between the hours of sunrise and sunset, and no fee or other
form of consideration is required for the privilege of using the facility for disposal purposes, the following are exempt from regulation:

A) A site at which only recognizable uncontaminated concrete, asphalt pavement, brick, soil, or stone is placed; or

B) A landfill for the disposal of trees, stumps, wood chips, and yard waste when the generation and disposal of such waste occur on properties under the same ownership and control.

The wastes listed above are considered to be uncontaminated when they have not come in contact with a hazardous waste, industrial waste, or petroleum product through a spill or other occurrence. Wastes may be presumed uncontaminated absent records, existing data, or knowledge or observation to the contrary. The term soil specifically includes uncontaminated soil Material generated by the cleaning of ditches, drainage, Culverts, storm sewers, catch basins, and related appurtenances and sweeping streets. Reinforcing steel embedded in concrete is considered an incidental metal and is included within the definition of concrete.

Exempt wastes, as noted above, which have been generated on the Project Site by the Work under this Contract may be buried on the Project Site on property owned by the Department in accordance with the requirements of Sections 203-3.08, Disposal of Surplus Excavated Materials or 203-3.10, Embankments, and DB Section 107-21.2. Exempt waste shall not be pulverized, shredded, or otherwise processed such that the individual waste components are rendered unrecognizable. Vegetative wastes shall be segregated from other exempt wastes when buried. All on-site disposal shall be subject to the Department’s Project Manager’s approval of location, final condition, and appearance.

Payment for the proper disposal of waste generated by the Work under this Contract is included in the appropriate Price Centers. The absence or unavailability of disposal sites on the Project shall not be the basis of a claim for extra compensation by the Design-Builder for the necessary and appropriate off-site disposal of exempt wastes.

Disposal of all construction and demolition debris other than the exempt wastes listed above shall occur off-site at a disposal facility authorized to accept such waste for disposal pursuant to 6 NYCRR Part 360. Off-site disposal of exempt wastes shall be carried out in accordance with 6 NYCRR Part 360.

Nothing herein is intended to prevent the Design-Builder from removing Material to off-site locations for speculative accumulation, beneficial use, recovery, or recycling purposes if such activities are consistent with all applicable federal, State, and local laws and regulations.

**DB 107-15 CONSTRUCTION, EXCAVATION, AND DEMOLITION CONTRACTS AT OR NEAR UNDERGROUND FACILITIES**

All costs associated with verification of the location of underground facilities pursuant to 16 NYCRR 753, as amended, shall be included in the Proposal for the respective Price Centers involved. The Design-Builder shall provide access to Public Service Commission personnel to examine and inspect excavation and demolition methods used within 4.5 m in any direction of any underground facility.

A) One-Call

Pursuant to 16 NYCRR 753, as amended, prior to non-emergency excavation, subsurface exploration of any kind, or installation below existing grade, including, but not limited to, digging; auguring; backfilling; boring; drilling; excavation; grading; jackhammering; pipe jacking; pavement milling; pile driving; plowing in; pulling in; sawcutting; tree root
removal; trenching; tunneling; and the installation of guiderail posts, sign posts, fence posts, or underground conduit, the One-Call notification system shall be notified of the date and location of the proposed Work. The Design-Builder shall contact the One-Call notification system serving the area a minimum of two Days and a maximum of ten Days, not including the date of the call, prior to Work. The Design-Builder shall mark proposed locations of excavation, or other activity listed above, with white paint, white stakes, or other indications as agreed to by the Utilities to facilitate the Work of underground Utility designation. Utilities that do not belong to the One-Call notification system shall be contacted separately. The town, City, or County may be contacted to obtain a list of Utilities. If additional Work is required, and staking, marking, or other designation has been lost, the Design-Builder shall contact the One-Call notification system for subsequent designation. If an underground facility has been designated, but the Design-Builder cannot physically locate the facility, the Utility shall be notified so that the designation can be verified. If an unmarked or unknown facility is discovered during the course of the Design-Builder’s operations, the Utility or suspected Utility shall be notified. If the Utility Owner cannot be determined, the One-Call notification system shall be notified. The Design-Builder shall support and protect from damage all exposed underground facilities. The Design-Builder shall notify the Department’s Project Manager of any accidental contact with or potential damage to any underground facility, regardless of whether the damage is visible or not.

The Design-Builder shall provide to the Department’s Project Manager, in writing, the information provided to the One-Call notification system, or the Utility if it is not a Once-Call notification system member, and the control number issued for each call placed to request designation of underground facilities. The Design-Builder shall protect and preserve designations until no longer required for safe Work near the underground facility.

The Design-Builder shall identify and provide to all Work Site supervisors and Equipment operators a list of emergency telephone numbers for each Utility having facilities within the Project limits. Supervisors shall periodically review the location of underground facilities with all Workers who are subject to exposure, including new Employees. If the Design-Builder fails to notify the One-Call notification system or a non-member Utility prior to excavation or activity listed above, a stop Work order will be issued in accordance with the provisions of DB Section 109[S or L]-15.2. Prior to lifting the stop Work order, the Department will consider convening a show cause meeting, at its convenience, to consider Worker dismissal in accordance with DB Section 102-3 or Contract termination in accordance with Part 1 – Agreement, Article 12, and DB Section 105-6.

B) Verification

Pursuant to 16 NYCRR 753, the Design-Builder shall verify precise location, size, depth, and direction of run of an underground facility or its encasement, by hand shovel or vacuum excavation, prior to the use of powered Equipment or the installation of any proposed Work, including the projected line of a trenchless installation such as boring or drilling, within the tolerance zone. Powered Equipment may be used to remove pavement or masonry within the tolerance zone, but only to the depth of such pavement or masonry. Powered Equipment shall not be used within 100 mm of the verified location of an underground facility.

C) Contact or Damage
Pursuant to 16 NYCRR 753, the Design-Builder shall, in the event of contact or damage to an underground facility, immediately notify the Utility and the Department’s Project Manager, suspend excavation or demolition in the immediate vicinity of the contacted or damaged facility, and take such emergency actions as are warranted to protect all endangered persons to the best of its ability.

D) Pressure Pipes
Pressure pipes shall not be pressurized without being adequately restrained against movement and no personnel shall be allowed in a trench or area containing a pressure pipe during initial pressurization until the pipe has been fully pressurized. Particular attention shall be paid to fittings and bends that create a thrust, which, if improperly restrained, may cause the pipe joints to separate and injure nearby personnel.

DB 107-16 HAZARDOUS MATERIAL REPORTING AND CLEAN-UP OF SPILLS

The Design-Builder shall be responsible for reporting and cleaning up spills associated with construction of the Project, and shall report and respond to spills of Hazardous Materials such as gasoline, diesel fuel, motor oils, solvents, chemicals, toxic and corrosive substances, and other Material that are a threat to public health or the environment. The Design-Builder shall be responsible for reporting past spills encountered during construction and current spills not associated with construction. Reports shall be made immediately to the Department’s Project Manager if on State ROW or to the property owner if outside of State ROW. Unreported spills identified after construction and associated with construction of the Project shall be cleaned up by the Design-Builder. Failure to report or respond to a spill shall result in the Design-Builder bearing the full cost of remediation of clean-up of such unreported spills.

The Department shall be responsible for any delay costs and expenses due to it or the Design-Builder making a new discovery of Hazardous Materials that are not identified in the RFP or the Contract Documents. The Design-Builder is responsible for all costs and expenses, including delay costs and expenses, for all Hazardous Material spills that are identified in the RFP or the Contract Documents or that are caused by the Design-Builder or any of its Subcontractors, Employees, or agents.

DB 107-17 PRIME COAT, TACK COAT, AND SOIL STERILANTS

Application of prime coat, tack coat, and soil sterilants in roadway surfacing must avoid soils outside the roadway prism. Contamination must be carefully avoided in irrigation supplies, wetlands, water impoundments, and live streams.

DB 107-18 STATE AND FEDERAL LAND-MANAGING AGENCIES

In carrying out Work within or adjacent to State or federal lands and forests, the Design-Builder shall comply with all regulations of the State or federal authority having jurisdiction governing the protection of these areas, and shall observe all sanitary laws and regulations. The Design-Builder shall keep the areas in an orderly condition, dispose of all refuse, and obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks, and other structures in accordance with the requirements of the applicable federal or State regulations.

DB 107-19 PREVENTION OF FOREST AND GRASS FIRES

The Design-Builder shall take all responsible precaution to prevent and suppress forest and grass fires and shall require all Employees and Subcontractors, both independently and at the request of the appropriate officials, to perform all actions reasonably within their power to prevent and suppress and to assist in preventing and suppressing forest fires and to make every possible effort to notify a forest official at the
earliest possible moment of the location and extent of any fire seen by them. The Design-Builder shall take the necessary steps to prevent and control fires in areas where severe fire hazards exist and, when required in the Contract, furnish and maintain firefighting Equipment and tools as required by the agency having jurisdiction. The Design-Builder shall comply with fire regulations applicable to the area where the Design-Builder is working and shall suspend fire-hazardous operations when necessary, at the direction of the Department’s Project Manager and pursuant to DB Section 109[S or L]-15.2.

**DB 107-20 MINIMIZATION OF SOIL DISTURBANCE**

The Design-Builder shall ensure that damage to, or removal of, vegetation and trees shall be kept to a minimum and that no extraneous clearing, grubbing, land disturbance, or excavations shall take place. The Design-Builder shall bear the full cost of vegetation remediation necessary due to the Design-Builder’s action.

**DB 107-21 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE**

The Design-Builder shall be responsible for the preservation of all public and private property. The Design-Builder shall protect carefully from disturbance or damage all land, governmental survey monuments, and property markers until the Department’s Project Manager has witnessed or otherwise referenced their location, and the Design-Builder shall not remove any monuments or markers until so directed.

The Design-Builder shall be responsible for all damage or injury to property of any character during the prosecution of the Work resulting from any act, omission, neglect, or misconduct in the Design-Builder’s manner or method of executing the Work, or at any time due to defective Work or Material, and said responsibility will not be released until the Project has been completed and accepted, provided that said responsibility will be released as to the affected unit or portion of the Project upon Partial Acceptance under DB Section 109[S or L]-11.1 or opening the affected unit or portion to traffic under DB Section 104-9. When or where direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the Work or in consequence of the non-execution thereof by the Design-Builder, the Design-Builder shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done by repairing, rebuilding, or otherwise restoring as may be directed, or the Design-Builder shall make good such damage or injury in an acceptable manner.

**DB 107-21.1 Restoration of Disturbed Areas Outside the ROW**

It is the intent of this Specification that all areas outside of the ROW, except as noted in the following text, disturbed, used by, or serving as a source of Material for the Design-Builder be restored to a pleasing and acceptable condition as specified and as satisfactory to the Department’s Project Manager. The Design-Builder shall obtain the written acceptance of the Department’s Project Manager for the use of any specific area before any Work in such area is begun, except as noted in the following text. Where deemed necessary by the Department’s Project Manager, the Design-Builder shall submit, as part of the request for acceptance, a grading Plan showing the proposed final grading of the area. Acceptance shall not be given if, in the opinion of the Department’s Project Manager, the area is not suited to acceptable restoration or if serious or permanent ecological damage is foreseeable. This Specification applies to areas such as, but not limited to, borrow pits or areas, spoil or waste areas, haul roads, storage areas, batching areas, Equipment storage areas, shop areas, and all similar areas. This does not apply to areas which have been or are being used by the Design-Builder as its established and permanent headquarters and Equipment pool sites or to commercial borrow sources, commercial gravel pits, commercial quarries, public disposal areas, and all similar areas.
In accordance with Article 23, Title 27 of the New York State Environmental Conservation Law all borrow pits and aggregate sources outside of the State ROW, where more than 1,000 t of minerals are removed from the earth within any 12 successive calendar months, require mining permits obtained from the New York State Department of Environmental Conservation. When such permit is required, the Design-Builder, in addition to complying with all restoration requirements for all areas as stated below, may be required by the Department’s Project Manager to meet any standard contained in the Mined Land Reclamation Rules and Regulations (6 NYCRR Parts 420 et. seq.) In general, the restoration shall include the following:

A) The removal of all Equipment and parts, junk, rubbish, excess Material, and debris of all kind;
B) Clean-up as required; grading as shown, if a grading Plan has been prepared; or grading so as to blend into the surrounding ground forms to the satisfaction of the Department’s Project Manager;
C) Scarification of storage yards, batching sites, and haul roads to the depth determined by the Department’s Project Manager as necessary to support vegetation;
D) The removal and re-grading of temporary roads or areas as required by the Department’s Project Manager;
E) The repair or removal of damaged trees and the fertilizing, seeding, and mulching of the areas as provided for in the Contract or as directed by the Department’s Project Manager; and
F) Grading the slopes of excavated areas to a stable condition, but in no case shall earth cut faces be left steeper than one vertical on one and one-half horizontal. All rock cut slopes shall be scaled to remove any loose or unstable rock.

Areas within sight of the finished Highway or any other Highway will require particular attention insofar as the above features are concerned. It is the intent to have all such areas present a pleasing appearance to travelers on any Highway.

Where borrow pits result in the formation of ponds or low areas intermittently filled with water, the Design-Builder shall furnish the Department’s Project Manager with a copy of its agreement with the landowner permitting the use of such areas. If such an area is within sight of any Highway, the Department’s Project Manager’s written acceptance must be obtained prior to the removal of any borrow from such a location. If such acceptance is not granted, Material for use under this Contract or for any other State contract may not be removed from the area. In the event the Design-Builder removes Material from such an area without the written acceptance of the Department’s Project Manager, payment will not be made for any item of Work in which the Material has been used. Grading Plans may be required for such areas and due consideration given to the appearance of the areas if they are visible from any Highway. All of this restoration shall be accomplished prior to Final Acceptance of the Contract, except that the Work of restoring the Design-Builder’s Work areas (storage, batching, Equipment, and shop areas) may be done after the Final Acceptance of the Contract, but must be completed prior to the final release of retained funds. Since the extent of such areas and the use and treatment during construction is within the discretion of the Design-Builder, within the limitations and requirements outlined, no payment will be made for any labor, Material, or Equipment necessary for the restoration of these areas. The cost of the Work shall be included in the amount proposed for the Project. Any Work done shall, in general, be in accordance with the Department’s Specifications for similar items of Work and/or as specified by the Department’s Project Manager.
In the event the Design-Builder carries on any operation on the referenced areas without written acceptance of the Department’s Project Manager, no payment will be made for any item in the Contract involved in any way with any operation on the unaccepted area.

DB 107-21.2 Restoration of Disturbed Areas Within the ROW

It is the intent of this Specification that all disturbed areas within the ROW but outside of the Work limits be restored to a pleasing and acceptable condition as specified and as satisfactory to the Department’s Project Manager. For the purposes of this Section, the Work limits shall include the road section plus a reasonable Work area at top of cut and toe of fill as determined by the Department’s Project Manager. Where a Price Center for turf establishment is not included in the Contract, disturbed earth areas within the Work limits shall be graded in a manner approved by the Department’s Project Manager and seeded as specified for standard turf establishment. The cost of this Work shall be included in the price proposed for the Contract and no separate payment shall be made for it.

The Design-Builder shall obtain the written permission of the Department’s Project Manager before beginning the use of any area within the ROW but outside the Work limits as noted in the preceding paragraph. Where deemed necessary by the Department’s Project Manager, the Design-Builder shall submit, as part of the request for permission, a grading Plan showing the proposed final grading of the area. If, in the opinion of the Department’s Project Manager, the area is not adaptable to acceptable restoration or if serious or permanent ecological damage is foreseeable, permission shall not be given. This Specification applies to areas such as, but not limited to, borrow pits or areas, spoil or waste areas, haul roads, storage areas, batching areas, water points, Equipment storage areas, shop areas, and similar areas. In general, the restoration shall include the following:

A) The removal of all Equipment and parts, junk, rubbish, excess Material, and debris of all kind;
B) Clean up as required; grading as shown, if a grading Plan has been prepared; or grading so as to blend into the surrounding ground forms to the satisfaction of the Department’s Project Manager;
C) Scarification of storage yards, batching sites, and haul roads to the depth of the compaction as determined by the Department’s Project Manager;
D) The removal of pavement or granular surfacing from temporary roads or areas as required by the Department’s Project Manager; and
E) The repair or removal of damaged trees and the fertilizing, turf establishment, and mulching of the areas as provided for in the Contract or as directed by the Department’s Project Manager.

Areas within sight of the finished Highway or any other Highway will require particular attention insofar as the above features are concerned. It is the intent to have all such areas present a pleasing appearance to travelers on any Highway.

All of this restoration shall be accomplished prior to Final Acceptance of the Contract except that the Work of restoring the Design-Builder’s Work areas (storage, batching, Equipment, and shop areas) may be done after the Final Acceptance of the Contract, but must be completed prior to the final release of the retained funds.

No payment will be made for any labor, Material, or Equipment necessary for the restoration of disturbed areas which extend beyond the Work limits. The cost of such Work shall be included in the price
New York State Department of Transportation

proposed for the Contract. All Work shall be in accordance with the Department’s Specifications for similar items of Work and/or as specified by the Department’s Project Manager.

**DB 107-22 ACQUISITION AND CONVEYANCE OF REAL PROPERTY**

The Department has identified property to be used for the Project, the boundaries of which are depicted in the Contract Documents. The Department will acquire ROW, including easements and other property rights. The Department will staff a ROW team that will be available in the Project vicinity to acquire ROW and deal with all ROW issues that may arise. Upon issuance of the environmental clearances and authorization from the appropriate State and federal agencies, the Department will begin acquisition of ROW, including easements and other property rights, based on approved maps.

As a part of its Proposal, the Design-Builder submitted a preferred ROW Acquisition Schedule. Parcel access dates shown on the ROW Acquisition Schedule shall be consistent with the needs for access demonstrated by the proposed Baseline Progress Schedule and subsequent updated Baseline Progress Schedules. The Design-Builder shall have access to properties as shown in the ROW Acquisition Schedule unless otherwise agreed to in writing between the Design-Builder and the Department.

Any additional ROW required due to design changes originated by the Design-Builder and deemed necessary by the Department will be acquired by the Department. Additional ROW acquisitions may cause Project delays. The Department will only be responsible for time and cost impacts associated with acquisition of additional ROW in the case of a Necessary Basic Project Configuration Change (see DB Section 104-4.2.2). If additional ROW is required for the Design-Builder’s convenience or if additional ROW is needed for a reason other than a Necessary Basic Project Configuration Change, the Department will conduct the acquisition of the ROW, but the Design-Builder will be responsible for all costs associated with the additional ROW and its acquisition.

The Design-Builder shall cooperate with the Department in the following:

A) Completion of Project design and identification of final ROW requirements and construction impacts. It is expected that the Design-Builder will identify any additional ROW needs no later than the Definitive Design Review for any affected Project component; and

B) Adjustment of the ROW Acquisition Schedule to be consistent with the most current Department-accepted Baseline Progress Schedule.

The Design-Builder shall coordinate with the Department regarding any design features that may impact properties, even though no property acquisition is contemplated. The intent is to avoid damages to properties not previously identified and addressed.

**DB 107-22.1 Department Responsibilities**

In addition to Department responsibilities identified above, the Department will keep a current status record of ROW acquisitions on updates to the ROW Acquisition Schedule.

**DB 107-22.2 Coordination**

Within 30 days of Contract Award, the Design-Builder will meet with the Department for the following reasons:
New York State Department of Transportation

A) Identification and evaluation of the status of all required ROW parcels as being any of the following:
   1) Already acquired with all impacts identified (status code A);
   2) Not yet acquired, but with all impacts identified (status code B);
   3) Not yet acquired and without all impacts identified (status code C); and
   4) Not yet acquired with probable need for condemnation (status code D); and

B) Confirmation of the Design-Builder’s preferred priorities for acquisition of outstanding ROW and development of a mutually agreed ROW Acquisition Schedule that is consistent with the current Baseline Progress Schedule.

The Design-Builder shall not enter onto parcels until the Department has obtained the legal right to do so.

DB 107-22.3 Change in Project Design

If, after the Contract Award, the Design-Builder identifies additional parcels to be acquired and/or modifications to the ROW limits (fee takings, easements, or other property rights), the Design-Builder shall prepare and submit to the Department new or revised surveys, legal descriptions, ROW maps, and justification of the need for additional ROW. The Department will review the request, determine whether the proposed acquisition is appropriate and necessary, and notify the Design-Builder regarding the minimum time required to complete the acquisition. If the Design-Builder and Department agree to the additional acquisition, the Design-Builder shall prepare any additional documents necessary for the Department to proceed with the acquisition.

If the Department determines that the acquisition is appropriate and required for the Project, the Department will acquire the ROW in accordance with Department procedures, subject to the conditions specified in this DB Section 107-22 regarding allocation of time and cost responsibilities.

DB 107-22.4 Delay in Acquisition

The Design-Builder shall meet with the Department to review ROW acquisition status at progress meetings. In the event that the Design-Builder determines that the Critical Path may be affected, the Design-Builder shall notify the Department immediately to determine the best course of action to avoid such delay through alternative design or construction methods or revisions to the Design-Builder’s Baseline Progress Schedule or ROW Acquisition Schedule.

If properties are not available by the dates shown in the ROW Acquisition Schedule, the Design-Builder shall exercise good faith efforts to work around any delay and to minimize any time or cost impacts associated with changes in the ROW Acquisition Schedule.

DB 107-22.5 Precedence of ROW Acquisition Schedule

The Baseline Progress Schedule and the design of the Project furnished by the Design-Builder shall not require the Department to acquire any real property except in accordance with the ROW Acquisition Schedule or as agreed by the Department and the Design-Builder.

DB 107-22.6 Right-Of-Way within Federal or State Lands
Deviations from planned ROW may be allowed within federal government land boundaries. However, acquisition of additional ROW from federal agencies generally requires considerably more time than a private property acquisition.

The Design-Builder is responsible for constructing features, such as fencing and drainage, required by State and federal land management agencies.

**DB 107-22.7 Encroachments**

The Department will aggressively pursue removal of encroachments located within the existing ROW on or before Contract Award.

The Design-Builder shall notify the Department of any encroachments that are in the way of construction upon their discovery.

Upon written notification by the Department, the Design-Builder will remove any encroachments that are in the way of construction in accordance with the Department’s rules, regulations, and procedures.

If the Design-Builder is required to remove encroachments that are not identified in the Contract Documents, such Work will be considered Extra Work under DB Section 104-3, and the Design-Builder may be entitled to additional compensation and/or time.

**DB 107-22.8 Temporary Construction Easements**

The Design-Builder shall be responsible to identify, prepare and submit to the Department new or revised surveys, legal descriptions, ROW maps, and justification of the need for the acquisition of all temporary construction easements not previously obtained by the Department at no change in Contract time or price. The Department will acquire the temporary construction easements on behalf of the Design-Builder.

**DB 107-23 PERSONAL LIABILITY OF PUBLIC OFFICIALS**

In carrying out the provisions of these Specifications or in exercising powers or authority granted to them by or within the scope of this Contract, there shall be no liability upon the Department, the Department’s Project Manager, or its authorized representatives, either personally or as officials of the State, it being understood that in such matters they act solely as agents and representatives of the State.

**DB 107-24 NO THIRD-PARTY LIABILITY**

It is specifically agreed between the parties executing this Contract that it is not intended by the provisions of the Contract to make anyone a third-party beneficiary or to authorize anyone not a party to this Contract to maintain an action for damage pursuant to the terms or provisions of this Contract.

**DB 107-25 INSURANCE**

**DB 107-25.1 The Design-Builder's Insurance Program Policy**

Within 10 days following the Design-Builder’s execution hereof, the Design-Builder shall deliver to the Department a certificate or certificates of insurance and policy or policies with respect to the insurance program. In addition, the Design-Builder shall promptly deliver to the Department a certificate or certificates of insurance with respect to each renewal of such policy or policies bearing an annotation.
evidencing payment of the premium or accompanied by other proof of payment satisfactory to the Department.

The certificate or certificates of insurance shall be in a form reasonably satisfactory to the Department stating the identity of all carriers, the identity of named insureds, the type of coverage, the description of policy limits, the deductibles, the other essential policy terms, and a statement of non-cancellation.

**DB 107-25.2 Endorsements and Waivers**

The insurance required to be provided by the Design-Builder hereunder shall contain the following provisions (A) through (F), except that workers’ compensation and employer’s liability coverage shall contain the following provisions (D) and (E).

- **A)** Name the Department and the State and their respective employees, agents, and consultants as additional insureds. The form of such additional insured endorsement shall be subject to review and approval by the Department, which approval shall not be unreasonably withheld.

- **B)** Apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

- **C)** Include a waiver of any right of subrogation against the additional insureds and their respective members, directors, officers, employees, agents, and consultants.

- **D)** State that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after 30 Days’ prior written notice by certified mail, return receipt requested, has been given to the Department, except for nonpayment of premiums, in which case 10 Days’ notice shall apply. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

- **E)** Contain deductibles that are commercially reasonable for companies similar to the Design-Builder with respect to net asset value and scope of business. Deductibles or self-insured retention shall not be applied against the Department or the State.

- **F)** Provide coverage on an “occurrence” basis, not a “claims made” basis for the public liability insurance pursuant to DB Section 107-25.5.

**DB 107-25.3 The Department’s Right to Remedy Breach by the Design-Builder**

If the Design-Builder fails to provide insurance as required herein, the Department shall have the right, but not the obligation, to purchase such insurance. In such event, the Contract Price shall be reduced by the amount paid for such insurance plus any administrative costs incurred by the Department in obtaining the insurance.

**DB 107-25.4 General Insurance Requirements**

All insurance policies provided by the Design-Builder under this Contract shall conform with the following:

- **A)** Be in standard form and substance as is then acceptable to the Department for policies of like coverage;

- **B)** Be issued by insurance carriers licensed to do business in the State and having a current rating of not less than “A” according to A. M. Best’s Insurance Reports Key Rating
New York State Department of Transportation

Guide or of recognized financial responsibility and otherwise agreed to by the parties and accepted by the Department in writing;

C) Have coverage that is primary and non-contributory coverage for Work performed and/or claims arising under this Contract with respect to all additional insureds; and

D) Name the Department and the State as additional insureds at policy inception as to any insured loss or liability arising out of or in any way related to the negligence of the Design-Builder in the performance of the professional services.

DB 107-25.5 Extended Reporting Period

All professional liability errors and omissions policies and the environmental liability insurance written on a “claims made” basis shall contain an extended reporting period of three years following Final Acceptance.

DB 107-26 DAMAGE

Until Final Acceptance of the Project by the Department’s Project Manager, the Design-Builder shall have the charge and care thereof and shall take every precaution against injury or damage to any part thereof by the action of the elements or from other causes, whether arising from the execution of or the non-execution of the Work. The Design-Builder shall rebuild, repair, restore, and make good all injuries or damages to portions of the Work occasioned by the above causes before Final Acceptance and shall bear the expense thereof except as provided in DB Sections 104-3 and 109[S or L]-9.

DB 107-26.1 Damage by Public Traffic

Payment shall be made to the Design-Builder for repair or replacement of any permanent element of the Highway which is completed to the stage of serving its intended function and is subsequently damaged by accident by public traffic. The Design-Builder must supply satisfactory evidence that such damage was caused by a public traffic accident and not by vandalism or by the Design-Builder’s Equipment. Satisfactory evidence shall generally be limited to the following: accident reports filed with the New York State Department of Motor Vehicles, police agencies, or insurance companies; statements by reliable, unbiased eye witnesses; and identification of the vehicle involved in the accident. Physical evidence that the damage was caused by a motor vehicle (such as tire marks or broken headlight glass) will not be sufficient unless it can be shown that the damage was not caused by the Design-Builder’s vehicles or by vandalism.

Repair or replacement Work caused by a public accident for which there is an identified Unit Price will be paid for at the Unit Price for that item. All other repair or replacement Work caused by a public accident will be paid for at an agreed price or by means of Force Account. Payment will not be made for repair or replacement Work in any way connected with untimely failure of any portion of the Highway under public traffic. The determination regarding whether an untimely failure has occurred shall be made by the Department’s Project Manager, taking into consideration the normal life and the amount of normal wear of the element involved. This provision does not relieve the Design-Builder of the responsibility of MPT for the Project or the responsibility of having a wholly complete and acceptable job at the time of final Inspection and Final Acceptance of the entire Project. Payment for such damage shall be made only after the Design-Builder has demonstrated to the satisfaction of the Department’s Project Manager that it has made every reasonable effort to collect the costs from the person or persons responsible for damage.
The Design-Builder shall be responsible for damages resulting from faulty designs as shown by the Design Plans and Project Specifications, but not for damages resulting from willful acts of Department officials or employees.

DB 107-26.2 Delays and Damage by Occurrence

In the event that damage to the Work in progress is caused by a flood, drought, tidal wave, fire, hurricane, earthquake, windstorm or other storm, landslide, or other catastrophe which constitutes an “occurrence,” as hereinafter defined, and to the extent that such damage has been determined by the Department to be beyond that which may be anticipated from heavy storms, and also to the extent that such damage is not reimbursable by insurance carried by the Design-Builder, the Design-Builder may apply in writing to the Commissioner for the State to pay or participate in the cost of repairing the damage to the Work from such cause or, in lieu thereof, and at the sole discretion of the Department, terminate the Contract and relieve the Design-Builder of further obligation to perform the Work. “Occurrence” shall include only those floods, droughts, tidal waves, fires, hurricanes, earthquakes, windstorms or other storms, landslides, or other catastrophes when such occurrences or conditions and effects have been proclaimed a disaster or state of emergency by the President of the United States, the Governor of the State of New York, the Federal Highway Administrator, or the chief executive of a County or City, unless such damage is caused by the Design-Builder’s action or inaction or the Design-Builder’s means and methods of construction.

DB 107-26.3 Application by Design-Builder

The Design-Builder’s written request for the State to pay or participate in the cost of rebuilding, repairing, restoring, or otherwise remedying such damage that has been determined by the Department to be beyond that which may be anticipated from heavy storms to the Work shall be submitted to and approved by the Department’s Project Manager before performing any Work other than emergency Work, including emergency Work necessary to provide for passage of public traffic.

DB 107-26.4 Obligation to Indemnify by the Design-Builder

The Design-Builder shall indemnify and save harmless the State, except as prohibited by law; any municipality in which the Work is being performed; and/or any public benefit corporation, railroad, or public Utility whose property or facilities are affected by the Work from suits, claims, actions, damages, and costs of every name and description resulting from the Work under this Contract and until the Final Acceptance thereof. The Design-Builder and any assigns, heirs, or successors in interest shall also indemnify and save harmless, except as prohibited by law, the Department’s Inspector from suits, claims, actions, damages, and costs involving personal injury and property damage resulting from the Design-Builder’s Work under the Contract during its prosecution and until the Final Acceptance thereof. The State may retain such monies from the amount due the Design-Builder as may be necessary to satisfy any claim for damages recovered against the State; any municipality in which the Work is being performed; any public benefit corporation, railroad, or public Utility whose property or facilities are affected by the Work; or the Department’s Inspectors. The Design-Builder’s obligation under this paragraph shall not be deemed waived by the failure of the State to retain the whole or any part of such monies due the Design-Builder, or where such suit, action, damages, and/or costs have not been resolved or determined prior to release of any monies to the Design-Builder under the Contract. Such obligation shall not be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the Design-Builder; its Subcontractors; the State; any municipality in which the Work is being performed; any public benefit corporation, railroad, or public Utility whose property or facilities are affected by the Work; or any of the Department’s consultants or contractors working relative to the Project. The Design-Builder has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the parties specified in this Section. This obligation shall
include the cost of attorney fees, disbursements, costs, and other expenses incurred in connection with such action or proceeding.

Such obligation does not extend to those suits, actions, damages, and costs of every name which arise out of the sole negligence of the State; any municipality in which the Work is being performed; any public benefit corporation, railroad, or public Utility whose property or facilities are affected by the Work of the Project; or any of the Department’s consultants or contractors working relative to the Project, their agents, or their employees.

**DB 107-26.5  Maximum Loads**

*See DB Section 105-9 for information on construction Equipment and maximum allowable loads.*

**DB 107-27  NO WAIVER OF LEGAL RIGHTS**

Upon completion of the Work, the Department will expeditiously make final Inspection and notify the Design-Builder of Final Acceptance. Such Final Acceptance, however, shall not preclude or prevent the Department from correcting any measurement, estimate, certificate, or price reduction made before or after completion of the Work, nor shall the Department be precluded or prevented from recovering from the Design-Builder, its Surety, or both such overpayment as it may sustain. A waiver on the part of the Department of a breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

The Design-Builder, without prejudice to the terms of the Contract, shall be liable to the Department for latent defects, fraud, or such gross mistakes as may amount to fraud.

**DB 107-28  COMMENCEMENT OF ACTION ON STATE PUBLIC WORKS CONTRACTS**

In accordance with Section 138-a of the New York State Finance Law, the time within which an action under this Contract against the Design-Builder must be commenced shall be computed from the date of completion of the physical Work. The Design-Builder must notify the Department in writing that such physical Work has been completed by specifying a completion date, which date shall be no more than 30 days previous to the date of such notice, in which case the completion date set forth in such notice shall be deemed to be the date of completion of the physical Work unless the Department, within 30 days of receipt of such notice, notifies the Design-Builder in writing of its disagreement.

In the event that the Design-Builder fails to send a notice provided for herein, or the State disagrees, then the date of completion of the physical Work shall be determined in any other manner provided by law. If the Design-Builder elects to send such a notice, it shall be sent by certified mail to the following address:

New York State Department of Transportation  
Office of Legal Affairs  
1220 Washington Avenue  
Albany, NY 12232 M.C. 0509

The Department hereby disagrees with any date selected by the Design-Builder pursuant to Section 138-a of the New York State Finance Law which is at variance with or earlier than the date of the Contract’s Final Acceptance as determined by the Commissioner. The provisions of Section 138-a of the New York State Finance Law shall in no way modify the duties and obligations of the Department to comply with Article IIA of the New York State Finance Law.
DB 107-29  THE DESIGN-BUILDER’S RESPONSIBILITY FOR THE TRAVELING PUBLIC

The Design-Builder shall conduct Work within the construction zone so that there will be minimal hazard to anyone transiting the Work Site on the open lanes of travel. To keep hazards to a minimum, the Design-Builder shall, as far as practical, keep Equipment, Material, and Workers from intruding into the travel lanes; remove any hazardous construction debris deposited on those lanes on a continuous and regular basis, inspect and repair the travel lanes, and remove obstacles deposited by the public as they transit the Work Site.

Notification that a hazard to the public exists may be received through the Design-Builder’s Inspections, from the Department’s employees, or the public. In any case, corrective action shall be taken to remedy the hazard within a reasonable time after notification is received. The Design-Builder shall have a contact number answerable on a 24 hour basis so that action can be initiated quickly when hazards are identified.

All claims from the public for losses that are alleged to have occurred within the construction zone shall be handled by the Design-Builder, even though a Subcontractor may have introduced the hazard that caused the damage. The Design-Builder shall designate, before the Work commences, the individuals who will be responsible for response to third party claims. The individuals shall provide claimants with a written outline of the Design-Builder’s claims procedure, along with a written copy of the Design-Builder’s name, address, and telephone number and the name and title of the Design-Builder’s individual assigned to damage claim response. The Design-Builder shall maintain a status report of all claims filed and the status of such claims. This report shall contain, at a minimum, the name, address, and telephone number of the claimant; the nature of the claim; pertinent findings regarding the claim; and a statement regarding the resolution of the claim. This report shall be available to the Department’s Project Manager upon request.

The Design-Builder shall establish a local contact number for the purpose of filing claims and post that telephone number conspicuously so that claimants can contact the right person quickly. In addition, the Design-Builder’s name, address, and telephone number shall be posted at each approach to the Construction Zone. All construction vehicles (whether Design-Builder, Subcontractor, or privately owned) working at the Construction Zone shall have clean and unobstructed license plates and be marked legibly with the appropriate company name.
(Project Name)
DESIGN-BUILD PROJECT

PIN ____________

DB CONTRACT DOCUMENTS
PART 2

DB SECTION 107
LEGAL RELATIONS AND
RESPONSIBILITY TO PUBLIC

APPENDIX 107A
FORMS
ASSIGNMENT OF PROPERTY DAMAGE CLAIM

WHEREAS _________________ whose principal place of business in _______ was required, pursuant to the terms of State Contract __________, to expend additional funds for the replacement/repair of ______________________ owned and maintained by the State of New York located at ___________________________________________ in the town of ________, New York and damaged as a result of a vehicular accident involving a vehicle(s) owned by __________________________________________ on _______________________, and

WHEREAS under the Contract Specifications, Part 2, Section 107-26, __________________, as Design-Builder was required to make reasonable efforts to recover the cost of such replacement from the responsible parties, and

WHEREAS __________________________, has made such efforts, and

WHEREAS the State of New York has paid to __________________________ the additional costs incurred as a result of the aforementioned damage to ______________________ hereby transfers and assigns to the State of New York any claim it may have against the above mentioned vehicle owner, and gives the State of New York full power and authority to demand, collect, receive, and release for the claim, and to bring, prosecute, and withdraw any suits or proceedings against ______________________ as fully to all intents and purposes as it might or could do if this assignment were not made.

IN WITNESS WHEREOF, I have executed this assignment on behalf of the corporation as __________________________ of the corporation.

STATE OF NEW YORK
COUNTY OF ______________

On the ____ day of ______________, 200_ before me personally came ____________ to me know, who being by me sworn, did depose and say that he resides at ________________ that he is __________________________ of ___________________, the corporation described in and which executed the above instrument; that he knows the seal of the corporation; that the seal affixed to the instrument is such corporate seal; that it was affixed by order of the board of directors of the corporation, and that he signed his name thereto by like order.

__________________________________
Notary Public
(Project Name)
DESIGN-BUILD PROJECT

PIN ____________

DB CONTRACT DOCUMENTS
PART 2

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PROSECUTION AND PROGRESS
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| 108-7   | Changed “OEODC” to “OCR”  

  Changed 15 calendar days to 7 calendar days |
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DB SECTION 108
PROSECUTION AND PROGRESS

DB 108-1 START AND PROGRESS OF WORK

DB 108-1.1 Baseline Progress Schedule

A) The Design-Builder shall prepare and submit to the Department’s Project Manager for Consultation and Written Comment an updated Baseline Progress Schedule per Part 5 – Special Provisions, Special Provision 108A. The Baseline Progress Schedule shall show the order in which the contractor proposes to carry on the work, the date on which it will start the major items of work (including but not limited to excavation, drainage, paving, structures, mobilization, soil erosion and sediment control, etc.) and the critical features (including procurement of Materials, plant and Equipment) and the contemplated dates for completing the same. The schedule shall show the order in which the Design-Build proposes to carry on the work. The schedule shall be in a suitable scale to indicate graphically the total percentage of work scheduled to be completed at any time. The Department may require that the progress schedule, at a minimum, include the following items:

1) Major work items and activities to be performed;
2) Seasonal weather limitations;
3) Time and money curve; and
4) Phase duration or milestone events, if applicable.

B) The initial update of the Baseline Progress Schedule and all subsequent monthly updates shall be certified by the Design-Builder’s QC Manager and signed and sealed by a New York-licensed professional engineer. The certification shall state the following:

“The baseline Progress Schedule hereby submitted correctly represents the Design-Builder’s planned and actual progress as of the date of the schedule and contains no:

5) Excessive leads or lags;
6) Assigned constraints, except those specified in the Contract Documents;
7) Multiple calendars; or
8) Retained logic.”

C) The purpose of this scheduling requirement is to ensure adequate planning and execution of the Work and to evaluate the progress of the Work. Consultation and Written Comment by the Department regarding the Baseline Progress Schedule shall not be construed to imply approval of any particular method or sequence of construction or to relieve the Design-Build of providing sufficient Material, Equipment, and labor to guarantee completion of the Project in accordance with the Contract Documents. The updated Baseline Progress Schedule may be utilized to facilitate the State’s Quality Assurance (QA) activities. Consultation and Written Comment regarding the Baseline Progress Schedule shall not be construed to modify or amend the Contract or the date of completion therein.
D) At the end of each payment estimate period, or at such intervals as directed by the Department’s Project Manager, the Design-Builder shall do the following:

9) Adjust the chart to reflect any changes in the Contract Work, Contract Time, or both;

10) Enter on the time-price curve the cumulative total percentage of Work actually in place; and

11) Submit three copies of the adjusted schedule to the Department’s Project Manager.

E) If, in the opinion of the Department’s Project Manager, the specified Work falls behind the Baseline Progress Schedule, the Design-Builder shall take such actions as are necessary to improve its progress. If the Design-Builder is behind schedule any month, it shall indicate what measures it will take in the next 30 days to put the Work back on schedule so as to meet the Contract’s completion date. The Design-Builder shall not be entitled to any additional compensation unless provided for in other provisions of the Contract on account of the requirement to put the Work back on schedule. In preparing the revised Baseline Progress Schedule, the Design-Builder shall consider increasing its Work force, construction plant and Equipment, or number of Work shifts. If the Department’s Project Manager finds the proposed Baseline Progress Schedule revision not acceptable, he/she may require the Design-Builder to submit a new revision.

F) The Baseline Progress Schedule and updates will be reviewed by the Department and the Design-Builder at least monthly as part of one of the weekly progress meetings.

G) The Design-Builder shall employ and supply a sufficient force of workers, Materials and Equipment and shall prosecute the work with such diligence so as to maintain the rate of progress indicated on the Baseline Progress Schedule to prevent work stoppage and ensure completion of the project within the contract time. Any additional or unanticipated costs or expense required to maintain the schedule shall be solely the Design-Builder's obligation and shall not be charged to the Department unless provided for in other provisions of the Contract.

H) The Design-Builder shall furnish weekly Work schedules indicating the number of personnel, kind of Equipment, and location and nature of the Work to be performed.

DB 108-1.2 Failure to Submit Baseline Progress Schedule or Update

If the Design-Builder fails to submit a Baseline Progress Schedule or any revision or update when required, the Department’s Project Manager may suspend payment for Price Center 1 per DB Section 109[S or L]-7.1.

DB 108-1.3 Monthly Progress Reports

The Design-Builder shall submit a monthly progress report with each Interim Payment request, consisting of the following:

A) A progress narrative;

B) Quality certifications;

C) A safety report, using Form SAF (DB Section 107-7.13 and Appendix 108A);

D) A security report (DB Section 107-8.3);
E) A monthly Baseline Progress Schedule update [DB Section 108-1(C) and Part 5 – Special Provisions, Special Provision 108A-3.3];
F) An Order-on-Contract status report;
G) A monthly subcontract report;
H) Form AAP 21c, Design-Builder Report of Contract Payments, for each Subcontractor (Appendix 108A);
I) Form AC 2947, Prime Contractor’s Certification (Appendix 108A);
J) Quantity calculations (DB Section 109[S or L]-6.2);
K) Updated Contract Submittals List (CSL);
L) A summary of hazardous and contaminated substance activities; and
M) Statement of Materials and labor used.

**DB 108-1.3.1 Progress Narrative**

The Design-Builder shall prepare and submit a monthly progress narrative. The progress narrative shall summarize the following information:

A) Activity and progress for the Contract, including design and construction and identification of the start and completion dates of Work on any Price Centers;
B) Achievement of any Progress Check Points (PCP);
C) Quality Control (QC) efforts, including results of any Design Reviews and/or quality audits;
D) Problems/issues that arose during the period and remaining problems/issues to be resolved;
E) Resolution of problems/issues raised in previous progress reports or resolved during the period;
F) Critical schedule issues and proposed resolutions, proposal of actions planned to correct any negative Float, and explanation of potential delays and/or problems and their estimated impact on performance and the Substantial Completion Date; and
G) Issues which may need the Department’s Project Manager’s attention or action for the next month, including Design Reviews.

**DB 108-1.3.2 Quality Certifications**

The Design-Builder shall submit monthly a certificate signed by the Design QC Manager and the Construction QC Manager certifying the following for the previous month:

A) That all Work, including that of the Designer and all other designers, Subcontractors at all tiers, Suppliers, and Fabricators has been checked and/or inspected by the Design-Builder’s QC staff and that all Work, except as specifically noted in the certification, conforms to the requirements of the Contract; and
B) That the Quality Plan and all measures and procedures provided therein are functioning properly and are being followed, except as specifically noted in the certification.
New York State Department of Transportation

DB 108-1.3.3 Order on Contract Status Report

The Design-Builder shall provide a report of outstanding Order on Contract requests containing the following:

A) The Design-Builder’s and Department’s Order on Contract identification numbers and/or coding;
B) The issue title;
C) A brief description of the change;
D) Any outstanding issues to be resolved;
E) The estimated cost and time implications; and
F) The projected resolution date.

DB 108-1.3.4 Subcontract Report

As part of the monthly progress report, the Design-Builder shall submit a subcontract report providing the Department with an updated list of Subcontractors (design and construction, at all tiers, including labor only). The Design-Builder shall specifically identify DBEs, MBEs, and WBEs in the report. The location where the Subcontractors worked shall also be shown.

The Design-Builder shall also report the results of all procurements consummated in the previous month, including those procured competitively and by other means. The Design-Builder shall indicate the type of Work or product procured and size of the procurement (in dollars), the names of firms competing for the subcontract, and the name of the successful Subcontractor.

The report shall indicate the total number of Subcontractors and the total dollar value of all subcontracts awarded to date. The report shall show the total number of subcontracts and the total value of subcontracts awarded to Disadvantage Business Enterprise (DBE) or Minority-owned Business Enterprise (MBE) and Women-owned Business Enterprise (WBE) firms to date.

The report shall indicate, for each subcontract, the following:

A) The original subcontract amount;
B) The value of any modifications to date; and
C) Payments made to date.

DB 108-1.3.5 Contract Submittals List

Within 30 Days of NTP, the Design-Builder shall prepare and submit to the Department’s Project Manager a CSL in the format shown on Form CSL, Appendix 108A, covering all submittals required during the first six months of the Contract. Thereafter, the Design-Builder shall submit monthly updates to Form CSL with the Monthly Progress Report (DB Section 108-1.3). The updated Form CSL shall show the record of submittals made to date and shall show the Submittals due over the next three month period.

DB 108-1.3.6 Summary of Hazardous and Contaminated Substances Activity

The Design-Builder shall submit a monthly summary of activities related to hazardous and contaminated substances. If there is no activity, the report shall indicate such.
Statement of Materials and Labor Used (Federal-aid Projects Only)

The Design-Build shall submit Form FHWA-47M (Appendix 108A) monthly reflecting the cumulative amount of materials and labor used. A final statement representing the total of all materials and labor used shall be submitted with the as-built plans (see DB Section 109S-11.2 or 109L-11.3)

Resumption of Work

If the prosecution of the Work is discontinued for any reason, the Design-Build shall notify the Department’s Project Manager, in writing, at least 48 hours in advance of resuming operations.

NOTICE TO PROCEED

The NTP will stipulate the date on which it is expected the Design-Build will begin the design and construction and from which date the Contract Time will be charged. Commencement of the Work by the Design-Build may be deemed and taken as a waiver on its part of NTP. After the Contract is executed, the NTP shall be issued within 30 days unless otherwise agreed to by the parties.

KEY PERSONNEL

The positions listed in Part 5 – Special Provisions, Special Provision 108B shall be the Design-Build’s key personnel for the Project. The Design-Build shall provide personnel that meet the minimum requirements specified in Part 5 – Special Provisions, Special Provision 108B.

The Design-Build’s Project Manager shall be the Design-Build’s representative and single point of contact.

The Department’s Project Manager may designate other positions as key personnel or change the designation of some of the positions as needed at any time during the Contract.

Key personnel shall be located in the Project vicinity for the duration of the Contract except for the following positions:

A) The Project Principal and QC Manager shall be available and present as necessary to fulfill their Project responsibilities;

B) The Design Manager and Design QC Manager shall be present through the completion of final design and shall be available as necessary for design changes and other design services during and after construction, including preparation of As-Built Plans; and

C) The Construction Manager and Construction QC Manager shall be present whenever construction activities are being actively pursued.

DIRECTORY

Within 15 days after NTP, the Design-Build shall submit to the Department’s Project Manager a directory and organizational chart showing all of its key personnel. The directory shall be updated throughout the Contract as changes occur. The directory shall include the names, titles, areas of responsibility, office address and location, office telephone and fax numbers, and cellular and/or pager numbers of key personnel. The Design-Build shall provide information sufficient for the Department to contact any of the key personnel on a 24 hour basis for the duration of the Contract.
The Department’s Project Manager shall provide a directory of the Department’s Project staff to the Design-Builder.

**DB 108-3.2 Temporary Absence of Key Personnel**

If any of the key personnel are to be absent from the Site for more than 48 hours, the Design-Builder shall inform the Department’s Project Manager in writing seven days in advance of an “acting” to represent the absent key personnel.

**DB 108-3.3 Changes in Key Personnel**

The Design-Builder shall assign the key personnel identified in the Design-Builder’s Proposal to this Project. Except in exceptional circumstances, as determined by the Department’s Project Manager, the Design-Builder shall submit the names and qualifications of proposed replacement key personnel to the Department’s Project Manager 30 days in advance of any replacement of any key personnel.

The Design-Builder may change key personnel only upon receipt of a written consent from the Department’s Project Manager. The Department’s Project Manager may require written justification from the Design-Builder explaining the replacement of any key personnel.

**DB 108-4 FINAL COMPLETION DATE AND CLOSING**

- **A)** All Work to be performed under the Contract shall be completed by the Final Completion Date stated in the Contract for the Project or within such extended time for completion as may be granted by the Commissioner. *(See Part 1 of Appendix to Form of Proposal and Part 5 – Special Provisions, Special Provision 108C.)* Whenever the Commissioner shall deem it necessary that any portion or certain portions of the Work shall be progressed in any particular manner or that any such portion or portions of the Work shall be completed pursuant to a certain sequence or schedule and before the date of completion of the entire Contract, the Design-Builder shall punctually comply with the related instructions, dates, and periods of time.

- **B)** If, during the progress of the Work, it should become necessary, because of the lateness of the season, to stop the Work, then the Design-Builder shall open proper draining ditches; erect temporary structures where necessary; provide temporary or permanent erosion control; prepare the Project so that there will be minimum interference with traffic; comply with all permit requirements; set up and maintain a competent organization, as directed by the Department’s Project Manager, to keep the Project in first class condition for traffic; and take every precaution to prevent any damage or unreasonable deterioration of the Work during the time it is closed.

**DB 108-5 FAILURE TO COMPLETE WORK ON TIME**

- **A)** For each Calendar Day that any Work shall remain uncompleted after the Substantial or Final Completion Dates, the amount per Calendar Day specified in Part 5 – Special Provisions, Special Provision 108C will be deducted from any money due the Design-Builder, not as a penalty but as liquidated damages, provided however that due account shall be taken of any adjustment of Substantial or Final Completion Dates as provided for in DB Section 108-6.2.
B) Permitting the Design-Builder to continue and finish the Work, or any part of it, after the Substantial or Final Completion Dates, or extensions thereto, will in no way operate as a waiver on the part of the State of any of its rights under the Contract.

C) The Commissioner may waive such portions of the liquidated damages as may accrue if he/she deems the Work is in such condition as to be safe and convenient for use by the traveling public. The Design-Builder is responsible and liable for said liquidated damages even in the event that the Design-Builder abandons the performance of the Contract or the Design-Builder is terminated pursuant to the provisions of this Contract.

D) The assessing of liquidated damages shall be in addition to engineering charges as provided for in DB Section 108-6.1.

DB 108-6  EXTENSION OF TIME

DB 108-6.1  Assessment of Engineering and Inspection Expenses

When the Work embraced in the Contract is not completed on or before the Final Completion Date specified therein, all appropriate engineering, oversight and Inspection expenses incurred by the State, its consultants, Inspection agencies, and railroad companies from the scheduled Contract Final Completion Date to the final date of completion of the Work, may be charged to the Design-Builder. When assessed, the charges shall be deducted from any monies due the Design-Builder. Before assessing such charges, the Department will give due consideration to factors attributing to such delay due to extenuating circumstances beyond the control of the Design-Builder, but limited to the following:

A) The Work or the presence on the Project Site of any third party, including, but not limited to, that of other contractors or personnel employed by the State; by other public bodies; by railroad, transportation, or Utility companies or corporations; or by private enterprises, or any delay in progressing such Work by any third party except as indicated or disclosed in the Contract Documents or ordinarily encountered or generally recognized as inherent in the Work;

B) The existence of any facility or appurtenance owned, operated, or maintained by any third party, except as indicated or disclosed in the Contract Documents or ordinarily encountered or generally recognized as inherent in the Work;

C) The act, or failure to act, of any public or governmental body or railroad, transportation, or Utility company or corporation, including, but not limited to, approvals, permits, restrictions, regulations, or ordinances not attributable to the Design-Builder’s submission, action, or inaction or the Design-Builder’s means and methods of construction;

D) Restraining orders, injunctions, or judgments issued by a court not caused by the Design-Builder’s action or inaction or the Design-Builder’s means and methods of construction;

E) Any industry-wide labor boycotts, strikes, picketing, or similar situations, as differentiated from jurisdictional disputes or labor actions affecting a single or small group of Subcontractors or Suppliers;

F) Any industry-wide shortages of Supplies or Material required by the Contract, as differentiated from delays in delivery by a specific or small group of Suppliers;

G) Unusually severe storms of extended duration or impact, other than heavy storms or climatic conditions which could generally be anticipated by the Design-Builder, as well as floods, droughts, tidal waves, fires, hurricanes, earthquakes, landslides, or other catastrophes;
H) Determinations by the Department to open certain Sections of the Project to traffic before the entire Work is completed;

I) Major unanticipated additional Work which significantly affects the scheduled completion of the Contract;

J) Additions to the scope of Work, additional Contract Work, Extra Work, delays in the review or issuance of Orders on Contract, or delays beyond the established time periods for Design Review which significantly affect the overall completion of the Contract;

K) Failure of the State to provide individual ROW parcels for an extended period of time beyond that indicated by the Contract if such unavailability, as determined by the Commissioner, significantly affects the scheduled completion of the Contract;

L) Any situation which was beyond the contemplation of the parties at the time of entering into the Contract; and

M) Situations covered by DB Sections 104-4 and 104-5.

Such charges will be assessed, however, in cases where the Work has been unduly delayed by the Design-Builder because of unwarranted reasons, inefficient operation, or for any other reason for which the Department determines the Design-Builder to be liable. Reasonable time necessary for Design Reviews, for changes or additions to the Work to meet field conditions which do not significantly affect the scheduled completion of the Contract, for delays incurred by seasonal and weather limitations, for localized labor actions and shortages of supplies or Material, and for other situations which should be anticipated are neither compensatory nor eligible for extensions of time without the assessment of engineering and inspection charges, except as provided for under DB Sections 104-4 and 104-5.

**DB 108-6.2 Extensions of Contract Time**

If a Project has been under partial or full suspension, upon lifting of the suspension, the Department’s Project Manager will furnish the Design-Builder a statement showing the number of Calendar or Working Days charged during the partial or full suspension period and will identify the Calendar or Working Days remaining in the Contract. The Design-Builder will be allowed one week after receipt of the statement in which to file a written protest identifying in what respect the statement is incorrect, otherwise the statement shall be deemed to have been accepted by the Design-Builder as correct. Only by mutual written agreement shall the Substantial Completion Date be extended or amended except when the Department orders Extra Work.

If the Design-Builder finds it impossible for reasons beyond its control to complete the Work within the Contract Time as specified or as extended in accordance with the provisions of this Section, the Design-Builder may, at any time prior to the expiration of the Contract Time as extended, make a written request to the Department’s Project Manager for an extension of time setting forth therein the reasons which the Design-Builder believes will justify the granting of the request. The Design-Builder’s plea that insufficient time was specified is not a valid reason for an extension of time. If the Department’s Project Manager finds that the Work was delayed because of conditions beyond the control and without the fault of the Design-Builder the Department’s Project Manager may extend the time for Substantial Completion in such amount as the conditions justify.

An extension will be granted for the time required to restore the Work to its original state where damage to the Work occurred from causes beyond the control of the Design-Builder. The extended time for Substantial Completion shall then be in full force and effect the same as though it were the original time for Substantial Completion.
If the Department’s Project Manager determines that the Extra Work does not impact the Critical Path of the Project, the additional time will be addressed in accordance with this Section. In all cases where Extra Work necessitates the extension of time the extension shall be negotiated and addressed in the Order on Contract for the Extra Work.

**DB 108-7 SUBCONTRACTING OR ASSIGNING THE CONTRACT**

Notwithstanding Part 1 – Agreement, Articles 5 and 32 and DB Section 107-4, the Department may assign a Design-Builder self performance requirement for this Contract.

*See Part 5 – Special Provisions, Special Provision 108D for more information on Design-Builder self performance.*

At the pre-work conference, the Design-Builder shall submit a list of intended Subcontractors and Material Suppliers. In addition, the Design-Builder will be required to update the list of Subcontractors and Material Suppliers as the Work progresses so that the Department will have, at all times, a current and accurate list of Subcontractors along with the Work that they perform and Material Suppliers along with the Material that they supply. The required forms for the submission of Subcontractor information will be supplied by the Department.

In the solicitation of Subcontractors to perform the subcontract Work under this Contract, prior to entering into any commitments for subcontracting or for purchase of supplies or Material or leasing of Equipment, the Design-Builder shall refer to the following publications to solicit participation of DBEs, MBEs, or WBEs. For Federal-aid contracts, the Design-Builder is required to consider Subcontractors from the Directory of Disadvantaged Business Enterprises published by the New York State Department of Transportation and administered by its OCR. For non-Federal-aid contracts, the Design-Builder is required to consider Subcontractors from the Directory of Minority and Women's Business Enterprises published by NYSDED. Requests for acceptance of Subcontractors shall be submitted to the Department’s Project Manager on the appropriate form.

For Federal-aid contracts, pursuant to 23 CFR 635.116, the Department cannot impose minimum subcontracting requirements or goals other than those necessary to meet the self performance criteria or the DBE program requirement, as found at DB Section 102-9.

All subcontracts shall be in writing and must contain all pertinent provisions of the Contract in regard to federal and State laws and regulations. No Contract Work is to be performed under a subcontract prior to Department’s Consultation and Written Comment regarding the Subcontractor from the Department’s Project Manager. No Work may be performed by a Subcontractor other than that specifically accepted by the Department’s Project Manager. Violations of the foregoing may result in no payment by the State for the related Work.

The Design-Builder shall allow the Department access to all subcontracts at all tiers and records regarding the subcontracts and shall provide copies of said subcontracts to the Department within ten Days of execution of each subcontract.

The intent of this Section shall not be circumvented by the Design-Builder by placing a Subcontractor’s employees directly on the Design-Builder’s payroll. If a person or group of people generally operated as an independent contractor, the Department will treat them as independent contractors for purposes of this Section.
The Design-Builder’s and its Surety’s liability under this Contract and the bonds shall not be waived or in any way diminished by subcontracting or other assignment of interest under the Contract.

The Design-Builder shall pay all Subcontractors their respective subcontract amounts for undisputed acceptable Work within 7 Calendar Days of receiving payment from the State. Failure to do so will result in the commencement and accrual of interest on amounts due to such Subcontractor for the period beginning on the date immediately following the expiration of such 7 Calendar Day period and ending on the date on which payment is made by the Design-Builder.

The Design-Builder shall retain no more than five percent of each payment to the Subcontractor, except that the Design-Builder may retain more than five percent but not in excess of 10% of each payment to a Subcontractor provided that prior to entering into a subcontract with the Design-Builder, the Subcontractor is unable or unwilling to provide performance and payment bonds, both in the full amount of the subcontract, at the request of the Design-Builder.

See the New York State Finance Law Section 139-f(2) for more information regarding payment of Subcontractors by the Design-Builder.

**DB 108-8  DEFAULT OF THE CONTRACT**

The Design-Builder may be declared to be in default of the Contract if the Design-Builder does any of the following:

A) Fails to begin the Work under the Contract within the time specified in the NTP;
B) Fails to perform the Work with sufficient resources (supervision, Workers, Equipment, and Material) to assure the prompt completion of said Work;
C) Performs the Work unsuitably or neglects or refuses to remove such Material or to redo such Work as may be rejected as unacceptable and unsuitable;
D) Discontinues the prosecution of the Work;
E) Fails to resume Work which has been discontinued within a reasonable time after notice to do so;
F) Becomes insolvent, is declared bankrupt, or commits any acts of bankruptcy or insolvency;
G) Allows a final judgment in a suit filed in connection with this Contract to stand unsatisfied for a period of 30 Calendar Days;
H) Makes an assignment, in connection with this Contract, for the benefit of creditors, without prior approval of the New York State Comptroller and the Department; or
I) For any other cause, except as provided in the Contract, fails to carry on the Work in an acceptable manner.

The Department’s Project Manager will give notice in writing to the Design-Builder and its Surety of such delay, neglect, or apparent default and will specify those provisions that have been violated and the corrective measure to be taken. If the Design-Builder or its Surety, within a period of 10 Calendar Days after such notice, does not proceed in accordance therewith, then the Department may, upon written notification from the Department’s Project Manager of the fact of such delay, neglect, or apparent default, and the Design-Builder’s failure to comply with such notice, have full power and authority without violating the Contract to declare the Design-Builder in default and take the prosecution of the Work out of
the hands of the Design-Builder and demand compliance by the Surety of the terms, conditions, and obligations contained in the performance bond executed by the Design-Builder and its Surety.

Upon the default of the Design-Builder as set forth above, the Surety shall take charge of said Work and complete the Contract at its own expense pursuant to the terms of this Contract, receiving, however, any balance of funds due and owing the Design-Builder under the Contract. In the event the Surety fails to so take charge of the Project upon the demand of the Department to do so, the Department may undertake to complete the Project with its own forces or may procure a competing contractor to finish the Work. All costs and charges thereby incurred by the Department, together with the cost of completing the Work under an alternative contract, will be deducted from the Contract funds which are due or may become due to the defaulting Design-Builder. If such expense exceeds the sum that would have been payable under the Contract, then the defaulting Design-Builder and the Surety shall be jointly and severally liable for the amount of such excess expense.
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(Project Name)
DESIGN-BUILD PROJECT

PIN _____________

DB CONTACT DOCUMENTS
PART 2

DB SECTION 108
PROSECTION AND PROGRESS

APPENDIX 108A
FORMS
DB SECTION 108A
APPENDIX 108A – FORMS
INDEX

AAP 21c - DB Contract Payments
AC2947 - DB Certification
FHWA-47M - Materials and Labor Used
Form SAF – Monthly Safety Report Format
Progress Narrative Format
Subcontractor Status
## Design-Builder Report of Contract Payments

<table>
<thead>
<tr>
<th>Final Report</th>
<th>Contract Number</th>
<th>County</th>
<th>Report Date</th>
</tr>
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<td>No</td>
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</table>

### Design-Builder Information
- **Name and Address**:
- **Federal Identification Number**:

### Subcontractor/Vendor Information
- **Name and Address**:
- **Federal Identification Number**:

### Payments Information
- **Total Payments Due to Date**:
- **Retainage or Other Withholding to Date**:
- **Total Payments to Date**:

### Comments:

### Certification
Section 139-f of the State Finance Law requires the Design-Builder to pay each of its subcontractors and/or materialmen the proceeds from the payment representing the value of work performed and/or materials furnished by the subcontractor and/or materialmen within 15 calendar days of the receipt of any payment from the public owner.

**Signed**: ____________________________________________  
**Title**: ____________________________________________  
(For Design-Builder)

**FINAL PAYMENT CERTIFICATION**
As an officer of the Subcontractor/Vendor identified above, and based on my personal knowledge, I certify that payment has been received in the amount stated herein pursuant to the last AAP HC-89 on file and that said work/services/product was performed/supplied solely by the Subcontractor/Vendor and that there were no rebates, refunds, or offsets applied to any payments except as noted under “Comments” above.

**Signed**: ____________________________________________  
**Title**: ____________________________________________  
(For Subcontractor/Vendor)

### Notarization for Final AAP-21c
- **Sworn to me this**
- **day of**
- **Notary Public**

---

Note to Subcontractor: If the Design-Builder has not paid your firm for work completed and accepted by the Department in accordance with the terms specified on this form, please contact the Department’s Project Manager for the Contract.
New York State Department of Transportation

AAP21c Form Instructions

Subcontractor/Vendor: Is defined as any subcontractor, materialmen, supplier or service provider with an AAPHC-89 on file for the contract.

Final Report: Check YES or NO, as appropriate, to indicate whether this will be the Final Report submitted for this Subcontractor/Vendor.

Contract No: Enter New York State contract number. (Example D257126).

County: Enter the name of county or counties this contract is located in. (Example: Albany).

Report Date: Enter date (Month/Day/Year) through which payments due and made are reflective of.

Design-Builder and Subcontractor/Vendor Data: Enter names, and addresses (including zip code), telephone numbers (including area codes) and Federal Identification Numbers for both the Design-Builder and Subcontractor/Vendor.

Total Payments Due to Date: Enter total of all invoices received to date for the supply of material or work completed or services performed by the Subcontractor/Vendor.

Retainage or Other Withholding to Date: Enter amount due Subcontractor/Vendor that has not been paid due to retainage or other withholding.

Total Payments to Date: Value of payments due to date less retainage or other withholding.

Comments: Amounts recorded as retainage or other withholding must be accompanied by a brief description of the circumstances necessitating the withholding along with item numbers involved (if any). Signatures: An authorized representative of the Design-Builder must sign and date.

Signatures on Final Report: An authorized representative of both the Design-Builder and Subcontractor/ Vendor sign and date.

Notarization: On the Final Report, or when directed by the Department, Design-Builder and Subcontractor/ Vendor signatures must be notarized.

The AAP-21c is a cumulative to-date report of the total payments due a Subcontractor/Vendor, total retainage or other withholdings, and the total payments made to the Subcontractor/Vendor. The AAP-21c is to be submitted by the fifteenth day of the month to the Department’s Project Manager, or when requested by the Department. The dollar values on this report should be accurate through the last day of the previous month. The Final AAP-21c should be submitted as soon as possible after the Subcontractor/Vendor has completed/supplied all of the work/services/products for which it was utilized, but not later than 60 days after the Subcontractor/Vendor has completed its commitment. This form is required as part of the contract documentation and shall be submitted with the Final Agreement and Estimate Package.

An AAP-21c is required for each Subcontractor/Vendor due payment on the contract for which there is an AAPHC 89 on file with the Department.

The Design-Builder shall submit the AAP-21c, signed by an authorized representative of the firm, to the Department’s Project Manager and a copy to each Subcontractor/Vendor due payment on the contract.

The Design-Builder’s portion of the Certification section of the Final AAP-21c must be completed and notarized.

The Design-Builder shall inform the Subcontractor/Vendor of its responsibility to review the form for accuracy and to have the Subcontractor/Vendor’s signature on the Final AAP-21c notarized.

This report is a written instrument within the meaning of Section 175.00 of the Penal Law. I am fully aware that it will be filed with the New York State Department of Transportation and become a part of the records thereof and that entering any false information hereon constitutes the crime of Offering a False Instrument for Filing in the first degree, which is a Class E Felony. (Penal Law, Section 175.35)
OFFICE OF THE STATE COMPTROLLER
DIVISION OF PRE-AUDIT AND ACCOUNTING RECORDS
BUREAU OF STATE EXPENDITURES

New York State Labor Law, Section 220-a
Design-Builder’s Certification

1. That I am an officer of ___________________________________________________________
   and am duly authorized to make this affidavit on behalf of the Design-Builder on Public Contract
   No. ____________________.

2. That I fully comprehend the terms and provisions of Section 220-a of the Labor Law.

3. That, except as herein stated, there are no amounts due and owing to or on behalf of laborers
   employed on the Project by the Design-Builder. (Set forth any unpaid wages and supplements,
   if none, so state).

   NAME          AMOUNT
   ____________________________________________
   ____________________________________________
   ____________________________________________

4. That the Design-Builder hereby files every verified statement(s) required to be obtained by the
   Design-Builder from the subcontractor(s).

5. That, upon information and belief, except as stated herein, all laborers (exclusive of executive or
   supervisory employees) employed on the Project have been paid the prevailing wages and
   supplements for their services through _____________________, (if more than one
   subcontractor list name and date separately) the last day worked on the Project by their
   subcontractor(s). (Set forth any unpaid wages and supplements, if none, so state and utilize
   clause 5 (A).

   NAME          AMOUNT
   ____________________________________________
   ____________________________________________
   ____________________________________________

(5A) That the Design-Builder has no knowledge of amounts owing to or on behalf of any laborers of
     its subcontractor(s).
6. In the event it is determined by the Commissioner of Labor that the wages or supplements or both of any such subcontractor(s) have not been paid or provided pursuant to the appropriate schedule of wages and supplements, then the Design-Builder shall be responsible for payment of such wages and supplements pursuant to the provision of Section 223 of the Labor Law.

_________________________________________
Signature

_________________________________________
Print Name

_________________________________________
Title

ACKNOWLEDGE:

STATE OF NEW YORK
COUNTY OF

On this _________________ day of _________________ 200__, before me personally came

_______________________________________, to me known and known to me to be the person described in and who executed for foregoing instrument and acknowledged that he executed the same.

_______________________________________
Notary Public

_______________________________________
County

If this affidavit is verified by an oath administered by a notary public in a foreign country other than Canada, it must be accompanied by a certificate authenticating the authority of the notary who administers the oath. (See CPLR § 2309©; Real Property Law, § 311, 312).
GUIDELINES ON COMPLETING FORM AC 2947
DESIGN-BUILDER’S CERTIFICATION

The following guidelines are provided to ensure uniform completion of the AC 2947.

1. Enter name of Design-Builder and Contract Number.

2. Nothing to enter.

3. This section pertains to the Design-Builders employees. Enter ‘NONE’ if all laborers have been paid the appropriate wages and supplements, otherwise indicate the name and amount due.

4. Verified statements referred to in this section means the subcontractor’s certification. Form AC 2948. An AC 2948 is required from each subcontractor for each wage rate period that each subcontractor performed Work on the Project. The term ‘hereby files’ means that the Design-Builder must provide all required AC 2948’s with their AC 2947.

5. This section refers to subcontractors and their employees. The date entered should be the last day of Work by the last subcontractor to perform Work on the Project. If more than one subcontractor was used a list must be provided with the last day of Work by each subcontractor indicated. Enter ‘NONE’ if the statement in 5A is true, otherwise indicate the name and amount due.

Page two of the form must be signed by an authorized officer of the Design-Builder in the presence of a notary public who shall complete the ACKNOWLEDGEMENT section of the form.
<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>ROADWAY</th>
<th>BRIDGE (Over 6 meters)</th>
<th>DATE STARTED*</th>
<th>DATE COMPLETED*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>LENGTH OF PROJECT</td>
<td>KILO-METERS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>FINAL* CONSTRUCTION COST</td>
<td>DOL.</td>
<td></td>
<td>TOTAL NO. BRIDGES</td>
<td></td>
</tr>
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</table>

**PART B** To be completed by contractor - see instructions on reverse (REMARKS Attach a plain sheet of paper)

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>TOTAL PROJECT</th>
<th>TOTAL LABOR-HOURS</th>
<th>GROSS EARNINGS</th>
<th>28 CLAY PIPE</th>
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<tbody>
<tr>
<td>4</td>
<td>TOTAL COST OF ALL MATERIALS AND SUPPLIES*</td>
<td>DOL.</td>
<td>PROJECT QUANTITY</td>
<td>CULVERT ITEMS</td>
<td>SIZE (cm.)</td>
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<tr>
<td>5</td>
<td>PETROLEUM PRODUCTS*</td>
<td>LIT.</td>
<td></td>
<td></td>
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<tr>
<td>6</td>
<td>CEMENT</td>
<td>KG.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>7</td>
<td>AGGREGATES PURCHASED</td>
<td>T.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>8</td>
<td>AGGREGATES PRODUCED</td>
<td>M³</td>
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<tr>
<td>9</td>
<td>BITUMINOUS MATERIAL</td>
<td>LIT.</td>
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<tr>
<td>10</td>
<td>LUMBER</td>
<td>THSD BD. M.</td>
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</tr>
<tr>
<td>11</td>
<td>REINFORCING STEEL</td>
<td>KG.</td>
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<tr>
<td>12</td>
<td>STRUCTURAL STEEL</td>
<td>KG.</td>
<td></td>
<td></td>
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<tr>
<td>13</td>
<td>READY-MIXED CONCRETE</td>
<td>M³</td>
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<tr>
<td>14</td>
<td>PREMIXED BITUMINOUS PAVING MATERIALS</td>
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<td>AGGREGATES PRODUCED</td>
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<td>16</td>
<td>MISCELLANEOUS STEEL</td>
<td>KG.</td>
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<tr>
<td>17</td>
<td>NOISE BARRIERS</td>
<td>LIN M.</td>
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</tr>
<tr>
<td>18</td>
<td>GUARDRAIL</td>
<td>LIN M.</td>
<td></td>
<td></td>
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<tr>
<td>19</td>
<td>BRIDGE RAIL</td>
<td>LIN M.</td>
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<tr>
<td>20</td>
<td>FINAL CONTRACT AMOUNT FOR SIGNS</td>
<td>DOL.</td>
<td></td>
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<tr>
<td>21</td>
<td>FINAL CONTRACT AMT. FOR LIGHTING</td>
<td>DOL.</td>
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<td></td>
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<tr>
<td>22</td>
<td>FINAL CONTRACT AMT. FOR TRAFFIC SIGNALS</td>
<td>DOL.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* MUST BE REPORTED ON ALL REPORTS

**MUST BE REPORTED ON ALL REPORTS**

REVIEWED BY ____________________________ DATE ____________________________
STATEMENT OF MATERIALS AND LABOR USED BY CONTRACTORS ON HIGHWAY CONSTRUCTION INVOLVING FEDERAL FUNDS

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this form is 2125-0033. The average completion time for this form is 5 hours. If you wish to make suggestions, please fax them to 202-366-3988; or mail to:

Federal Highway Administration
Construction Cost Analysis Group, HNG-13
400 7th Street, SW
Washington, D.C. 20590
GENERAL REQUIREMENTS

Form FHWA-47 should be transmitted for each Federal-aid project involving construction performed under contract awarded by competitive bidding that is located on the National Highway System (NHS), except projects for which the total final construction cost of the roadway and bridge is less than $1,000,000 or projects consisting primarily of (1) the installation of protective devices at railroad grade crossings, or (2) highway beautification.

Form FHWA-47 should be transmitted with or, if data is already available, in advance of the Final Report required by Federal-aid Policy Guide Chapter 6 G 6011.11

A separate form should be transmitted for each contract except that data for two or more contracts on the same project may be combined when such contracts are completed at approximately the same time. In case of a combination, the earliest starting date and the latest completion date should be reported. Where a single contract covers more than one project, one form may be prepared for each project or for the entire contract, provided none of the data are duplicated. A Form FHWA-47 should not be prepared for a contract covering only the purchase of material but the quantity of material should be reported when subsequently included in a construction project. In all cases, only the original of Form FHWA-47, typed or clearly lettered, and no carbon or photocopies, should be transmitted to the Washington Office.

If nonparticipating work is included in the contract, all data should be combined with the Federal-aid data in preparing the form. Data for any subcontract must be combined by the State or the division office with the prime contract if not so combined by the prime contractor. It will be the State's responsibility to see that all prime contract and subcontract costs, material, and labor-hours have been reported for each contract, and no duplication of data are involved. Quantities of State-furnished materials should be included with contract quantities, and costs of STATE-furnished materials should be added to Item 2 "Final Construction Cost" and also to Item 4 "Total Cost of All Materials and Supplies." All quantities should be reported to the nearest whole unit and only in the units specified. All costs should be reported to the nearest dollar.

Check urban or rural to indicate whether the major cost is for work within an urban area or in a rural location.

All figures should be verified for reasonableness by State highway department and Federal Highway Administration division office engineers. The total material cost and the total labor-hours and gross earnings should bear reasonable relationships to the final construction cost. Also the quantity of each material reported should be reasonable with respect to the quantities of other materials. For example, if a large quantity of reinforcing steel is reported with no cement or ready-mixed concrete, an error of omission in reporting would be indicated.

Generally, the total cost of materials, supplies, and labor should be substantially less than the final construction cost, as the latter also includes costs of equipment ownership, overhead, and profit which are not required to be reported. If the final construction cost is less or only a few percent more than the total cost of materials, supplies and labor, the indication is that the contractor suffered a loss on the project or that there is an error in reporting. In such case, if it is determined that the figures reported are correct, a statement should be made on a plain sheet of paper marked "Remarks" to the effect that the contractor actually did suffer a loss, (verify with contractor).

Part B - INFORMATION TO BE SUPPLIED BY CONTRACTOR IMMEDIATELY UPON COMPLETION OF CONTRACT OR PROJECT

Specific Instructions for the Following Numbered Items:

Item 3 - Report total labor-hours worked and earnings of all contractor's employees on the project, including those on operation and maintenance of equipment.

Item 4 - This should be the total cost, at the jobsite of all construction materials and supplies purchased for and used on the project, including the cost of materials for signing and lighting and the cost of any materials and supplies not specifically listed herein. Costs of equipment or equipment rental and the cost of operating the equipment, except the costs of fuel and lubricants, should not be included in this item. Small items of equipment such as jackhammers, handtools, repair parts, tires, etc., are not considered to be supplies. Costs of such items and also overhead costs should not be included. The amount included here for aggregates produced should be only the cost paid by the contractor for the aggregates and should not include the costs of excavating, processing, loading and hauling. Wages and labor-hours for aggregates produced should, of course, be included with Item 3.

Item 5 - Report total number of liters of all gasoline, diesel oil, lubricating oil, and grease for equipment and trucks. For conversion purposes use factor of 3.6 kilograms of grease per 3.8 liters.

Items 6, 7, and 8 - Report quantity of cement used on project. Do not report here the cement included in Item 15.

Items 9 and 10 - Report quantity of aggregates purchased from commercial producers, such as sand, gravel, crushed stone, etc. Do not report here aggregates included in Items 15 and 16. Aggregates produced by the contractor shall be reported as Items 17 and 18.

Item 11 - Report number of liters of bitumens such as asphalt and tar. Do not report here bituminous materials included in Item 16.

Item 12 - Report all lumber products purchased for and use on the project, including plywood and pressed wood, but excluding timber piling, lumber in fencing, guardrail, and signs, and lumber purchased for use on previous projects and previously reported. The quantity of lumber should be reported as the number of thousand board meters and not as the number of board feet.

Item 13 - Report total number of kilograms of reinforcement (plain or coated) for both structures and pavement. Include estimated quantities of reinforcing and prestressing steel in purchased precast units, except concrete pipe reinforcement.

Item 14 - Report total number of kilograms of structural steel, steel H-piling, and sheet piling.

Item 15 - Report total number of meters of ready-mixed concrete plus estimated quantity of concrete in purchased precast units, excluding Item 27.

Item 16 - Report total number of metric tons of bituminous paving mixtures that are purchased in a prepared condition ready for placement as they reach the job.

Items 17 and 18 - Report total quantity of aggregates such as sand, gravel, crushed stone, etc., produced by the contractor.

Item 19 - Report estimated total weight of steel products not appropriate for Items 13, 14 and 26, such as joint devices, tabular piling, etc.

Items 20, 21, and 22 - Report total lengths, in linear meters, of all types of noise barriers, guardrail and bridge rail.

Item 23 - Report final contract amount for all types of signs including foundations, posts, structural supports, etc. Do not include traffic signals.

Item 24 - Report final contract amount for highway and bridge lighting including foundations, conduits, standards, wiring, switches, luminaires, etc. Do not include traffic signals.

Item 25 - Report final contract amount for traffic signals.

Item 26 - Report, by size, regardless of class, type, gauge or coating, total number of linear meters of corrugated steel pipe, structural plate pipe, pipe-arches and arches.

Item 27 - Report, by size, regardless of class, type, gauge or coating, total number of linear meters of plain and reinforced concrete drain and culvert pipe.

Item 28 - Report, by size, total number of linear meters of clay pipe.

Item 29 - Report, by size, total number of linear meters of corrugated aluminum culvert.

Item 30 - Report, by size, total number of linear meters of plastic pipe.

*Quantities of steel, concrete and lumber used in connection with Items 20, 21, 22, 23, 24, and 25 should not be reported unless difficulties are encountered in segregating such quantities from total quantities.
FORM SAF  
Monthly Safety Report Format  
(DB Sections 107-7.5.8 and 108-1.3)

Design-Builder’s Name: ____________________________  
Period Covered (Month and Year): ____________  
Name of Design-Builder’s Safety Manager: ________________

<table>
<thead>
<tr>
<th>Item</th>
<th>Contract Total</th>
<th>Contract Cumulative Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. Man-Hours Worked (Construction)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. Lost Workday Cases (entire shift lost)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. Restricted Workday Cases (partial shift lost or reassigned to “light” duty)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. Cases Requiring Medical Attention</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. Fatalities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. On-Site Safety Meetings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. On-Site Equipment Accidents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. Vehicle Accidents, including off-site accidents by vehicles working on Contract</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. New Workers on Site During Period</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. New Worker Safety Orientation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. Supervisor/Foreman Safety Sessions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. Site Safety Inspections</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. Describe circumstances surrounding each lost workday and each fatality case.

2. Describe actions taken and/or planned to prevent reoccurrence.

Signed for the Design-Builder:

(Signature) ____________________________  
(Printed or typed name) ____________________________  
(Date) ____________________________  

(Signature) ____________________________  
(Printed or typed name) ____________________________  
(Date) ____________________________  

Form SAF
Design-Builder: _____________________________  

Progress Report No. _______  Period Covered: ____________  
(Enter inclusive dates)  

1. Summary of design activity and progress:  

2. Summary of construction activity and progress:  

3. Price Centers Started and/or Completed during Period:  

<table>
<thead>
<tr>
<th>Price Center Code</th>
<th>Price Center Title</th>
<th>Started This Period (Enter date)</th>
<th>Completed This Period (Enter date)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

4. Progress Check Points Achieved This Period  

<table>
<thead>
<tr>
<th>Price Center Code</th>
<th>PCP Number</th>
<th>Description</th>
<th>Planned or Specified Date of Completion</th>
<th>Actual Date of Completion</th>
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</thead>
<tbody>
<tr>
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<td></td>
<td></td>
</tr>
</tbody>
</table>
5. Summary of QC Efforts:
   a) Design (include results of any Design Reviews conducted during period):
   b) Construction:

6. Summary of problems/issues that arose during the period and remaining issues to be resolved:

7. Summary of resolution of problems/issues raised in previous progress report or resolved during the period:

8. List of accident(s) during period (indicate type, frequency, and severity) and description of corrective actions taken:

9. Summary of critical issues and proposed resolution. Discuss actions planned to correct any negative float. Explain potential delays and/or problems and their estimated impact on performance and the overall completion date:

10. Actions requested and/or required of the Department, including Design Reviews and visits:

11. Other items:

12. Photographs.

For the Design-Builder: ________________________________  ________________________________
   (Signature)  (Date)
   (Printed or Typed Name)
   Design-Builder’s Project Manager
## STATUS OF SUBCONTRACTORS

**Project # D ________**

<table>
<thead>
<tr>
<th>Name &amp; Address</th>
<th>Date on AAPHC 89</th>
<th>First Day of Work</th>
<th>Last Day of Work</th>
<th>Date on AC 2948</th>
<th>Is Sub Finished?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

---

Contract Form
(Project Name)
DESIGN-BUILD PROJECT

PIN _____________

DB CONTRACT DOCUMENTS
PART 2

DB SECTION 109S
PRICE, PROGRESS, AND PAYMENT
FOR SMALLER, LESS COMPLEX
PROJECTS
This page is intentionally left blank.
SECTION 109S
PRICE, PROGRESS, AND PAYMENT
(SMALLER, LESS COMPLEX PROJECTS)

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SECTION 109S
PRICING, PROGRESS, AND PAYMENT
(SMALLER, LESS COMPLEX PROJECTS)

This DB Section 109S describes and specifies the pricing concepts, specifies the means of determining the Work progress, and establishes the procedures for requesting and making payment.

109S-1 PRICING CONCEPT

Price Centers (PC) will be used for all pricing. The price for each PC will be reflected as a Price Center Value (PCV) on Form SP, Schedule of Prices. The sum of all the PCVs will be the Contract Price.

The pricing concept is summarized as follows:

A) Price Centers are identified and defined for management, design, construction, and support activities on the Project;
B) Price Center Values (lump sum prices or the sum of Unit Priced items) are assigned to each PC and to designated activities within each PC by the Proposer/Design-Builder per the Instructions To Proposers (ITP); and
C) Details of the process are described in this DB Section 109S.

109S-1.1 Price Centers

[Note: Delete references to Price Centers 4 and 5 if those activities are “rolled” into Price Center 1 for smaller, less complex projects.]

109S-1.1.1 General Requirements for Defining Price Centers

Form PCD shows the Department’s suggested titles and limits of PCs. The Proposer/Design-Builder may adjust the PC titles, contents, and limits subject to the requirements noted below, but shall designate PCs of a similar magnitude and nature to those shown on Form PCD.

The Proposer/Design-Builder shall divide the Project into PCs each representing one or more groups of inter-related Work forming part of the Project. The Proposer/Design-Builder will use the following indicators to create the PCs, as applicable to the Project:

A) Price Center 1 for preliminaries and general requirements, including activities shown in Form PC1 and Table 190S-1;
B) Price Center 2 for Project-wide engineering and design activities, including activities shown in Form PC2;
C) Price Center 3 for Maintenance and Protection of Traffic (MPT) activities, including those shown on Form PC3;
D) Price Center 4 for Project-wide environmental monitoring and mitigation activities shown on Form PC4;
E) Price Center 5 for public information/community relations activities, including those listed on Form PC5;
F) Price Center 6 for Hazardous Materials and contaminated substance remediation activities, including activities shown on Form PC6;
New York State Department of Transportation

G) Price Center 7, Interim Payments (see Part 5 – Special Provisions, Special Provision 697); and

H) Construction PCs - Price Centers 8 and on represent groupings of related construction activities.

See the ITP, Appendix C, for all pricing forms.

For all PCs except PCs 1, 2, 3, 4, 5, 6 and 7, (Forms PC1, PC2, PC3, PC4, PC5, PC6, and PC7), the Proposer/Design-Builder shall provide a description identifying the scope of Work for each PC in bulleted or narrative form on Form PCD. The Proposer/Design-Builder may include a list of the key components shown on Form SP in each PC description. The Proposer/Design-Builder must generally describe all the Work encompassed within each PC and clearly cross reference items of a similar nature that are included in other PCs.

109S-1.1.2 Mobilization
Mobilization shall be an activity in PC 1. Mobilization shall not exceed four percent of the Contract Price.

109S-1.1.3 Material Delivered to the Site
If the Proposer/Design-Builder plans to request payment for Material delivered to the Site, it must show delivery of the Material as an activity of the associated PC. See also DB Section 109S-6.3.

109S-1.1.4 Specific Rules for Price Centers
The following rules apply for PCs.

A) Price Centers 1 Through 7
The Proposer/Design-Builder may add Project-wide activities to Forms PC1 through PC7, but shall not delete any of the activities shown on Forms PC1 through PC7.

B) Other PCs
1) Price Centers shall not contain more than one Critical Path; and
2) The Design-Builder may find it beneficial to place significant portions of the Project that will be completed by a separate Subcontractor and/or represent significant differences in crafts and/or trades, such as Utility Relocations, in separate PCs.

109S-1.2 Options

109S-1.2.1 Option 1 – Schedule of Values
The Department may exercise Option 1, Schedule of Values, by the date specified on the Appendix to the Form of Proposal. In exercising Option 1, the Department may delete, at its sole discretion, any items and their associated Unit Prices listed on Form SOV, Schedule of Values, and include the revised Form SOV in the Contract at Part 10.

Form SOV (included in the Price Proposal) will be incorporated into the Contract at Part 10 when and if Department exercises the option. The Unit Prices shown on Form SOV will be the Unit Price for Orders-on-Contract for all additions or deletions of Work included in the items on Form SOV. The prices shown on Form SOV will include the cost of all construction labor, Equipment, Material, project management, and Design-Builder and Subcontractor markups. The Unit Prices shown on Form SOV do not include engineering or design costs.
109S-1.2.2 Other Options

[Add other options as required. Warranties, if any, shall be proposed and priced as options.]

109S-1.3 Revisions during the Contract

109S-1.3.1 Revisions to Price Centers

In the event that revisions to the PCs are required during the Contract, the following procedures shall apply:

A) Where new PCs are required, the Design-Builder shall revise and submit the following to the Department’s Project Manager:
   1) Form SP; and
   2) Form PCD.

B) Where revisions to existing PCs are required, the Design-Builder shall revise and submit the following to the Department’s Project Manager:
   1) The appropriate revised PC descriptions on Form PCD; and
   2) Any change to Form SP including any revisions to PCs 1, 2, 3, 4, 5, and/or 6 on Forms PC1, PC2, PC3, PC4, PC5, and/or PC6.

109S-1.3.2 Revisions to Schedule of Prices

The Design-Builder shall revise the affected PCVs and Form SP to incorporate any change to the Contract Price. The Design-Builder will update Forms SP and PCD, including Forms PC1, PC2, PC3, PC4, PC5, and/or PC6, as appropriate, and submit them to the Department’s Project Manager for written Approval.

109S-2 MEASUREMENT/DETERMINING PROGRESS

Unless specified otherwise in the Contract Documents, there will be no measurement of quantities to determine payment due, except for any Unit Price items.

The Design-Builder shall measure Unit Price items as specified in DB Section 109S-2.6, or per the Project Specifications developed by the Design-Builder and accepted by the Department for items that have Unit Prices.

For PCs and/or Orders-on-Contract paid on a Force Account basis, the Design-Builder shall substantiate progress with submittal of statements specified in DB Section 109S-9.3.

For PCs and/or Orders-on-Contract paid on a Unit Price basis, the Design-Builder shall substantiate progress with submittal of invoice documents specified in DB Section 109S-6.2.

For all Work paid on a lump sum basis, progress and payment shall be determined as follows.

109S-2.1 Price Center 1

A) Except for payment for payment and/or performance bonds, insurance, and mobilization, payment will be made in equal monthly amounts throughout the duration of the Contract for Work with PC 1, provided work required under PC 1 is performed and submitted per Contract requirements. If PC 1 Work does not meet or is not submitted per Contract
requirements, payment for PC 1 Work will be suspended at the previous month’s cumulative level until Work is brought into compliance.

B) Where the Contract requires submittal of a payment and/or performance bond, the requirement is met when the bond has been provided in the amount and under the terms required in the Contract and by a Surety which the Department accepts. Payment will be made on the amount shown on the paid receipt for such bond.

C) Where the Contract requires the submittal of insurance certificates or similar documents, the requirement is met when the document has been delivered to the Department’s Project Manager and content of the document is shown to meet the Contract requirements and the Department’s Project Manager notifies the Design-Builder in writing of that determination. Payment will be made in the amount shown on the insurance premium(s).

D) Mobilization shall be invoiced at the end of the period following submittal of the Baseline Progress Schedule that the Department’s Project Manager acknowledges in writing meets the Contract requirements.

E) Where the Contract requires the submittal of a specified Plan or similar document, the requirement is met when the Plan has been submitted and the Department’s Project Manager acknowledges in writing that the Plan or document meets Contract requirements.

F) Where the Contract requires an audit and/or update of a specified Plan, the requirement is met when the report of the audit and/or Plan update is submitted to the Department’s Project Manager and the Department’s Project Manager acknowledges or Approves (if specified) in writing, after receipt of the report or update, that it meets the Contract requirements.

G) For continuing activities listed in Table 109S-1, the requirements are met when the specified standards and/or requirements, such as those listed in Table 109S-1, are met.
## TABLE 109S-1

### PRICE CENTER 1 CONTINUING ACTIVITIES STANDARDS

<table>
<thead>
<tr>
<th>Activity</th>
<th>Requirement/Standard</th>
</tr>
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</table>
| **Project management and construction management** | • Monthly progress reports prepared and submitted in accordance with DB Section 108-1.3;  
• Key personnel are on Site and meet qualifications requirements of Part 5 – Special Provisions, Special Provision 108B;  
• Meetings conducted and attended, and minutes prepared in accordance with, DB Section 105-16;  
• Baseline Progress Schedule submitted and maintained in accordance with Part 5 – Special Provisions, Special Provision 108A;  
• Required notices given to the Department’s Project Manager in timely manner; and  
• Contract submittal list submitted and updated in accordance with DB Section 108-1.8. |
| **Quality Control (QC) of management and construction** | • Quality Plan and updates submitted and receive Department’s Project Manager’s written acknowledgement in accordance with DB Section 113;  
• Management and construction activities conducted in accordance with the Quality Plan;  
• Sampling and testing conducted in accordance with DB Section 105-8; and  
• Documentation prepared and maintained in accordance with DB Sections 111-18 and 112-10. |
| **Security** | • Site Security Plan and updates submitted and Department’s Project Manager’s written acknowledgement of Plan received in accordance with DB Section 107-8.2; and  
• Security facilities maintained and security services provided in accordance with the Site Security Plan. |
| **Facilities and Equipment provided for Department** | • Facilities and Equipment provided, maintained, and cleaned, and Utilities provided and paid for, in accordance with Part 5 – Special Provisions, Special Provision 637, and Part 9 – Standard Specifications & Engineering Instructions, Section 637. |
| **Safety** | • Safety Plan and updates submitted and received Department’s Project Manager’s written acknowledgement in accordance with DB Section 107-7.5; and  
• Construction Work conducted in accordance with DB Section 107-7 and the Safety Plan, including submittal of required reports. |
| **Communications** | • Communications Equipment and services, including courier service, provided in accordance with Part 5 – Special Provisions, Special Provision 637. |
| **Design-Builder’s temporary facilities and Site maintenance** | • Site and facilities maintained in accordance with DB Section 107. |
| **Insurance** | • Specified levels of insurance maintained in accordance with DB Section 107-25. |
109S-2.2 Price Centers Associated with Engineering and Design

The Progress Check Points (PCP) are met when the requirements for preconstruction engineering, design and design management, and design QC, including Design Reviews, have been achieved for the applicable Design Unit including the specified reports, documentation, and QC records; the certifications of the Designer and the Design QC Manager; and the Department’s Project Manager’s written acknowledgement. In the case of design studies and/or reports, the PCP is met when the Department’s Project Manager issues a written acknowledgement regarding the study or report.

Progress will be determined on a cumulative percent complete basis as agreed between the Design-Builder and the Department’s Project Manager consistent with the percent complete show on Form DUS (see DB Section 111-3).

109S-2.3 Price Centers 3 Through 6

Except for PC Work paid by Force Account or Unit Price basis, payment will be calculated on a straight line basis, with equal incremental payments from the planned start to the planned completion of the Work in the PC, except as may be adjusted per 109S-7. If Work is not performed per Contract requirements, payment may be suspended at the previous month’s level until Work is brought into compliance.

109S-2.4 Price Center 7

Interim payment will be calculated per Part 5 – Special Provisions, Special Provision 697.

109S-2.5 Price Centers Associated with Construction

Progress will be determined on a cumulative percent complete basis as agreed between the Design-Builder and the Department’s Project Manager. The Design-Builder will not be considered to have progressed the Work under the following circumstances:

A) Quality Control procedures have not been followed and documentation has not been provided, as documented by Non-Conformance Reports (NCR);

B) Required temporary Erosion Control measures are not in place; and/or

C) Environmental requirements have not been met.

109S-2.6 Unit Priced Work

In computing amounts in estimates or Work done under Unit Prices, all estimates, including the final, will be made for actual quantities of Work performed and Material placed in accordance with the requirements contained in the Project Specifications, Design Plans, and standard sheets (except as provided under DB Section 109S-6.3) as determined per DB Section 109S-6.2, and the resulting quantities involved in the Contract shall be accepted as final, conclusive, and binding upon the Design-Builder. If quantities of earthwork are to be paid under a Unit Price basis, the planimeter shall be considered one instrument of acceptable precision, and the quantities computed from areas obtained by its use shall be accepted by all parties hereto as accurate. However, arithmetical computations, utilizing any type of computing device and software shall also be considered instruments of acceptable precision. The choice of instrument shall be that of the Department’s Project Manager and may vary by contract as deemed appropriate.
OVERTIME DISPENSATION REQUIREMENTS FOR NON-FEDERAL-AID CONTRACTS

All Proposers should base their Price Proposals and Work progression on the assumption that overtime dispensation pursuant to Article 8 of the New York State Labor Law for any Workers, laborers, and mechanics to Work more than eight hours in any one Calendar Day or more than five Days in any one week will not be granted for any operation for the duration of the Contract. Subsequent to Award, where the Request For Proposal (RFP) has imposed specific scheduling and/or phasing requirements or where it is determined by the Department to be in the best interest of the public, the Department may process, for approval by the New York State Department of Labor (NYSDOL), requests for overtime dispensation on certain specific operations and, in the event that NYSDOL approves such overtime dispensation, there shall be no adjustment in the Contract Price for such dispensation.

CHANGES TO CONTRACT PRICE

The Contract Price shall be increased or decreased only by an Order-on-Contract issued in accordance with DB Section 104-3 and DB Section 109S-9.

The Design-Builder shall revise the PCVs in accordance with the terms of an Order-on-Contract and submit the revisions to the Department’s Project Manager for written Approval.

The Department’s Project Manager may decide the applicable PC for the purpose of any revision in accordance with this DB Section 109S-4 if and insofar as the same is not identified in the pricing documents, and shall notify the Design-Builder in writing upon making any such decision.

Notwithstanding this DB Section 109S-4, the Department’s Project Manager may decide not to include a sum payable to the Design-Builder pursuant to the Contract in a PCV, in which case the Department’s Project Manager shall notify the Design-Builder of the decision and the Design-Builder may apply for payment of the sum in accordance with DB Section 109S-6.

PAYMENTS ON CONTRACT

The attention of Proposers is specifically called to the provisions of Sections 70, 71, and 79-a of the New York State Lien Law that apply to funds being received by a Design-Builder for a public improvement. These provisions declare that the funds received by the Design-Builder shall constitute trust funds in the hands of the Design-Builder and shall be applied first to the payment of certain claims.

In accordance with Part 1 – Agreement, Article 9, payments to the Design-Builder for Work satisfactorily performed will be made monthly. No monthly payment will be made unless the value of the Work done is equal to five percent of the Contract Price or $1,000.00, whichever is the lesser. At the Design-Builder’s request, semi-monthly estimates may be rendered provided the value of the Work performed in a two week interval is in excess of $50,000.00 or if, in the opinion of the Department, it is to the best interests of the State to do so. When a performance bond is approved, five percent shall be retained from each periodic payment or estimate until Final Acceptance of the Work.

As set forth in Supplemental Information Available to Proposers (CONR 9i-DB), this Contract may be funded by monies from other governmental or non-governmental entities which may include municipalities, Counties, towns, villages, or authorities. If the Contract is funded by monies from the New York Thruway Authority as set forth in Supplemental Information Available to Proposers (CONR 9i-DB), separate payment may be made by both the State of New York and the New York State Thruway Authority.
No certificate approving or authorizing the first partial payment or, in the event there shall be no first partial payment, no certificate approving or authorizing any final payment, shall be made to a Foreign Contractor unless such Foreign Contractor has furnished satisfactory proof that all taxes due by such Foreign Contractor under the provisions of Articles 9, 9A, 16, and 16A of the New York State Tax Law have been paid. The certificate of the State Tax Commission to the effect that all such taxes have been paid shall be conclusive proof of the payment of such taxes.

109S-5.1 Scope of Payment

The Design-Builder shall receive and accept compensation provided for in the Contract as full payment for furnishing all Material and for performing all Work under the Contract in a complete and acceptable manner and for all risk, loss, damage, or expense of whatever character arising out of the nature of the Work or the prosecution thereof.

109S-5.2 Payment Concept

Payment will be calculated on a percent of Work complete basis except for Work performed under other specified means, such as Unit Prices and/or Force Account and PCs 1 and 3 through 7 (see DB Sections 109S-2.1, 109S-2.3, 109S-2.4, 109S-6.2 and 109S-9).

The Design-Builder will be paid monthly based on the percentages of Work complete and amounts agreed between the Design-Builder and the Department’s Project Manager for each PC.

The cumulative amount earned at the end of each period will be determined by multiplying the PCV by the agreed percent complete.

If the Design-Builder and the Department’s Project Manager cannot come to agreement on the percent complete or amount due, the determination of the Department’s Project Manager shall be used as the basis of the request for periodic payment. The Department’s Project Manager shall submit a written statement to the Design-Builder outlining the rationale behind any substantial adjustment.

Payment will be based on the Price Proposal (which has been incorporated into the Contract at Part 10 – Design-Builder’s Proposal, upon Award of the Contract).

Requirements relating to requests for payment for the Work are set forth in DB Section 109S-6.

109S-5.3 Progress Payments

Unless otherwise specified, no payment will be made for Work until its completion in accordance with the Specification.

109S-5.4 No Payment on Design-Builder’s Non-Compliance

In accordance with Part 1 – Agreement, Article 9, no estimate for the purpose of payment will be completed so long as any lawful or proper direction to the Design-Builder by the Commissioner or his/her designee concerning the Work or Material has not been complied with. See also DB Section 109S-7.1(B)(4).
109S-6  REQUESTS FOR PERIODIC PAYMENT

The Design-Builder shall submit all requests for payment to the Department’s Project Manager with the monthly progress report (see DB Section 108-1.3) signed by the Design-Builder’s Project Manager or Deputy Project Manager, except that the request for final payment must be signed by the Design-Builder’s Project Manager or designated Project Principal. The Design-Builder shall submit the request by the fifth Day of each month (if a Holiday, the next Work Day) or other mutually agreed date.

The Design-Builder’s Project Manager, QC Manager, and Design Manager shall execute the certifications on Form PP(S).

There will be no advance payments.

Mobilization will be paid per DB Section 109-1.1.2.

The Design-Builder shall submit the request for periodic payment using the format illustrated in Form PP-S (Appendix 109S-A). The Design-Builder will complete the request for periodic payment in accordance with the instructions shown on Form PP-S. The maximum cumulative payments at any point in time shall not exceed the sum of planned cumulative payment for each PC.

109S-6.1  Payment Requests with the Monthly Progress Report

Each application for periodic payment shall contain the following:

A) The amount claimed to be payable using Form PP-S, setting out the percentage and amount of each PCV, including amounts due under Force Account PCs and/or Orders-on-Contract;

B) Any other amount claimed to be payable or deducted pursuant to a determination of the Department’s Project Manager, identifying the relevant determination; and

C) A certificate included on Form PP-S certifying progress reported and compliance with Contract requirements. The certification shall be signed by the Design-Builder’s Project Manager/Deputy Project Manager, QC Manager, and Design Manager.

109S-6.2  Unit Price Work

The Design-Builder shall submit a summary table of quantities with the request for periodic payment indicating location, item number and description, quantity, Unit Price, and total amount due for the period covered by the invoice. The Design-Builder will attach copies of quantity measurement notes or field book entries stamped and signed by a New York-licensed professional engineer or surveyor in the Design-Builder’s construction QC organization. The Design-Builder’s Project Manager or Deputy Project Manager and the Construction QC Manager must sign and date the summary table.

The Design-Builder shall measure quantities per DB Section 109S-2.6.

109S-6.3  Partial Payment for Material Delivered to the Site

Upon application by the Design-Builder, using Form 109S-6A (Appendix 109S-A), and Approval by the Department’s Project Manager, payments for the actual cost of certain Material may be made to the Design-Builder prior to incorporation of such Material in the permanent Work. To be eligible for partial payment, Material must meet all of the following conditions:
A) Be included on the List of Material in this DB Section 109S-6.3;
B) Have a minimum Material cost of $5,000.00;
C) Be Material that will be incorporated into permanent Work;
D) Be in a condition which is ready for on-site installation without further fabrication or processing;
E) Be delivered and stored at the Site of the Work or at a site and in a manner approved by the Department’s Project Manager; and
F) Be Material which will be stored a minimum of 60 Days.

With application for partial payments, the Design-Builder shall provide documentation as follows:

1) Bill(s) of sale or vouchers indicating the actual dollar value paid by the Design-Builder for the Material as stored;
2) Certification of title (Appendix 109S-A - Form 109S-6B) showing that title to the Material, without encumbrances, is in the name of the Design-Builder and that title is warranted to the New York State Department of Transportation;
3) Documented evidence of acceptability of the Material; and
4) If the Material is stored on private property, a release and waiver covering such Material (Appendix 109S-A - Form 109S-6C), and providing access to the storage site, which release and waiver shall be executed by the property owner in favor of the New York State Department of Transportation or its agents.

When applying for partial payment of products which are claimed to be in short supply or unique to an individual project, the Design-Builder shall include documentation supporting that claim, to the satisfaction of the Department’s Project Manager. The amount of partial payments shall not exceed the total invoice amount for stored Material, nor shall the partial payment for Material relating to any Contract Work item exceed 85% of the price for that item. The quantity of Material for which payments are made shall not exceed the estimated quantity for that item. The making of partial payments shall not be deemed to be a Final Acceptance of Material, nor shall it relieve the Design-Builder of responsibility for such Material. The Design-Builder shall be responsible for assuring that only those Materials which comply with the Specifications are incorporated into the Project. All costs associated with handling, transportation, and storage of Material, including any storage site rental, security, and weather protection, shall be borne by the Design-Builder and included in the prices proposed for the Contract Work. Any Material, other than that which is determined by the Department’s Project Manager to be unique to the Project, which is not incorporated into the Work, shall remain the property of the Design-Builder.

Partial payments made for such unused Material shall be withdrawn with no further obligation by the State.

LIST OF MATERIALS

- Iron, steel, and aluminum products (including all metal components of railings and bridge superstructures);
- Precast and prestressed concrete products;
- Pipe and underdrain products;
- Concrete and stone curb or masonry products;
- Concrete, steel, and timber piles and appurtenances;
• Timber products;
• Traffic signal, traffic control, signing, and lighting components;
• Cable, wire, and conduit;
• Impact attenuator components;
• Material in short supply; or
• Material manufactured to meet specific, unique requirements of the Project (to be determined by the Department’s Project Manager).

109S-6.4  Equipment Used to Construct the Project

The Department shall not pay for direct costs of Equipment used to construct the Project. The Design-Builder shall allocate costs for Equipment, whether new, used, or rented, as part of the activities with which the Equipment is associated.

109S-6.5  Bond Premiums

The amount payable to the Design-Builder for bond premiums shall initially be a dollar-for-dollar pass through of the Design-Builder’s costs (not to exceed the amount shown on Form PC1 for such premiums).

109S-6.6  Permits

The amount payable to the Design-Builder for permits shall be a dollar-for-dollar pass-through of the Design-Builder’s costs (not to exceed amount shown on Form PC1 for permits). The Design-Builder shall provide backup documentation supporting each cost in this category to the Department prior to any payment.

109S-7  REVIEW AND PROCESSING OF REQUESTS FOR PERIODIC PAYMENT

Upon receipt of a request for periodic payment, the Department’s Project Manager will proceed in accordance with this DB Section 109S-7.

Any adjustments by the Department’s Project Manager to a request for periodic payment shall be reasonable and in accordance with the Contract Documents.

Upon resolution of any problems with any request for periodic payment that resulted in an adjustment in the amount of a prior request for periodic payment, or upon satisfaction of any conditions that were the basis for such an adjustment, the Design-Builder may include the amount of the adjustment in the next request for periodic payment.

109S-7.1  Payment Limitations and Partial Suspension of Payments

A) There will be no advance payments or payments for mobilization except as specified in DB Section 109S-2.1(D);

B) The Department will not pay for construction Work, including Work being paid on a Force Account basis, unless the following conditions are met:

1) Design Plans and Project Specifications are on Site for the Work being constructed;
2) Design Plans and Project Specifications have been checked and reviewed in accordance with DB Section 111-12 and design documentation maintained in accordance with DB Section 111-18;

3) Construction Work has been inspected and sampling and testing conducted in accordance with DB Section 112-3.2;

4) Items covered by NCRs issued by the Department, the Design QC Manager, or the Construction QC Manager are corrected and/or resolved to the satisfaction of the Department; and

5) Construction documentation is completed and records and reports submitted and/or retained in accordance with DB Section 112-10.

C) As a condition precedent to consideration by the Department’s Project Manager of any periodic payment for Work described in PC 1 for the preceding month, the monthly progress report completed in accordance with DB Section 108-1.3 must accompany each such application;

D) As a condition precedent to consideration by the Department’s Project Manager of any periodic payment for Work described in PC 1 for the preceding month, all certified payrolls of the Design-Builder and all Construction Subcontractors shall be up to date and submitted to the Department;

E) The Department may suspend payment for PCs’ 1, 3, 4, and/or 5 Work for any period if the Design-Builder’s performance of PCs’ 1, 3, 4, and/or 5 continuing activities during the period resulted in any of the following:

1) Serious disruptions to necessary MPT and access through the Site;

2) Serious disruptions to the Department’s access to the Site or use of facilities provided for the Department’s use;

3) Unacceptable safety performance as evidenced by the Design-Builder’s accident record;

4) Non-compliance with environmental requirements that leads to citations, fines, and/or other penalties by environmental authorities;

5) Serious disruptions to procedures and documentation required by the Quality Plan and/or specified in the Contract;

6) Continued reports of blocked vehicular and/or pedestrian access to properties; or

7) Continued report of failure to comply with the community interaction plan and/or requirements of Part 4 – Performance Specifications, Performance Specification ___.

No payment will be made under PCs or Orders-on-Contract being paid on a Force Account basis for design or construction Work necessitated to correct deficiencies noted on an NCR. The Design-Builder shall clearly delineate in its records and on the Force Account report (see DB Section 109S-9.3) personnel and Equipment used on any corrective Force Account Work on such deficiencies.

109S-7.2 Certification for Periodic Payment

Within 14 days of receipt of a request in accordance with DB Section 109S-6, the Department’s Project Manager shall issue to the Department, with a copy to the Design-Builder, a periodic payment certificate (Appendix 109S-A - Form CONR30b-DB) showing the amount of any periodic payment the
Department’s Project Manager considers payable by the Department to the Design-Builder. Such periodic payment certificate shall be the sum of the following:

A) The amounts shown to be due on Form PP-S; and

B) The amounts determined by the Department’s Project Manager to be due in respect of the following:

1) Additional cost incurred and payable in accordance with the Contract;

2) Work executed pursuant to a Force Account Order-on-Contract; and

3) Any other amount or allowance to which the Design-Builder is entitled under the Contract, unless account has been or will be taken of such amount or allowance by way of a revision of a PCV under DB Section 109S-1.3;

less:

C) The retention monies as provided for in DB Section 109S-8;

D) Any amounts certified for payment on certificates previously issued; and

E) Any amounts recoverable from the Design-Builder in accordance with the Contract; including any amount withheld for PC 1 because the Design-Builder failed to provide the monthly progress report in the form and detail required in the Contract, or failed to provide a revised Baseline Progress Schedule that the Department’s Project Manager has determined meets Contract requirements.

At the same time, the Department’s Project Manager shall countersign the Form PP-S to be based on the draft submitted by the Design-Builder pursuant to DB Section 109S-6, amended as necessary, certifying the Work and amounts the Department’s Project Manager considers the Design-Builder to have achieved. The Department’s Project Manager shall have power to omit from any such certificate the value of any Work with which the Department’s Project Manager may, for the time being, be dissatisfied. The Department’s Project Manager may delete, correct, or modify any sum or statement of fact previously certified by him or her.

109S-7.3 Payment by Department

Within 30 Days after receipt by the Department of an acceptable request for periodic payment (such acceptability as determined by the Department), the Department will pay the Design-Builder the amount of the request approved for payment by the Department’s Project Manager, less any applicable retention and less any amounts that the Department is otherwise entitled to withhold.

109L-1.1 Adjustment for Cost of Fuel, Asphalt, & Steel

Refer to New York State Department of Transportation Web site at: www.dot.state.ny.us/constr/fule/fule_home.html.

109S-7.4 Pay Adjustment Factors for Quality

Payment will be adjusted for Materials quality per Standard Specification Section 401-4. Pay adjustments for Work quality shall be made as provided in individual Part 7 Sections.

Where a Unit Price is listed in Form SOV (Option 1), the Pay Adjustment to the item shall be equal to:
(Unit price) x [(Pay Adjustment Factor)-1.0] x (Quantity of Materials failing to meet the Contract Specifications).

If a Unit Price is not included in Form SOV (Option 1) the Pay Adjustment shall be negotiated.

Pay adjustments applied to items for deficient Work accepted by the Department shall not relieve the Design-Builder of meeting any warranty requirements of the Contract.

109S-8 RETENTION

Pursuant to the New York State Highway Law, Section 38(7)(a) and (b), the Department shall retain five percent from each progress payment made to the Design-Builder.

The failure by the Department to deduct any of these sums from a periodic payment shall not constitute a waiver of the Department’s right to such sums.

109S-8.1 Request for Release of Retention upon Substantial Completion of the Contract

Pursuant to the New York State Highway Law, Section 38(7), if the Commissioner determines that the Contract is substantially complete, and that the withholding of the retention would be an injustice to the Design-Builder, the Commissioner may direct the Department’s Project Manager to include in the final accounting such uncompleted items and pay for them at the PC prices in the Contract upon the Design-Builder’s depositing with the Commissioner a certified check drawn upon a legally incorporated bank or trust company equal to at least double the value of such uncompleted Work, or, with the Approval of the Comptroller, securities as are listed in subdivision three of Section 139 of the New York State Finance Law, equal to at least double the value of such uncompleted Work. The inclusion of the retention in the final accounting is contingent upon the certification of the Department’s Project Manager that the essential items in the Contract have been completed in accordance with the terms of the Contract.

The Design-Builder’s deposit may be used by the Commissioner to complete the uncompleted portion of the Contract and shall be returned to the Design-Builder if the Design-Builder completes the uncompleted Work within a specified number of Work Days after it has been notified to proceed with the Work.

109S-8.2 Release of Retention upon Final Acceptance

Pursuant to the New York State Highway Law DB Section 38(7), upon completion and Final Acceptance of the Contract Work, the Commissioner shall, pending final payment, pay not to exceed 70% of the amount of the retention.

109S-9 EXTRA WORK, FORCE ACCOUNT WORK, AND RECORD KEEPING

109S-9.1 Contract Item Charges

The Department reserves the right to order changes in the scope of the Contract Work as is necessary to complete the Project, in accordance with the intent of the Contract Documents.

A) Lump Sum Work. Lump sum Contract adjustments shall be based on negotiations between the Design-Builder and the Department.

B) Unit Priced Work. For Unit Priced items payment shall be made at the Contract Unit Price for all Work less than or equal to twice the original Contract quantity. Once this
limit is exceeded, any additional Work shall be considered to be new Work, with payment determined in accordance with DB Section 109S-9.2.

109S-9.2 New Item Charges

109S-9.2.1 Agreed Prices

Agreed prices for new items of Work or Material may be incorporated in the Order-on-Contract as the Commissioner may deem them to be just and fair and beneficial to the State. These prices must be supported by a complete price analysis in the Order-on-Contract, or if approved by the Department’s Project Manager, by reference to the weighted average bid or proposal prices for similar types and quantity of Work from other recent contracts. The price analysis will be based on an estimated breakdown of charges listed in DB Section 109S-9.2.2 unless some other basis is approved by the Commissioner. Agreed prices may be lump sum or Unit Priced Work.

109S-9.2.2 Force Account Charges

A) Design-Builder Charges. Where there are no applicable Unit Prices for Extra Work ordered and agreed prices cannot be readily established or substantiated, the Design-Builder shall be paid the actual and reasonable cost of the following:

1) Necessary Material (including transportation to the Site). Material is all products incorporated in the temporary or permanent Work. The following items consumed in progressing the Work are also considered to be Material for which reimbursement with an allowance for profit and overhead will be made. The items are oxygen, acetylene, propane, welding rods, grinding wheels, and saw blades. Separate reimbursement will not be made for all other products which may be consumed in progressing the Work and reimbursement for these items is considered to be included in the reimbursement for overhead. Material used, if acquired by direct purchase, must be documented by bills or acceptable invoices. All prices on used Material incorporated in either temporary or permanent Work shall be billed at a fair value, less than the original cost when new. A reasonable salvage credit shall be given for substantial salvageable Material recovered. Salvage value of substantial Material recovered shall be determined by the Department’s Project Manager in coordination with the Design-Builder.

2) Necessary construction and non-construction labor costs including supplemental benefit payments. Each class of labor shall be billed separately at actual payroll rates. Average rates based on different classes of labor will not be accepted.

3) Necessary payroll taxes and insurance payments and other such reasonable charges that are paid by the Design-Builder pursuant to existing written agreements with its Employees and/or labor organizations.

4) Sales taxes, if any, required to be paid on Material not permanently incorporated into the Work under an Order-on-Contract.

5) Equipment, truck, and plant rentals, other than small tools. The Design-Builder shall be reimbursed for the number of hours that the Equipment, truck, or plant is actually used on a specified Force Account job. Equipment used by the Design-Builder shall be specifically described by the Manufacturer, model number, and date of manufacture and be of suitable size and suitable capacity required for the Work to be performed. In the event the Design-Builder elects to use Equipment of a higher rental rate than the Equipment suitable for the Work, payment will be made at the rate applicable to the suitable Equipment. The Equipment actually
used and the suitable Equipment upon which the rental rate is based will be recorded as a part of the record for Force Account Work. The Department’s Project Manager shall determine the suitability of the Equipment. If there is a differential in the rate of pay of the operator of oversize or higher rate Equipment, the rate paid for the operator will likewise be related to the suitable Equipment.

a) Design-Builder Owned Equipment, Trucks, and Plant - The Design-Builder shall be reimbursed for its ownership costs and for its operating costs for self owned Equipment at the rates listed in “Equipment Rental Rates” published by Equipment Watch of San Jose, California, applied in the following manner:

- **Ownership Costs** - It is mutually understood that the rates for ownership costs reimburse the Design-Builder for all non-operating costs of owning the Equipment, truck, or plant, including depreciation on the original purchase; insurance; applicable taxes; interest on investment; storage; overhead; repairs; moving the Equipment onto and away from the Project or Work Site; and profit. Reimbursement will be made for the hours of actual use as described below:
  - Less than eight hours of actual use, the product of the actual number of hours used or fraction thereof multiplied by the hourly rate, or the daily rate, whichever is less;
  - Between eight hours and 40 hours of actual use, the product of the actual number of hours used divided by eight multiplied by the daily rate, or the weekly rate, whichever is less;
  - Between 40 and 176 hours of actual use, the product of the actual number of hours used divided by 40 multiplied by the weekly rate; and
  - Over 176 hours of actual use, the product of the actual number of hours used divided by 176 multiplied by the monthly rate.

- **Operating Costs** - The rate for operating costs includes fuel, lubricants, other operating expendables, and preventative and field maintenance. Operating cost does not include the operator’s wages. The Design-Builder shall be reimbursed the product of the number of hours of actual use multiplied by the estimated operating cost per hour.

- **Rates** - The rates used shall be those in effect at the time the Force Account Work is done as reflected in the then current publication of “Equipment Rental Rates.” When Force Account type analysis is used to establish agreed prices in accordance with DB Section 109S-9.2.1, the rates used shall be those in effect when the agreed price is developed by the Design-Builder and submitted to the Department’s Project Manager.
• Area Adjustment Factor - The geographic area adjustment factor shown on the map at the beginning of each section of “Equipment Rental Rates” shall not be applied to the Equipment rates subsequently listed in each section, and shall not be used as a basis for payment.

• Non-Established Rates - In the event that a rate is not established in “Equipment Rental Rates” for a particular piece of Equipment, truck, or plant, the Commissioner shall establish rates for ownership costs and operating costs for that piece of Equipment, truck, or plant that is consistent with its cost and expected life.

b) Rented Equipment, Trucks, and Plant:

• In the event that the Design-Builder does not own a specific type of Equipment and must obtain it by rental, it shall be paid the actual rental rate for the Equipment for the time that the Equipment is used to accomplish the Work or is required by the Department’s Project Manager to be present, not to exceed the adjusted rental rate in “Equipment Rental Rates” plus the reasonable cost of moving the Equipment onto and away from the Project Site.

• The Design-Builder shall also be reimbursed for the operating cost of the Equipment unless reflected in the rental price. Such operating cost shall be determined in the same manner as specified for Design-Builder owned Equipment above.

• In the event that area practice dictates the rental of Equipment with an operator or dictates the rental of fully fueled and maintained Equipment, truck, or plants, payment will be made on the basis of an invoice for the rental of the Equipment with an operator or for fully fueled and/or maintained Equipment, trucks, or plants including all costs incidental to its use, including costs of moving to and from the Site, provided the rate is substantiated by area practice.

c) Maximum Amount Payable - The maximum amount of reimbursement for the ownership costs of Design-Builder owned Equipment, trucks, or plant, or the rental cost of rented Equipment, trucks, or plant, is limited to the original purchase price of the Equipment, truck, or plant for any Force Account Work as listed in “Equipment Rental Rates” published by Equipment Watch. In the specific event when the ownership or rental reimbursement is limited by the original purchase price, the Design-Builder shall, nevertheless, be reimbursed for the operating cost per hour for each hour of actual use.

6) Profit and Overhead. Profit and overhead cost shall be 20% of the following:

a) Construction Labor and Non-Construction Labor Employed by Construction Firms - Twenty percent of the total direct labor cost (actual hours worked multiplied by the basic hourly wage rate) plus supplemental benefits payments, payroll taxes, insurance payments, and
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other labor related fringe benefit payments as defined in paragraphs 2 and 3 of this DB Section 109S-9.2.2(A), but not including the overtime additive payments. Profit and overhead shall not be paid on the premium portion of overtime; and

b) Total cost of Material as defined in paragraph 1 of this DB Section 109S-9.2.2(A), including the cost of transportation to the Project Site.

c) Overhead for construction firms shall be defined to include the following:

- Premium on bond;
- Premium on insurance required by the State other than workers’ compensation insurance, including premium on public liability and property damage insurance; federal old-age benefits; other payroll taxes; and such reasonable charges that are paid by the Design-Builder pursuant to written agreement with its Employees;
- All salary and expenses of executive officers, supervising officers, or supervising Employees;
- All clerical and stenographic Employees;
- All charges for minor Equipment such as computer hardware and software; survey Equipment; small tools, including shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, and wrenches; and other miscellaneous supplies and services; and
- All drafting room accessories such as paper and tracing cloth and reproduction costs.

B) Subcontractor Charges. When the Work is performed by a Subcontractor, the Design-Builder shall be paid the actual and reasonable cost of such subcontracted Work as outlined above in DB Section 109S-9.2.2(A) items 1 through 5, but profit and overhead shall be figured at 25% unless some other basis is approved by the Commissioner.

C) Service Charges. When Work is performed by, and a fee is paid to, a service provider, the Design-Builder shall be paid the actual cost of the service fee plus a maximum five percent for Contract supervision, overhead, and profit. This five percent shall be applied once to the service fee regardless of the firm making direct payments to the service provider. For the purposes of this DB Section, “services” shall be considered to include professional fees, testing fees, dumping fees, Utility charges, and other specialized Work which is not accounted through labor, Equipment, and Material in paragraphs A) and B) of this DB Section 109S-9.2.2. For Work reimbursed under Force Account procedures, service fee schedules shall be approved by the Department’s Project Manager.

Overhead for firms providing professional services shall include those items included in their respective overhead rate for GSO (Non-FAR) or base field (Non-FAR) as appropriate to its contract with the Design-Builder. Overhead shall not be paid on the premium portion of overtime.

109S-9.3 Force Account Report

Payment for Force Account Work will be made on the basis of the following reports.
A) The Design-Builder will deliver to the Department’s Project Manager a daily summary of Force Account Work done on the Contract using Forms MURK 11b (DB-C) and/or MURK 11b (DB-D) [Appendix 109L-A]. This summary will be delivered to the Department’s Project Manager not later than closing time on the day following that for which the Work is reported. The summary shall contain the following:

1) A list of Materials used indicating the amount and nature of each Material. The cost (if known) should also be included. This must be documented later by proper receipts.

2) A list of Equipment used indicating the number of hours used and the kind, type, and size of Equipment.

3) A list of personnel (design and construction) by name, including the hours worked, the labor classification at which they were used on the Force Account Work, and the location of the Work.

4) A statement of the Work accomplished by Force Account for that day.

5) This summary will be dated and signed by the Design-Builder’s authorized representative and the Department’s Project Manager.

6) The contract number and other identification as well as the name of the Design-Builder shall appear on the statement.

7) The Department’s Project Manager will make any notations, remarks, or comments on this form that may assist in final payments.

B) Within five Calendar Days after the end of each pay period, the Design-Builder shall deliver to the Department’s Project Manager a Force Account summary of labor used on the Work, using MURK 12c (DB-C) and MURK 12c (DB-D) (Appendix 109S-A), which shall include the following:

1) For construction labor and non-construction labor employed by construction firms, the name, hourly rate of pay, hours worked, fringe benefits, and/or other items as shown on the actual payroll.

2) For other non-construction labor, the name, rate of pay, and the hours worked.

C) On completion of the specific Force Account Work, the Design-Builder shall, within 10 Calendar Days, deliver to the Department’s Project Manager a Force Account summation, using MURK 13d (DB-C) and MURK 13d (DB-D) (Appendix 109S-A), wherein all Material, Equipment, and labor charges are shown and totaled together with such other expenditures as are concerned with the Force Account item. This summation shall be dated and signed by the Design-Builder’s authorized representative and the Department’s Project Manager.

D) In the event the Design-Builder fails to deliver the required Force Account documentation to the Department’s Project Manager within the time period specified in DB Section 109S-9.3, and as a result the Order on Contract for the Force Account Work is not fully approved at the date of Final Acceptance, the number of Calendar Days of the time period between Final Acceptance and the issuance of the Force Account Order on Contract attributable to the Design-Builder’s late Force Account submissions, will extend the required payment date by an equal period of time.
109S-10 DISPUTE RESOLUTION AND DISPUTED WORK PROVISIONS

It is the goal of the Department to resolve disputes that may arise under the Contract in a timely, just, and fair manner consistent with the terms of the Contract. Towards this goal, the Department is specifying these dispute resolution and disputed Work provisions. The dispute resolution process may be undertaken at any time from the Contract Award to the submission of the final estimate for payment by the Comptroller. The process recognizes and will take into consideration the risks and controls inherent in design and construction which the Design-Builder or the Department have agreed to assume pursuant to the terms of the Contract.

If the Design-Builder considers its disputes unresolved after following the requirements of this DB Section, then at any time prior to the submission of the final agreement for payment to the Comptroller, the Design-Builder may request in writing a meeting with the Commissioner, or his/her designated representative, to review any outstanding dispute or items of a dispute that have not previously been resolved to the satisfaction of the Design-Builder through the dispute resolution process. If requested by the Design-Builder, the Department will schedule a contract closeout meeting to review outstanding disputes or items of dispute that have not previously been resolved. Unresolved disputed item(s) or portions thereof shall only be considered in connection with the Contract closeout process set forth in DB Section 109S-10.7. If, after the payment of the final agreement, any dispute(s) or portions thereof remain unresolved, the Design-Builder shall retain the option of filing a claim in accordance with New York State and/or federal law. If the Design-Builder fails to comply with the requirements of this DB Section, any claim of the Design-Builder with respect thereto shall be deemed waived.

109S-10.1 Time Related Disputes

Whenever the Design-Builder believes that it is or will be entitled to additional compensation for time related disputes, whether due to delay, Extra Work, disputed Work, breach of the Contract, or other causes, the Design-Builder shall follow the procedures set forth in this DB Section. All subcontracts or supply or Equipment contracts shall incorporate the provisions of this DB Section. If such subcontracts or supply or Equipment contracts do not have similar provisions, then the State payments to the Design-Builder for such subcontract or supply or Equipment Work shall be limited to only that which are provided by the provisions of this DB Section as if it were in effect for such subcontract or supply or Equipment contract.

A) This DB Section is intended to cover all such events which include termination for convenience (DB Section 105-6), major deductions or increases in scope of Work, suspension of Work (DB Section 105-1), and cancellation of the Contract, as well as actions, forces, or factors, whether they be termed “delay,” “disruption,” “interference,” “inefficiencies,” “impedance,” “hindrance,” “acceleration,” or otherwise.

B) Strict compliance with the notice provisions and the record keeping provisions of this DB Section shall be an essential condition precedent under the Contract to any recovery of time related damages by the Design-Builder whether it be under the Contract provisions, court actions and proceedings, or otherwise.

C) Except for situations that come within the terms of DB Section 109S-15, within 10 Work Days after the Design-Builder has knowledge or should have had knowledge of an event, matter, or occasion that will result in time related damages, the Design-Builder must provide the Department’s Project Manager with written notice of a dispute for time related damages.

D) The Department shall have no liability and no adjustment will be made for any time related damages which accrued more than 10 Work Days prior to the filing of such a
notice with the Department’s Project Manager. Failure of the Design-Builder to give such written notice in a timely fashion will be grounds for denial of the dispute and the Department does not have to show prejudice to its interest before such denial is made. In the event the Design-Builder fails to provide the required written notice within the 10 Work Day period. In the event the Design-Builder fails to maintain and submit such specified records, the Design-Builder hereby agrees to waive the dispute for compensation, notwithstanding the fact that the Department may have actual notice of the facts and circumstances which comprise such dispute and is not prejudiced by said failure.

E) As directed by the Department’s Project Manager, the Work shall continue during the pendency of the dispute. The Department’s Project Manager shall make the initial determination in writing on the dispute and the Design-Builder, if it considers the issue unresolved, shall promptly notify, within 10 Work Days after receipt of the Department Project Manager's decision, the Regional Director in writing of its position relative to the dispute. If the Regional Director does not resolve the dispute to the satisfaction of the Design-Builder, the latter shall promptly, within 10 Work Days after receipt of the Regional Director’s decision, notify the Commissioner, in writing with copies to the Department’s Project Manager and the Regional Director, of its contentions relative to the dispute, indicating the substance of previous communication on the issue with the Department’s Project Manager and the Regional Director and its rebuttal of their previous findings or determinations.

F) The Commissioner, or his/her designee, shall make a finding thereon and notify the Design-Builder of same in writing.

G) If time related damages are presumed to have been incurred, and after giving the Department notice of a dispute for time related damages, the Design-Builder must keep daily records certified by the Design QC Manager and/or Construction QC Manager of all labor, Material, and Equipment costs and hours incurred for the affected operations. These daily records must identify each operation affected and the specific locations where Work is affected. On a weekly basis, beginning the week following the date of giving notice of a dispute for time related damages, the Design-Builder shall meet with the Department’s Project Manager and present the daily records for the preceding week. If the Department’s Project Manager disagrees with the accuracy, applicability, or reasonableness of any portion of the Design-Builder's submission, he/she shall promptly notify the Design-Builder who shall correct its records. If there is a dispute as to records, the Design-Builder must follow the requirements of DB Section 109S-10.5. The dispute shall first be submitted to the Regional Director and, if unresolved, will be submitted in writing to the Commissioner or his/her designee whose decision shall be final and conclusive subject to the Design-Builder's right to assert a claim in New York State Court of Claims. Lack of substantial compliance with the requirements to attend weekly meetings or present its records will constitute a waiver by the Design-Builder of said dispute for time related damages.

H) After giving notice of a dispute for time related damages, the Design-Builder shall prepare and submit to the Department’s Project Manager, if requested, weekly written reports until complete resolution of the dispute, which shall be available at the next scheduled job meeting, providing the following information:

1) Potential effect to the Design-Builder's schedule caused by the time related dispute;
Identification of all operations that have been affected or delayed, or are or may be affected or delayed;

Explanation of how the Department's act or omission affected or delayed each operation and estimation of how much more time is required to complete the Project;

Itemization of all extra costs being incurred, including the following:

An explanation as to how those extra costs relate to the effect or delay and how they are being calculated and measured;

Identification of all Project employees for whom costs are being compiled; and

Identification of all Manufacturer's numbers of all items of Equipment for which costs are being compiled.

In addition, after submitting the required notice specified in this DB Section, the Design-Builder shall complete its dispute submission by complying with DB Section 109S-10.8, when such information is ascertainable by the Design-Builder, and DB Section 109S-10.9.

See DB Section 109S-10.6 for the review time periods for disputes to the Commissioner and DB Section 109S-10.7 for the closeout process.

109S-10.2 Time Related Dispute Compensation

A) As limited by DB Section 109S-10, the following elements of damage, and only the following elements, will be recoverable by the Design-Builder as “time related dispute damages” provided that they are actual and reasonable:

1) Documented additional or escalated Work Site direct labor expenses, including Project-related non-construction labor expenses and professional services fees;

2) Documented additional or escalated costs for Material;

3) Documented additional or escalated Equipment costs less appropriate credits, as such are determined in accordance with this DB Section;

4) Documented costs of extended Work Site overhead (field costs, including field supervision). Work Site overhead would include the job superintendent, office engineer, and clerical staff, but would not include working foremen;

5) An additional 10% of the total of items (1), (2), (3), and (4), above, for home office overhead and 10% for profit thereon. However, when DB Sections 104-4 and 104-5 apply, no anticipated profits shall be allowed, and where DB Section 109S-15.1 applies, no profit or anticipated profits shall be allowed;

6) Documented additional or escalated insurance and bond costs; and

7) When the Work is performed by a Subcontractor, the Design-Builder shall be paid the actual and reasonable cost of such subcontracted Work as outlined above in (1) through (4) and the Design-Builder’s main office overhead and profit shall be figured at 15% and 10% respectively (except for professional services, the allowance for the Design-Builder shall be five percent for supervision, overhead, and profit). However, where DB Sections 104-4 and 104-5 apply, no anticipated
profits shall be allowed, and where DB Section 109S-15.1 applies, no profit or anticipated profits shall be allowed.

B) Equipment, truck, or plant rentals, other than small tools:

1) Equipment used by the Design-Builder shall be specifically described by the Manufacturer, model number, and date of manufacture and be of suitable size and capacity required for the Work to be performed. In the event the Design-Builder elects to use Equipment of a higher cost than the Equipment suitable for the Work, payment will be made at the actual cost rate applicable to the suitable Equipment unless otherwise provided for in this DB Section. The Department’s Project Manager shall determine the suitability of Equipment. For purposes of computing the Design-Builder’s self-owned Equipment, truck, or plant costs, the rate used shall be based on the rate listed in “Equipment Rental Rates” published by Equipment Watch, with the appropriate adjustments noted in DB Section 109S-9.2.2.

2) In the event that a rate is not established in “Equipment Rental Rates” for a particular piece of Equipment, truck, or plant, the Commissioner shall establish a rate for ownership costs and operating costs for that piece of Equipment, truck, or plant that is consistent with its cost and expected life.

3) The Design-Builder shall be reimbursed for its operating costs for self-owned Equipment based on actual cost data. Operating costs shall include fuel, lubricants, other operating expendables, and preventive and field maintenance. Operating costs do not include the operator’s wages. In the event, after documented and demonstrated due diligence, actual operating costs are not ascertainable, then the Design-Builder will be compensated utilizing not more than 50% of the operating costs set forth in “Equipment Rental Rates” and the Design-Builder shall be reimbursed the product of the number of hours of actual use multiplied by the operating cost per hour.

4) The rate for idle Equipment and stand-by Equipment shall be based upon the rate of depreciation specified in the Design-Builder’s books and records, or 50% of the rate set forth in “Equipment Rental Rates” published by Equipment Watch with the appropriate adjustments noted in DB Section 109S-9 of these Specifications, whichever is greater. In the event the Equipment is fully depreciated, the Commissioner will pay the actual ownership costs based upon Department audit of the Design-Builder’s books and records.

5) The maximum amount of reimbursement for the ownership costs of Design-Builder owned Equipment, trucks, or plant, or the rental cost of rented Equipment, trucks, or plant, is limited to the original purchase price of the Equipment, truck, or plant as listed in “Equipment Rental Rates” published by Equipment Watch. In the specific event when the ownership or rental reimbursement is limited by the original purchase price, the Design-Builder shall, nevertheless, be reimbursed for the operating cost per hour for each hour of actual use.

6) For purposes of rented Equipment, the provisions of DB Section 109S-9.2 are controlling.
C) The parties agree that, in any dispute for time related damages, the Department will have no liability for the following items and the Design-Builder further agrees it shall make no claim for the following items:

1) Profit, in excess of that provided in DB Section 109S-10.2(A)(5) and (7);
2) Loss of anticipated or unanticipated profit;
3) Labor inefficiencies and loss of productivity;
4) Home office overhead in excess of that provided in DB Section 109S-10.2(A)(5) and (7);
5) Consequential damages, including, but not limited to, interest on monies in dispute, including interest which is paid on such monies; loss of bonding capacity, bidding opportunities, interest on retention, or investment; or any resultant insolvency;
6) Indirect costs or expenses of any nature;
7) Direct or indirect costs attributable to performance of the Work where the Design-Builder, because of situations or conditions within its control, has not progressed in a manner satisfactory to the Department’s Project Manager; and
8) Attorney’s fees or claims preparation expenses.

D) Remedies Exclusive: With respect to time related dispute compensation provisions, the parties agree that the State shall have no liability to the Design-Builder for expenses, costs, or items of damage other than those which are specifically identified as payable under DB Section 109S-10.2. In the event any legal action is instituted against the State by the Design-Builder on account of any such dispute for additional compensation, whether on account of time related dispute, delay, acceleration, breach of contract, or otherwise, the Design-Builder agrees that the State’s liability will be limited to those items which are specifically identified as compensable under DB Section 109S-10.2. The Design-Builder further agrees to make no claim for expenses other than those which are specifically identified as compensable under DB Section 109S-10.2. Nothing in this DB Section is intended to create any liability of the State not existing at common law or pursuant to the terms of this Contract or to prevent the Design-Builder from filing a claim in the New York State Court of Claims.

109S-10.3 Acceleration Disputes

The Design-Builder may not maintain a dispute for costs associated with acceleration of the Work unless the Department has given prior express written direction by the Department’s Project Manager to the Design-Builder to accelerate its effort. The Design-Builder shall always have the basic obligation to complete the Work in the time frames set forth in the Contract. For purposes of this DB Section, lack of express written direction on the part of the Department shall never be construed as assent. If the Design-Builder does accelerate its Work efforts pursuant to a written order or express written Approval by the Department’s Project Manager, the Design-Builder shall be compensated for its effort in the same manner and as limited by DB Section 109S-10.2. The Department, in determining whether or not any compensation under this DB Section is warranted, will evaluate the facts and circumstances which led to the acceleration to determine whether they were in the Design-Builder's control.

If the Design-Builder is claiming a “constructive acceleration,” it must follow the requirements of DB Section 109S-10.1.
109S-10.4 Disputed Work

If the Design-Builder is of the opinion that any Work ordered by the Department’s Project Manager to be done as Contract Work is Extra Work and not Contract Work, or that any order of the Department’s Project Manager exceeds the Work requirements of the provisions of the Contract, the Design-Builder shall promptly, within 10 Work Days of receipt of the order or direction, notify the Department’s Project Manager in writing of its contentions thereto. The Design-Builder must progress the Work as required and ordered. In the meantime, the Design-Builder, if it considers the issue unresolved, shall promptly, within 10 Work Days of receipt of the Department’s Project Manager's written decision, notify the Regional Director in writing of its position relative to the dispute. If the Regional Director does not resolve the dispute to the satisfaction of the Design-Builder, the latter shall promptly, within 10 Work Days of receipt of the Regional Director's written decision, notify the Commissioner, in writing with copies to the Department’s Project Manager and the Regional Director, of its contentions relative to the dispute, indicating the substance of previous communication on the issue with the Department’s Project Manager and the Regional Director and its rebuttal of their previous findings. The Commissioner, or his/her designated representative, shall make a finding thereon and notify the Design-Builder of same in writing. If such work is determined by the Commissioner, or his/her designee, to be Extra Work pursuant to the provisions of this DB Section, compensation will be made pursuant to DB Section 109S-9. In addition, after submitting the required notice specified in this DB Section, the Design-Builder shall complete its dispute submission by complying with DB Sections 109S-10.8, when such information is ascertainable by the Design-Builder, and 109S-10.9. This DB Section shall cover all such applicable Extra Work under DB Section 109–9.

During the progress of such disputed Work, the Design-Builder and Department’s Project Manager shall keep daily records and make reports of all labor, Material, and Equipment used in connection with such Work and the cost thereof as specified in DB Section 109S-9.2. If the Department’s Project Manager or Regional Director fails to reply within 60 days, the Design-Builder may take the dispute to the next level.

If the Commissioner or his/her designated representative determines that the Work in question is Contract Work and not Extra Work or that the order complained of is proper, he/she shall again direct the Design-Builder to continue the disputed Work and the Design-Builder must promptly comply.

The Design-Builder's right to pursue a dispute under this DB Section for extra compensation or damages will not be affected in any way by the Design-Builder's complying with the directions of the Commissioner or Department’s Project Manager to proceed with the Work, provided the Design-Builder continues to keep and furnish the Department’s Project Manager with Force Account reports as specified in DB Section 109S-9.2.3.

If the Commissioner, or his/her designated representative, determines that such Work is Extra Work and not Contract Work or that the order complained of is not proper, then the Commissioner, or his/her designated representative, shall have prepared, if necessary, an Order on Contract covering such Work as soon as is practical after the Determination is made. Payment will be made for such Work via agreed price or Force Account pursuant to DB Section 109S-9.2. The Commissioner, or his/her designee, will notify the Design-Builder in writing of the date upon which the Department has approved the Order on Contract. Performance of Work until receipt of the Order on Contract by the Design-Builder shall be considered disputed Work. The Design-Builder must progress the Work of the Contract, including the Work covered by any such Order on Contract, as directed by the Department’s Project Manager.
Adjustments to Contract Items, adjustments to the time of performance, or the addition of new items to
the Contract necessitated by such Determination may be made up until the time the final agreement is
submitted for payment to the Comptroller, provided that all the requirements of DB Sections 109S-10 and
104-3 are complied with. In addition, documented, additional, actual, and reasonable costs incurred by the
Design-Builder pursuant to following a written order to perform Work (that was subsequently contained
in an Order on Contract which was disapproved) will be considered as reimbursable. This Work will be
considered disputed work for which the Design-Builder will be compensated. Eligibility for compensation
shall cease upon notification of the Order on Contract's disapproval. Failure by the Design-Builder to
promptly notify, in writing, the Department’s Project Manager, the Regional Director, and the
Commissioner of its contentions relative to any dispute or to maintain and furnish Force Account reports
for disputed Work shall constitute a waiver of the disputed Work. See DB Sections 109S-10.6 for the
review time periods for disputes to the Commissioner and 109S-10.7 for the closeout process.

109S-10.5 Auditing of Records

The Design-Builder which has filed a dispute must have the following records available for audit at any
time following the filing of such dispute, whether or not such dispute is part of a suit pending in the courts
of this State. If a dispute is filed on behalf of a Subcontractor or Supplier, such Subcontractor or Supplier
must also have the following records available for audit any time following the filing of such dispute,
whether or not such dispute is part of a suit pending in the courts of this State. The audit may be
performed by employees of the Department or by an independent auditor appointed by the Department.
The audit may begin on 10 Work Days' notice to the Design-Builder, Subcontractor, or Supplier as is
appropriate. The Design-Builder, Subcontractor, or Supplier shall cooperate with the auditors. The
Department will maintain the audit, its backup, reports, schedules, and conclusions as confidential
material. Failure of the Design-Builder, Subcontractor, or Supplier to maintain and retain sufficient
records shall constitute a waiver of that portion of such dispute that cannot be verified and shall bar
recovery.

Without limiting the generality of the foregoing, the auditors shall have available to them, and the Design-
Builder agrees to provide access to, the following documents:

A) Daily time sheets, job superintendent diaries or log sheets, and foreman's daily reports.
B) Union agreements and reports, if any.
C) Insurance policies, welfare and benefits records, or plans for union and non-union
personnel.
D) Payroll register.
E) Individual Employee earnings records.
F) Payroll tax returns.
G) Material invoices, purchase orders, and all Material and supply acquisition contracts.
H) Material cost distribution work sheet.
I) Equipment records (list of company Equipment, rates, depreciation schedules, daily
Equipment reports or logs, fueling logs or records, Equipment lease/purchase agreements,
and Equipment purchase invoices).
J) Vendor rental agreements and Subcontractor invoices, agreements, and back charge
records.
K) Subcontractor payment certificates.
L) Canceled checks (payroll and vendors).
M) Job cost ledger or report.
N) Job payroll ledger, petty cash journal, and supporting vouchers.
O) General ledger, general journal (if used), and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals.
P) Cash receipts, cash disbursements journal, and purchase journal.
Q) Audited and unaudited financial statements for all years reflecting the operation on this Project.
R) Depreciation records on all company Equipment whether such records are maintained by the company involved, its accountant, or others.
S) If a source other than depreciation records is used to develop costs for the Design-Builder’s internal purposes in establishing the actual cost of owning and operating Equipment, all such other source documents.
T) All documents which reflect the Design-Builder's actual overhead during the years this Project was being performed.
U) All documents related to the preparation of the Design-Builder's Proposal including the final calculations on which the Proposal was based.
V) All documents which relate to each and every dispute together with all documents which support the amount of damages as to each dispute.
W) Work sheets used to prepare the dispute establishing the cost components for items of the dispute including, but not limited to, labor, benefits and insurance, Materials, Equipment, and Subcontractors and all documents which establish the time periods, the individuals involved, and the hours and rates for the individuals.

In the event the Design-Builder fails to substantially furnish the above required reports and accounting records, such failure shall constitute a waiver of the dispute for payment other than for payment at Contract Prices for the Work performed.

109S-10.6 Review Time Periods for Disputes to the Commissioner

A) For all disputes of $50,000.00 or less, the Department shall respond in writing within 45 Days of receipt of the dispute. If any additional documentation supporting the dispute or relating to the subject matter of the dispute is required the Department may request said documentation in writing within 30 Days of receipt of the dispute. The Design-Builder shall provide such information within 30 Days unless another time period is agreed to. The Department's written response to the additionally documented dispute shall be submitted to the Design-Builder within 15 Days after receipt of said additional documentation or within a period of time no greater than that taken by the Design-Builder in producing said additional documentation, whichever is greater. If the Design-Builder disputes the Department's written response, or the Department fails to respond within the time prescribed, the Design-Builder may so notify the Department in writing within seven Days of receipt of the Department's response, or within seven Days of the Department's failure to respond. Upon the Design-Builder's request, the Department shall
schedule a meeting or conference. By agreement between the Department and the Design-Builder, such time periods may be modified.

B) For disputes over $50,000.00 and less than or equal to $250,000.00, the Department shall respond in writing within 60 Days of receipt of the dispute. If any additional documentation supporting the dispute, or relating to the subject matter of the dispute is required, the Department may request said documentation in writing within 30 Days of receipt of the dispute. The Design-Builder shall provide such information within 30 Days unless another time period is agreed to. The Department's written response to the additionally documented dispute shall be submitted to the Design-Builder within 30 Days after receipt of said additional documentation, or within a period of time no greater than that taken by the Design-Builder in producing said additional documentation, whichever is greater. If the Design-Builder disputes the Department's written response, or the Department fails to respond within the time prescribed, the Design-Builder may so notify the Department in writing within 15 Days of receipt of the Department's response, or within 15 Days of the Department's failure to respond. Upon the Design-Builder's request, the Department shall schedule a meeting or conference. Within 30 Days the Design-Builder will be notified of the date of the meeting or conference. By agreement between the Department and the Design-Builder, such time periods may be modified.

C) For disputes over $250,000.00, and disputes that have an undetermined value, the Department shall respond in writing within 90 Days of receipt of the dispute. If any additional documentation supporting the dispute or relating to the subject matter of the dispute is required the Department may request said documentation in writing within 30 Days of receipt of the dispute. The Design-Builder shall provide such information within 30 Days unless another time period is agreed to. The Department's written response to the additionally documented dispute shall be submitted to the Design-Builder within 60 Days after receipt of the said additional documentation, or within a period of time no greater than that taken by the Design-Builder in producing said additional documentation, whichever is greater. If the Design-Builder disputes the Department's written response, or the Department fails to respond within the time prescribed, the Design-Builder may so notify the Department in writing within 30 Days after the receipt of the Department's response, or within 30 Days of the Department's failure to respond. Upon the Design-Builder's request, the Department shall schedule a meeting or conference. Within 30 Days the Design-Builder will be notified of the date of the meeting. By agreement between the Department and the Design-Builder, such times periods may be modified.

If any dispute or portion thereof remains unresolved following the meeting(s) or conference(s) and the payment of the final agreement, the Design-Builder may file a claim in accordance with law and the provisions of the Contract.

109S-10.7 Closeout Process

A) A dispute or claim, or a portion thereof, that has been previously submitted to the Department under DB Section 109S-10.4 and which remains unresolved to the satisfaction of the Design-Builder may be submitted for Department review in connection with the closeout procedure. The closeout meeting process involves meeting(s) with the Design-Builder and its representatives and Department personnel to amicably resolve all
remaining disputes of the Contract. In lieu of pursuing the closeout meeting process the Design-Builder may elect to utilize the following process.

1) The Commissioner, after consultation with the four major contractor associations in the State who represent the majority of the contractors performing work for the Department, shall appoint a Department employee to determine what method of dispute resolution is appropriate for each Contract that has unresolved disputes over $50,000.00. Such person, referred to as the gatekeeper, shall establish universal criteria, subject to Approval of the Commissioner after consultation with the four major contractor associations, which will be used in connection with the review of the disputes. The outcome of the review will either be the closeout meeting process, or alternate dispute resolution methods that are consistent with law, including, but not limited to, facilitation methods or a Disputes Review Board (DRB), as such is described hereafter. The gatekeeper shall advise the Department and the Design-Builder how he or she would proceed with processing such dispute(s) in an attempt to resolve the matter. The decision of the gatekeeper shall be final and shall not be subject to review under Article 78 of the C.P.L.R., except for the option of filing a claim in accordance with law.

2) A facilitator may be used or a DRB may be established to assist in resolving disputes arising out of the performance of the Contract. The facilitator shall be one person, agreed to by the Department and the Design-Builder, who is knowledgeable in public work construction matters and who shall try to bring the parties to a mutually agreeable resolution of the disputes. The DRB shall consist of three persons who are knowledgeable in public work construction matters. The DRB membership shall be selected in the following manner: one shall be selected by the Department, one selected by the Design-Builder, and one mutually selected by the Department and the Design-Builder. The DRB shall make a recommendation as to the resolution of the disputes. The expenses of the facilitator, DRB, or any other method shall be equally shared by the Department and the Design-Builder. The records made and recommendations or action of the facilitator, the DRB, or any other dispute resolution method, shall be off the record, non binding, confidential, and may not be used in any future litigation.

B) If any dispute or claim, or portion thereof, remains unresolved following the meeting(s) or conference(s) and the payment of the final agreement, the Design-Builder may file a claim in accordance with law and the provisions of the Contract.

109S-10.8 Required Content of Dispute Submission

All disputes must be submitted in writing to the Department’s Project Manager, and must be in sufficient detail to enable the Department’s Project Manager to ascertain the basis and the amount of each dispute. As a minimum, the following information must be provided when such information is ascertainable by the Design-Builder:

A) Time Related Dispute Submissions.

1) A description of the operations that were delayed, the reasons for the delay, and how they were delayed, including the report of all scheduling experts or other consultants, if any.

2) An as-built chart, Critical Path method scheme, or other diagram or chart depicting in graphic form how the operations were or are presumed to be adversely affected.
3) The date on which actions resulting in the dispute occurred or conditions resulting in the dispute became evident.

4) A copy of the notice of dispute required per DB Section 109S-10.1(C) for the specific dispute by the Design-Builder.

5) To the extent known, the name, function, and activity of each Department official, employee, or agent involved in, or knowledgeable about, facts that gave rise to such dispute.

6) The name, function, and activity of each Design-Builder or Subcontractor official or Employee involved in, or knowledgeable about, facts that gave rise to such dispute.

7) The identification of any pertinent documents, and the substance of any material oral communication relating to such dispute.

8) A statement as to whether the additional compensation or extension of time, if requested, is based on the provisions of the Contract or is an alleged breach of the Contract.

9) The amount of additional compensation sought and a breakdown of that amount into the categories specified as payable under DB Section 109S-10.2 above.

10) If an extension of time is also requested, the specific days for which it is sought and the basis for such request as determined by an analysis of the construction progress schedule.

B) For Other Disputes Including Acceleration Disputes.

1) A detailed factual statement of the dispute providing all necessary dates, locations, and items of Work affected by the dispute.

2) The date on which actions resulting in the dispute occurred or conditions resulting in the dispute became evident.

3) A copy of the notice of dispute required for the specific dispute by the Contract pursuant to DB Sections 109S-10.1 and 109S-10.4.

4) The name, function, and activity of each Department official, employee, or agent involved in, or knowledgeable about, facts that gave rise to such dispute.

5) The name, function, and activity of each Design-Builder or Subcontractor official, Employee, or agent involved in or knowledgeable about facts that gave rise to such dispute.

6) The specific provisions of the Contract which support the dispute and a statement of the reasons why such provisions support the dispute.

7) The identification of any pertinent documents and the substance of any material oral communications relating to such dispute.

8) A statement as to whether the additional compensation or extension of time requested is based on the provisions of the Contract or an alleged breach of the Contract.

9) If an extension of time is also requested, the specific days for which it is sought and the basis for such request as determined by an analysis of the construction schedule.
10) The amount of additional compensation sought and a breakdown of that amount shall conform to the requirements of DB Section 109S-10.2 except for acceleration disputes which shall conform to the requirements and categories specified in DB Section 109S-10.3 above.

109S-10.9 Required Certification of Disputes

When submitting any dispute over $50,000.00, the Design-Builder must certify in writing, under oath, and in accordance with the formalities required by the Contract, as to the following:

A) That supporting data is accurate and complete to the Design-Builder’s best knowledge and belief; and

B) That the amount of the dispute and the dispute itself accurately reflects what the Design-Builder in good faith believes to be the Department’s liability.

If the Design-Builder is an individual, the certification shall be executed by that individual. If the Design-Builder is not an individual, the certification shall be executed by the following:

1) A senior company official in charge at the Design-Builder’s plant or location involved; or

2) An officer or general partner of the Design-Builder having overall responsibility for the conduct of the Design-Builder’s affairs.

109S-11 ACCEPTANCE AND SUBSTANTIAL COMPLETION

109S-11.1 Partial Acceptance

If at any time during the prosecution of the Project the Design-Builder satisfactorily completes a unit or portion of the Project, such as a structure, an interchange, or a section of road or pavement, the Design-Builder may request the Department’s Project Manager to make an Inspection of that unit. If the Department’s Project Manager finds upon Inspection that the unit has been satisfactorily completed in compliance with the Contract, the Department’s Project Manager may accept that unit as being completed, and the Design-Builder may be relieved of further responsibility for the unit, unless before Final Acceptance of the Work, latent defects are discovered. If latent defects are discovered in the accepted unit, then the Design-Builder will remain responsible for that unit. Such partial acceptance shall in no way void or alter the terms of this Contract.

Devices intended to be used for traffic safety and control that are permanently installed in their final position with all ancillary components and being used by the traveling public shall be accepted when installed in accordance with the Design Plans and Project Specifications, prior to completion of the remaining Work on the job.

Permanently installed items accepted on this basis are limited to guardrails, impact attenuators, traffic signal systems, signs, lighting, raised pavement markers, concrete wall barriers, concrete bridge parapets, bridge railings, guard cable, guardrail anchorages, permanent pavement markings, and fencing. All required performance tests and guarantees shall remain applicable.

Damage, theft, or vandalism to the items by the public after Final Acceptance will be repaired or replaced by the State or by the Design-Builder in conformance with DB Section 104-3. When the damage to an item is such that only partial repair or replacement is required and the Work is to be done by the Design-
Builder, payment shall be made as provided in DB Section 109S-9.2. Items damaged due to negligence of the Design-Builder shall be repaired or replaced at no cost to the State.

The Design-Builder shall erect the items in a logical sequence and time frame within the life of the Project, and items constructed prematurely will not be accepted until such time in the life of the Project that the device becomes effective for its intended use.

109S-11.2   Substantial Completion

When the Design-Builder considers that the Project is substantially complete, the Design-Builder shall notify the Department’s Project Manager in writing.

Prior to receiving a certificate of Substantial Completion for the entire Project, the Design-Builder must complete any specified training for Department personnel.

Within seven days of receipt of the Design-Builder’s written application for a certificate of Substantial Completion, the Department’s Project Manager, in the company of the Design-Builder, will inspect the Project covered by the notice. During the Inspection, the Work will be examined and QC documentation will be reviewed. The Department’s Project Manager will prepare a written list of outstanding items, if any, to be completed or corrected before issuance of the certificate of Substantial Completion and a separate written list of items to be completed or corrected prior to Final Acceptance. The list shall be included in the QA/QC documentation with an agreed date of correction for each deficiency.

If there are no outstanding items to be completed or corrected before Substantial Completion of the Project, the Design-Builder shall, following Inspection:

A) Submit to the Department’s Project Manager special guarantees, Warranties, maintenance agreements, final certifications, and similar documents required under the Contract;

B) Deliver tools, spare parts, instructions, and similar items required to operate and maintain the Work; and

C) Make changeover of locks to all Equipment and facilities and deliver keys and/or combinations to the Department’s Project Manager.

The Design-Builder shall complete or correct the outstanding items, if any, to be done before issuance of the certificate of Substantial Completion and request re-inspection by the Department’s Project Manager in writing.

Within seven Days of the Design-Builder’s request for re-inspections, the Department’s Project Manager will re-inspect the Project and issue a certificate of Substantial Completion if the outstanding items noted for Substantial Completion during the Inspection are completed or corrected.

109S-11.3   Final Acceptance

Upon receipt of written notice from the Design-Builder of the projected completion date of all of the requirements for the Project, the Department’s Project Manager will inspect or review any remaining portions of the Project not inspected at the time of issuance of the certificate of Substantial Completion and review any activities required under the Contract not completed at the time of Substantial Completion on the projected completion date to verify that all Work items, including surveys and As-Built Plans and Design Acceptance, have been completed.
The Design-Builder shall prepare and submit As-Built Plans of the following types in electronic format on CD-ROMs and one reproducible hard copy set:

A) Plan and profile sheets;
B) Signing and striping;
C) Pavement typical sections;
D) All bridge Plans;
E) Retaining structure Plans;
F) Utility Relocation Plans;
G) Drainage structure Plans;
H) Cross sections in areas with retaining structures and/or cuts and/or fills in excess of 3 m high; and
I) Plans of consolidated access points.

The Design-Builder shall also submit the final tabulation of Materials and labor used on Form FHWA-47M (see DB Section 108-1.10).

Upon verification that all items have been completed, the final Inspection by the Department’s Project Manager and the Regional Director shall be scheduled and conducted within 14 Calendar Days. If the Inspection discloses Work, in whole or in part, as being unsatisfactory, the Department’s Project Manager will give the Design-Builder the necessary written instructions within the time limit set by the Department’s Project Manager. Upon correction of the Work, the Department’s Project Manager will make an additional Inspection and notify the Design-Builder accordingly as soon as reasonably possible thereafter.

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

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

109S-12 FINAL AGREEMENTS AND PAYMENT

The final agreement [C47-B (DB) – Final Agreement, Appendix 109S-A] will not be drawn and finalized until all Work required under the Contract has been satisfactorily completed and all claims presented and all accounts for Extra Work and Material have been rendered; considered; and, if agreed to, made a part of such final agreement. The value of such Work and Material shall be computed under and according to the terms of the Contract. Work remaining to be accomplished under an uncompleted Work agreement, shall be considered as completed Work for the purpose of the final agreement. The Commissioner, or his/her designee, will have final Approval of the final agreement as prepared and certified as to its correctness by the Department’s Project Manager and approved by the Regional Director, less any and all
deductions authorized to be made by the Commissioner under the Contract. The right is reserved to the Commissioner to reject the whole or any portion of the final agreement, should said certification of correctness by the Department’s Project Manager be found to be inconsistent with the terms of the Contract or otherwise improperly given.

Payment pursuant to such final agreement less any deductions authorized to be made by the Comptroller shall constitute the final payment to the Design-Builder.

109S-13 TIMELY PAYMENTS

DB Section 179 of the New York State Finance Law requires the Department to make final payment on Highway projects within 75 Calendar Days after Final Acceptance by the Commissioner. If the Department unjustifiably fails to pay the final payment within the prescribed 75 Calendar Days, it may be required to pay interest for each day in excess of the 75 Calendar Days.

In order to enable the Department to process the final payment properly and expeditiously, the Design-Builder is advised that all of the following documents and submissions, as the same may be appropriate to this Contract, are considered to be necessary to enable the processing of the final payment as described above:

A) Form 109-11B, General Release (Appendix 109S-A);
B) Outstanding claims and disputes;
C) Extra Work cost accounts;
D) Final labor affidavits;
E) Approved original reproducibles;
F) Material certifications;
G) Certified payrolls;
H) Federal Highway Administration record of Material, Supplies, and Labor (Form FHWA-47);
I) Tax clearance for Foreign Contractors; and

The Design-Builder is advised that the above list is general in nature, that every item may not be applicable to the Contract, and that a submission not shown above may be required to enable the processing of the final payment. It should be noted that any time taken beyond the date of Final Acceptance to satisfy or furnish the above information shall extend the required payment date by an equal period of time.

The Department, in accordance with DB Section 179 of the New York State Finance Law, has determined that a 30 Calendar Day review period, after Final Acceptance of the Project, is required for final payments after which time the 75 day interest-free processing period will commence.

109S-14 ACCEPTANCE OF FINAL PAYMENT

The acceptance by the Design-Builder, or by anyone claiming by or through it, of the final payment shall constitute and operate as a release to the State from any and all claims of any liability to the Design-Builder for anything theretofore done or furnished for, relating to, or arising out of the Work done, and
for any prior act, neglect, or default on the part of the State or any of its officers, agents, or employees unless the Design-Builder serves a detailed and verified statement of claim upon the New York State Department of Transportation not later than 40 Days after the mailing of such final payment. Such statement shall specify the items and details upon which the claim will be based and any such claim shall be limited to such items. Should the Design-Builder refuse to accept the final payment as tendered by the Comptroller, it shall constitute a waiver of any right to interest thereon.

109S-15

CHANGED CONDITIONS AND DELAY PROVISIONS

109S-15.1 Compensable Delays and Changed Conditions

The provisions of this Contract permit monetary compensation for delays and interference in certain defined instances. The Design-Builder agrees that the only claims it may make for extra compensation caused by delay or interference affecting the performance or the scheduling of Contract Work is for those instances arising out of the following:

A) Differing site conditions;

B) Suspension of Work (other than stop orders pursuant to DB Section 109S-15.1(A));

C) Significant changes in the character of the Work; and

D) Situations not referenced in DB Section 109-16 and which are not within the contemplation of the parties at the time of entering into the Contract.

In addition, these aforementioned provisions may also form the basis for Extra Work compensation pursuant to DB Section 109S-9 and DB Section 109S-10. Failure of the Design-Builder to adequately progress the completion of the Work will be considered in determining whether the aforementioned instances are the primary causes of delay. In all such instances, for any claim asserted under this DB Section, the Design-Builder shall keep detailed written records of the costs and agrees to make them available to the Department at any time for purposes of audit and review.

Any dispute relating to such claims shall be promptly submitted to the Department’s Project Manager in writing, pursuant to the notice provisions of the Contract. Failure by the Design-Builder to notify the Department’s Project Manager in writing pursuant to the provisions of this Contract, or to maintain and furnish cost records of such claims, shall constitute a waiver of the claim.

109S-15.2 Suspensions of Work Ordered by the Department’s Project Manager

A) The Department’s Project Manager may stop by written order any Work or any part of the Work under the Contract if the methods or conditions are such that unsatisfactory Work might result (including progressing construction in the absence of Design Plans, Project Specifications, and/or Working Plans that have not been reviewed and released for construction per DB Section 111-12); if improper Material or procedures are being used; if the Design-Builder fails to comply with any Contract requirement or with any provision of the Specifications, its Proposal, the Plans, or any State or federal law or regulation; if the conditions of the Project are considered to be sufficiently deficient as to seriously affect the safety of the public or the persons employed for the construction of the Project; or if major non-conformance with the MPT Plan is causing serious disruptions to traffic operations. The Design-Builder shall not be entitled to any additional monetary compensation for such a Work stoppage.

B) If the performance of all or any portion of the Work is suspended or delayed by the Department’s Project Manager in writing for an unreasonable period of time (not
originally anticipated, customary, or inherent to the DB industry) and the Design-Builder believes that additional compensation and/or Contract Time is due as a result of such suspension or delay, the Design-Builder shall submit to the Department’s Project Manager in writing a request for adjustment within seven Calendar Days of receipt of the notice to resume Work. The request shall set forth the reasons and support for such adjustment. The record keeping requirements of DB Sections 104-16 and 105-5 must be complied with in connection with any requests for reimbursement.

C) Upon receipt, the Department’s Project Manager will evaluate the Design-Builder's request. If the Department’s Project Manager agrees that the cost and/or time required for the performance of the Contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of, and not the fault of, the Design-Builder, its Suppliers, or its Subcontractors at any approved tier, and not caused by weather, the Department’s Project Manager will make a cost and/or time adjustment (excluding profit) and modify the Contract in writing accordingly. The Design-Builder will be notified of the Department’s Project Manager's determination whether or not an adjustment of the Contract is warranted.

D) No Contract adjustment will be allowed unless the Design-Builder has submitted the request for adjustment within the time prescribed.

E) No Contract adjustment will be allowed under this DB Section to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this Contract.

F) This DB Section shall be governed by the notice provisions set forth above, and the record keeping and other requirements of DB Sections 104-16, 105-5, and 109S-10.5. Additional compensation via Orders on Contract shall be made for time related costs, if any, pursuant to DB Section 109S-10.2. For any increased costs of the Work resulting from a suspension of Work, payment shall be made pursuant to DB Section 109S-9.2, but the Equipment compensation shall be governed and controlled by the provisions of DB Section 109S-10.2.

**109S-16 NON-COMPENSABLE DELAYS**

The Design-Builder agrees to make no monetary claim for, and has included in its prices for the Work under the Contract, any extra/additional costs attributable to any delays, inefficiencies, or interferences in the performance of the Contract caused by or attributable to items (A) through (K) set forth below.

A) The Work or the presence on the Project Site of any third party, including, but not limited to, that of other contractors or personnel employed by the State; by other public bodies; by railroad, transportation, or Utility companies or corporations; or by private enterprises, or any delay in progressing such Work by any third party as indicated or disclosed in the Contract Documents or ordinarily encountered or generally recognized as inherent in the Work.

B) The existence of any facility or appurtenance owned, operated, or maintained by any third party, as indicated or disclosed in the Contract Documents or ordinarily encountered or generally recognized as inherent in the Work.

C) The act, or failure to act, of any other public or governmental body or railroad, transportation, or Utility companies or corporations, including, but not limited to, approvals, permits, restrictions, regulations, or ordinances attributable to the Design-Builder's design, submission, action or inaction, or means and method of construction.
D) Restraining orders, injunctions, or judgments issued by a court which were caused by the Design-Builder's submissions, action or inaction, or means and method of construction.

E) Any labor boycott, strike, picketing, or similar situation.

F) Any shortages of supplies or Material required by the Contract Work.

G) Climatic conditions, storms, floods, droughts, tidal waves, fires, hurricanes, earthquakes, landslides, or other catastrophes. However, payment may be made for repairing damage to the Work caused by an “occurrence” as provided in DB Section 107-26.2.

H) Contract quantities in excess of the original Contract quantity for Unit Priced Work, additional Contract Work, or Extra Work which does not significantly affect the overall completion of the Contract, delays in the review or issuance of Orders on Contract or field change sheets, or delays within the established time periods for Consultation and Written Comment on Design Documents, Working Plans, other submittals and construction details, means, and methods.

I) Variations in soil moisture content from that represented in reports, borings, or tests conducted by the Department and included in the Contract Documents.

J) Any situation which was within the contemplation of the parties at the time of entering into the Contract.

K) Award of the Contract by the State more than 90 days beyond the Proposal Due Date [Instructions to Proposers (ITP), Section 1.6.2] or the Final Revised Proposal Date (Addendum to ITP), if any, whichever is later.

L) Correcting any Materials or Work rejected either by the Design-Builder or the Department, or, for the time being, Work unsatisfactory to the Department for which payment has been withheld. Refer to DB Sections 109(L or S)-7.2; DB Sections 109(L or S)-15.2(A); DB Section 106-6; and DB Section 108-8(C).
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(Project Name)
DESIGN-BUILD PROJECT

PIN ___________

DB CONTRACT DOCUMENTS
PART 2

DB SECTION 109S
PRICE, PROGRESS, AND PAYMENT
SMALL PROJECTS

APPENDIX 109S-A
FORMS
APPENDIX 109S-A
FORMS
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C47-B (DB) Final Agreement
CONR-30B(DB) Certificate of Contract Work Progressed and Recommended for Payment
Form 109S-06A Request for Payment of Materials
Form 109S-06B Certificate of Title to Stored Materials
Form 109S-06C Release and Waiver for Materials Stored on Private Property
Form PP(S) Request for Periodic Payment
Form 109-11B General Release
MURK 11a (DB-C) Record of Work Authorized but Not Included in Contract (Construction)
MURK 11a (DB-D) Record of Work Authorized but Not Included in Contract (Design)
MURK 11b (DB-C) Daily Record of Force Account Work (Construction)
MURK 11b (DB-D) Daily Record of Force Account Work (Design)
MURK 12c (DB-C) Force Account Summary of Labor, Construction
MURK 12c (DB-D) Force Account Summary of Labor, Design
MURK 13d (DB-C) Force Account Summary, Construction
MURK 13d (DB-D) Force Account Summary, Design
Final Contract Payment Letter
Partial Payment Request
STATE HIGHWAY

Articles of Agreement made this _______ day of ________________, 200__, between

____________________________________________________________________________

party of the first part, and the State of New York, party of the second part, to be attached to and
form a part, of the Contract between parties hereto, dated the _________________ day of

___________, 200__, pursuant to chapter 63, Laws of 1936, as amended; Chapter 867,
Laws of 1923, and Chapter 348, Laws of 1926.

WITNESSETH:

The party of the first part, ___________________ _____________________________, hereby agrees to
furnish all materials and labor hereinafter described at the prices hereinafter, mentioned, in accordance
with the terms of the original contract, the requirements contained in this Agreement and the orders of the
State Department of Transportation.

And, in consideration of not being required to furnish the items deduced by this Agreement, which were
found to be unnecessary for the proper completion of the Work, hereby consents to the deduction of said
items:

The party of the second part, the State of New York represented by the State Department of
Transportation, hereby agrees to pay __________ _____________________________, party of the first
part, the prices mentioned in this Agreement for the materials and labor actually ordered and performed,
in the same manner as is provided for the monthly payments in the Contract hereinbefore referred to.
FINAL AGREEMENT

Contract No. _______________________________

Federal Project No. __________________________

Highway No. _______ County of _______________

Attached to and forming part of agreement dated __________________

Net (Increase/Decrease) $___________________

The said Contract and all plans, specifications and papers appertaining thereto shall form a part of this Agreement.

IN WITNESS WHEREOF, we have hereunto subscribed our names the day and year first above written.

___________________________________________
Design-Builder

By: ________________________________________

Title: _______________________________________

Approved: _________________, 200__

________________________________   PEOPLE OF THE NEW YORK
Regional Director
STATE DEPARTMENT OF
TRANSPORTATION
CONSTRUCTION DIVISION

Amount: __________________________

Approved _________________, 200__   Approved ________________, 200__

________________________________
For the State Comptroller

________________________________
Deputy Chief Engineer – Construction Division
CERTIFICATION OF CONTRACT WORK PROGRESSED AND
RECOMMENDATION FOR PAYMENT

FA NO. ___________________ COMPTROLLER’S CONTRACT NO. ________________

I, ________________________________, hereby certify that I am the officially designated
(Name & Civil Service Title)*

Department’s Project Manager of the subject Project, that the amount of Work done and the Material
incorporated under the subject Contract as stated in this estimate up to and including ____________,
____ and Order-on-Contract # _____ was necessary and has been established from estimates and
determinations of progress and inspections which I made or were made under my supervision during my
official connection with the said Contract and from the official notes on progress made by my
predecessors of such Work under them, and to the best of my knowledge and belief, the said information
is correct and in strict compliance with the terms of the said Contract.

I further certify that the records from which this estimate was developed and any other record
required by statute, rule, or regulation of the New York State Department of Transportation or the federal
government or prescribed in the Contract have been established and will be filed in the Regional Office,
in accordance with the terms of the Contract.

Date:       ___/___/___          Department’s Project Manager’s Name: __________________________
Title: ________________________________

MIR Date: ___/___/___              DCE: _________________________ Firm: _____________________*
CCE: _________________________ Firm: _____________________*

I hereby certify that the detail estimate and calculations which developed the total shown by this
payment are correct and just. Payment is recommended and approved. This certificate is based upon the
information herewith that has been provided by the aforesaid designated Department’s Project Manager
of the subject Contract.

Date: ______________ Name: _________________________ Title: ___________________

TO BE COMPLETED WHEN NECESSARY BY STATE AGENCY OTHER THAN NEW YORK STATE
DEPARTMENT OF TRANSPORTATION.

APPROVED FOR PAYMENT:

________________________     __________________
Agency                        Date

________________________     __________________
Signature                     Date

* If an employee of a consulting engineering firm - show name of engineering firm.
# REQUEST FOR PARTIAL PAYMENT OF STORED MATERIALS (DB)

## SECTION A: COMPLETED BY DESIGN-BUILDER

Date:  

<table>
<thead>
<tr>
<th>Contract ID</th>
<th>PIN</th>
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</table>

Description:  

Design-Builder:  

Price Center Number:

Materials Description:  

Value of Payment Requested:

Materials Stored At:

Scheduled Installation on Project:

Submitted By:

## SECTION B: COMPLETED BY DEPARTMENT

<table>
<thead>
<tr>
<th>Verify Submissions</th>
<th>Date</th>
<th>Check By</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill of Sale or Voucher</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certification of Title</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(to Design-Builder)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Warranty of Title</td>
<td></td>
<td></td>
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<tr>
<td>(to Department)</td>
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<tr>
<td>Evidence of Acceptability</td>
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</table>

Verify Storage:  

Waiver and Release  
(if stored on private property):  

Verify Scheduled Installation:  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

Payment Recommended By:  

Payment Approved By:  

Department’s Project Manager:
FORM 109-06B

CERTIFICATION OF TITLE
TO MATERIALS STORED, OR TO BE STORED,
FOR INCORPORATION INTO DEPARTMENT OF
TRANSPORTATION PROJECT

WHEREAS, ______________________, hereafter referred to as the "Design-Builder", is engaged in the performance of the Design-Build Contract, hereafter referred to the "Contract", with the New York State Department of Transportation, hereafter referred to as the "Department", and

WHEREAS, in accord with the Design Plans and Project Specifications, the Design-Builder has purchased certain Materials for incorporation into the Contract Work from ______________________, hereafter referred to as the "Vendor", and

WHEREAS, these Materials referred to are as follows:

DESCRIPTION of Materials and quantities:

and,

WHEREAS, to comply with the provisions of the Contract Documents regarding partial payments (DB Section 109S-06) requiring certification of the Design-Builder’s absolute legal title to the Materials described above and warrant of title to the same Materials to the Department, the Design-Builder and the Vendor have entered into the following agreement.

NOW, THEREFORE, and in consideration of the forgoing premises, the Design-Builder and the Vendor agree, with the intention of being bound hereby, as follows:

1. The Vendor has executed this document for the purpose of acknowledging that: the Vendor has made an outright sale and transfer of title for the above Materials to the Design-Builder free of all restrictions, filings, or liens; the Vendor is the lawful owner of the above Materials and has the right make such transfer of title; and the Vendor will not in the future make any claims whatsoever to such title.

2. The Design-Builder certifies and represents that it is the lawful holder of the absolute legal title to the above Materials, and has full legal right, power and authority to sell and transfer such title without restrictions, filings, or liens of any kind on the part of the Vendor and/or any Subcontractor.

3. The Design-Builder, Vendor, and/or any Subcontractor or their successors and assigns, will and do by these presents warrant title to the above described Materials to the New York Department of Transportation.
4. In the event that the Vendor has sold the above described Materials to a Subcontractor of the Design-Builder, this Certification of Title is hereby amended at all applicable points to reflect this fact. By the execution of this certification, any such Subcontractor is acknowledging that: such Subcontractor has made an outright sale and transfer of title for the above Materials to the Design-Builder free of all restrictions, filings, or liens; such Subcontractor is the lawful owner of the above Materials and has the right to make such transfer of title; and such Subcontractor will not in the future make any claims whatsoever to such title.

IN WITNESS WHEREOF, the parties hereto have caused this Certification of Title to be executed this day of __________, 2003.

ATTEST: DESIGN-BUILDER

___________________________

By _________________

Title _________________

ATTEST: SUBCONTRACTOR

___________________________

By _________________

Title _________________

ATTEST: VENDOR

___________________________

By _________________

Title _________________
FORM 109-06C
RELEASE AND WAIVER
FOR MATERIALS STORED ON PRIVATE PROPERTY

CONTRACT INFORMATION

CONTRACT NO:

DESCRIPTION:

DESIGN-BUILDER:

STORAGE INFORMATION

STORAGE SITE:

OWNER’S NAME:

MATERIALS STORED:

WHEREAS, the undersigned certifies to be property owner, or authorized representative thereof, of the above described storage site.

WHEREAS, the undersigned has contracted and leased to the Design-Builder indicated above who holds a Contract with the New York State Department of Transportation the right to store and remove the above listed Materials at said storage site, and

WHEREAS, these listed Materials are the same as those for which the Design-Builder is asking payment in whole or part from the Department in advance for removal of such Materials from said storage site.

NOW, THEREFORE, in consideration of such payment being made to said Design-Builder, I/we do hereby release any and all claims which I/we have or can claim to have upon the above listed Materials for any and all sums of money which may be due to me from said Design-Builder for the privilege of storing such Materials on said storage site,

FURTHER, I/we do hereby consent and agree that in the event of the failure of said Design-Builder to
fulfill and perform said Contract with the Department, or if said Contract is canceled in part or in whole by the Department such that the Design-Builder is prohibited from completing said Contract, then the Department or any substitute party or Design-Builder may remove all such Materials from the above storage site without further payments due to me for use of said storage site.

FURTHER, I/we do hereby agree that for purposes of inspection, sampling, inventory, removal or other reasons as determined necessary by the Commissioner of Transportation; the Department’s officers, employees, agents, or contractors; or the contractors’ agents, officers, and employees shall have the right to enter upon the storage site at any and all times with Equipment and vehicles to take therefrom any or all of said stored Materials stored by the above contract, and that such right of ingress, egress, and regress to and from the storage site shall be without obstruction, objection, or hindrance, and without further payment due for such rights, and

FURTHER, I/we do hereby waive any and all claims upon such stored Material or upon rights to remove the same.

THE FORGOING INSTRUMENT shall bind the property owner(s), their successors and assigns, and legal representatives.

ATTEST: ____________________________ L.S.
               Date

______________________________ L.S.
               Date

IN WITNESS WHEREOF, I have hereunto set my hand and seal this

_______ day of ________________, 2003.

______________________________
NOTARY PUBLIC
New York State Department of Transportation

**FORM PP(S)**
Request for Periodic Payment and Periodic Certifications

<table>
<thead>
<tr>
<th>(6) Price Center Code</th>
<th>(7) Price Center Value</th>
<th>(8) Cumulative Amount Earned at End of Last Period</th>
<th>(9) Cumulative Percent Complete End of This Period</th>
<th>(10) Actual Cumulative Amount Earned End of This Period</th>
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<tbody>
<tr>
<td>PC1, Preliminary &amp; General Requirements</td>
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<td></td>
<td></td>
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<tr>
<td>PC2, Engineering &amp; Design</td>
<td></td>
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<tr>
<td>PC3, Maintenance and Protection of Traffic</td>
<td></td>
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<tr>
<td>(Add other Price Centers as required)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(11) Total Amount Earned to Date

(12) Total Amount Earned as of Last Period

(13) Amount Earned This Period

(14) Less Retention (5%)

(15) Net Due This Period

**Progress and Quality Certification:**
We hereby certify that all Work performed meets Contract requirements, and that the cumulative amount earned at end of the period covered by this request and certificate are correct to the best of our knowledge.

**For the Design-Builder:**

Signed:  

Printed or Typed Name:  

Design-Builder's Representative  

QA Manager  

Date:  

**Designer’s Certification:**

I hereby certify that responsible design staff have examined the site and the Work under construction and have, based on their professional judgment, determined that the site conditions appear to be consistent with those represented by the design documents that the Work is progressing accordance with the Design Plans and Project Specifications

Signed:  

Printed or Typed name:  

Design Manager  

Date:  

**Department Endorsement:**

I hereby confirm the achievement of the cumulative amount earned to date indicated herein and concur with this request and certificate except as noted below or attached.

**For Department:**

(Signature)  

(Date)

Department's Project Manager  

(Date)
GENERAL RELEASE

The undersigned, _________________________________________________, a corporation duly incorporated under the laws of the State of _______________________, and duly authorized to do business in the State of New York, in consideration of payment of the sum of $______________________, of which $____________________ is retainage, and in addition $____________________ in securities being held in lieu of retainage monies, the receipt of which is hereby acknowledged, does, for itself, its successors and assigns, hereby fully released and discharge the State of New York, the Department of Transportation of the State of New York and all offices, agents and employees of the State of New York from all claims, demands, accounts, contracts and liabilities of every kind or nature in law or in equity arising out of a contract designated as ________________________________________________.

or arising out of the performance of the said contract, or arising out of the completion and acceptance of the said contract, or in any other way connected with the said contract, and in case any claim shall have been filed by the undersigned with the clerk of the Court of Claims for any such claim arising out of the said contract, the undersigned further consents that an order may be made by said Court without notice to the undersigned dismissing the claim upon the merits.

IN WITNESS WHEREOF, the ___________ day of ________________ has hereunto set his hand and affixed the seal of his corporation.

___________________________________

Name and Title

STATE OF \\
COUNTY OF \\

On this ________ day of _____________, 200__, before me personally came __________________________, to me know, who being by me duly sworn, did depose and say that he resides in ___________________________; that he is the __________________________ of the corporation described in and which executed the foregoing instrument; that he know the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name by like order.

_______________________________

Notary Public
# Daily Record of Work Authorized, Not Included in Contract (Construction)

**Contract No.:**

**Fed. Project No.:**

**Design-Builder:**

**Date:**

## Price Center and Description:

<table>
<thead>
<tr>
<th>Labor</th>
<th>Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>Total O.T.</td>
</tr>
<tr>
<td></td>
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</table>

<table>
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<tbody>
<tr>
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<th>Equipment</th>
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<th>Cost</th>
<th>Hours</th>
<th>Cost</th>
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<tr>
<td>Name</td>
<td>Stock</td>
<td>Bare Cost</td>
<td>Trans Taxes</td>
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</table>

**Total for Day**

**Statement of Work Accomplished:**

CERTIFICATION: I certify to the best of my knowledge and belief that the account herein shown is an accurate statement of the labor used and direct expenses incurred on this day.

Signed: __________________________________
For Design-Builder Date ______________________

Signed: __________________________________
For Dept. of Transportation Date ______________________

**Murk 11a (DB-C)**
**DAILY RECORD OF WORK AUTHORIZED, NOT INCLUDED IN CONTRACT (DESIGN)**

<table>
<thead>
<tr>
<th>Contract No.</th>
<th>Fed. Project No.</th>
<th>Design-Builder</th>
<th>Date</th>
</tr>
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**Price Center and Description:**

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<tr>
<th>LABOR (EXEMPT)</th>
<th>LABOR (NON-EXEMPT)</th>
<th>DIRECT EXPENSES</th>
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</thead>
<tbody>
<tr>
<td>Name</td>
<td>Labor Classification</td>
<td>Hours</td>
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<tr>
<td></td>
<td>Total</td>
<td>O.T.</td>
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</tbody>
</table>

| Total for Day | Total for Day | Total for Day |

**STATEMENT OF WORK ACCOMPLISHED:**

CERTIFICATION: I certify to the best of my knowledge and belief that the account herein shown is an accurate statement of the labor used and direct expenses incurred on this day.

Signed: ____________________________  ____________________________
For Design-Builder                   For Dept. of Transportation
Date                                  Date
# DAILY RECORD OF FORCE ACCOUNT WORK (CONSTRUCTION)

**Price Center and Description:**

<table>
<thead>
<tr>
<th>LABOR</th>
<th>MATERIALS</th>
<th>EQUIPMENT</th>
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<tbody>
<tr>
<td>Name</td>
<td>Labor Classification</td>
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<tr>
<td>-----------------------------</td>
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<tr>
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<td>Total</td>
<td>O.T.</td>
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<tr>
<td>Total for Day</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**CERTIFICATION:** I certify to the best of my knowledge and belief that the account herein shown is an accurate statement of the labor used and direct expenses incurred on this day.

Signed: __________________________  __________________________
For Design-Builder                  Date                                      For Dept. of Transportation                     Date

MURK 11b (DB-C)
# DAILY RECORD OF FORCE ACCOUNT WORK (DESIGN)

<table>
<thead>
<tr>
<th>Contract No.:</th>
<th>Fed. Project No.:</th>
<th>Design-Builder:</th>
<th>Date:</th>
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**Price Center and Description:**

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<th>LABOR (EXEMPT)</th>
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<th>DIRECT EXPENSES</th>
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</thead>
<tbody>
<tr>
<td>Name</td>
<td>Labor Classification</td>
<td>Hours</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Total</td>
</tr>
</tbody>
</table>

**Total for Day**

**STATEMENT OF WORK ACCOMPLISHED:**

CERTIFICATION: I certify to the best of my knowledge and belief that the account herein shown is an accurate statement of the labor used and direct expenses incurred on this day.

Signed:

For Design-Builder: ______________________ Date: ______________________

For Dept. of Transportation: ______________________ Date: ______________________
<table>
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<tr>
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<tr>
<th>Name</th>
<th>Hourly Rate</th>
<th>Hours for Period</th>
<th>Regular (Direct) Wages</th>
<th>Premium (Direct) Wages</th>
<th>Gross Wages</th>
<th>$_____ Per Week Limitation Per Man</th>
<th>$_____ Per Week Limitation</th>
<th>Wages Over $_____</th>
<th>Wages Over $_____</th>
<th>Fringe Benefits</th>
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<tr>
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<td>Basic (Regular)</td>
<td>Premium Additive</td>
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<td>O. T. (Premium)</td>
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Total for Period

MURK 12c (DB-C)
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**Hourly Rate**

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<th>Hours for Period</th>
<th>Regular (Direct) Wages</th>
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<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Overtime</td>
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</table>

**EXEMPT**

|                 |                   |
|                 |                   |

**NON-EXEMPT**

|                 |                   |
|                 |                   |

**Total for Period**

|                   |                   |                   |

MURK 12C(DB-D)
## FORCE ACCOUNT SUMMATION (CONSTRUCTION)

<table>
<thead>
<tr>
<th>Contract No.</th>
<th>Fed. Project No.</th>
<th>Design-Builder</th>
<th>Price Center</th>
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<table>
<thead>
<tr>
<th>Period</th>
<th>Regular (Direct) Wages</th>
<th>Premium Wages</th>
<th>Gross Wages</th>
<th>$ Per Wk. Limitation</th>
<th>$ Per Wk. Limitation</th>
<th>Wages Over $</th>
<th>Wages Over $</th>
<th>Fringe Benefits</th>
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</thead>
</table>

**Totals**

**NOTE:** Use category (either $ Limitation or Gross Wages) mandated by your insurance policy.

### LABOR AMOUNT

<table>
<thead>
<tr>
<th>Regular Wages</th>
<th>Fringe Benefits</th>
<th>Other Benefits</th>
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</thead>
</table>

### TAXES AND INSURANCE

- **F.I.C.A.** \( \%) \times [\text{Gross Wages less Wages over } \$]$
- **N. Y. S. and Fed. Unempl.** \( \%) \times [\text{Gross Wages less Wages over } \$]$
- **Workers' Compensation** \( \%) \times [\text{Wages over } \$] \text{ per week limitation} \text{ or } [\text{Gross Wages}]$ *See Note Above
- **P. L. and P. D. Insurance** \( \%) \times [\text{Wages over } \$] \text{ per week limitation} \text{ or } [\text{Gross Wages}]$ *See Note Above

### EQUIPMENT

<table>
<thead>
<tr>
<th>Indent. No.</th>
<th>Cost</th>
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**SUBTOTAL**

<table>
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<tr>
<th>P. &amp; O. 20%</th>
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</table>

**TOTAL LABOR**

**TOTAL FORCE ACCOUNT**

- **Labor**
- **Materials**
- **Equipment**

**TOTAL**

**CERTIFICATION:** I certify, to the best of my knowledge and belief, that the equipment used on this work was of the proper size, that material taken from stock as designated above is charged at fair market value, and that account herein shown is an accurate statement of materials and equipment used.

Signed ________________________________
For Design-Builder

Signed ________________________________
For Dept. of Transportation

Date ________________________________
<table>
<thead>
<tr>
<th>Period</th>
<th>Regular (Direct) Wages</th>
<th>Premium Wages</th>
<th>Gross Wages</th>
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<tbody>
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<th>Direct Expenses</th>
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<td></td>
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</tbody>
</table>

**25% if work is done by Subcontractor

TOTAL FORCE ACCOUNT

Labor

Direct Expenses

TOTAL
Dear [DESIGN-BUILDER NAME]:

Attached for your review is a summary of final contract quantities for the subject contract. [Include only if there are unit priced items in the Contract.]

In accordance with Section 109 of the Contract Documents, the final agreement for the project referenced herein will not be drawn and finalized "until all work required under the contract has been satisfactorily completed, all claims presented and all accounts for extra work and materials have been rendered, considered, and if agreed to, made a part of such final agreement".

Additionally, in accordance with Specification Section 109-13, certain documents and submissions are considered to be necessary to enable timely processing of the final payment. As of the date of this letter, the following have not yet been received and may delay the processing of the final payment:

[List any missing documentation. If all documentation has been submitted, modify this letter accordingly.]

As Design-Builder for the subject contract, you are hereby required to promptly submit to this office any exceptions or disputes relative to the proposed final contract payment, accounts for extra work and materials, together with supporting measurements and/or data, and any other documentation listed above. In order to be considered as a part of the final agreement, your reply with supporting documentation must be received by this office within fifteen (15) days of the date of this letter. If this deadline presents a serious problem, please notify this office by certified mail within fifteen (15) days of the date of this letter as to when you will forward the required information.

If we do not receive any notification from you within fifteen (15) days of the letter, we will assume you are in agreement with the final contract payment and have no disputes. We will, therefore, proceed with the processing of the final estimate.

Very truly yours,

________________________________

Your name
Department’s Project Manager

cc: [NAME], Regional Construction Engineer, Region [#]

File

Contract Form
## REQUEST FOR PARTIAL PAYMENT OF STORED MATERIALS

### SECTION A: COMPLETED BY DESIGN-BUILDER

<table>
<thead>
<tr>
<th>Date</th>
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</thead>
<tbody>
<tr>
<td>Contract ID:  D PIN</td>
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<tr>
<td>Description:</td>
</tr>
<tr>
<td>Design-Builder:</td>
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<tr>
<td>Price Center Number:</td>
</tr>
<tr>
<td>Materials Description:</td>
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<tr>
<td>Value of Payment Requested:</td>
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<tr>
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(Project Name)
DESIGN-BUILD PROJECT

PIN _____________

DB CONTRACT DOCUMENTS
PART 2

DB SECTION 109L
PRICE, PROGRESS, AND PAYMENT
FOR LARGER PROJECTS
This page is intentionally left blank.
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SECTION 109L

PRICE, PROGRESS, AND PAYMENT

FOR LARGER PROJECTS

This DB Section 109L describes and specifies the pricing concepts, specifies the means of determining the Work progress, and establishes the procedures for requesting and making payment.

109L-1 PRICING CONCEPT

The Price Center concept will be used for all pricing. The price for each Price Center will be reflected as a Price Center Value (PCV) on Form SP, Schedule of Prices. The sum of all of the PCVs will be the Contract Price.

The pricing concepts are summarized as follows:

A) The Project is divided into DB Sections (see Form PCD, Price Center Descriptions, and Form SP);
B) Price Centers are identified and defined for Project-wide activities and construction activities within the DB Sections;
C) Price Center Values (lump sum prices or the sum of Unit Priced items) are assigned to each Price Center and to designated activities within each Price Center by the Proposer/Design-Builder per the Instructions to Proposers (ITP);
D) A Contract Periodic Payment Schedule (PPS-C) is prepared by distributing the PCVs over the period of performance of the Work within each Price Center on a cumulative amount earned basis (a time-price curve). The time-price curve for the Project as a whole is determined by summing the cumulative amounts earned for the Price Centers;
E) Progress Check Points (PCP) (designated by the Department and Design-Builder) are identified and defined for each of the Price Centers;
F) The date when achievement of the PCPs is planned is identified and shown on a Schedule of PCPs;

Details of the process are described in this DB Section 109L.

See the Reference Documents, Volume III, Exhibit III, Division 3, for an example of Price Center pricing and payment.

109L-1.2 Price Centers

109L-1.2.1 General Requirements for Defining DB Sections and Price Centers

Form PCD shows the Department’s suggested titles and limits of DB Sections and Price Centers. The Proposer/Design-Builder may adjust the Price Center titles, contents, and limits subject to the requirements noted below, but shall designate DB Sections and Price Centers of a similar magnitude and nature to those shown on Form PCD.

The Proposer/Design-Builder shall divide the Project into Price Centers each representing one or more groups of inter-related Work forming part of the Project. The Proposer/Design-Builder will use the following indicators to create the DB Sections and Price Centers:
A) Use DB Section “A” for non-construction Price Centers, including the following, as applicable:

1) Price Center 1 for preliminaries and general requirements, including activities shown in Form PC1 and Table 109L-1;

2) Price Center 2 for Project-wide engineering and design activities, including activities shown in Form PC2;

3) Price Center 3 for Maintenance and Protection of Traffic (MPT) activities, including those shown on Form PC3;

4) Price Center 4 for Project-wide environmental monitoring and mitigation activities shown on Form PC4;

5) Price Center 5 for public information/community relations activities, including those listed on Form PC5;

6) Price Center 6 for Hazardous Materials and contaminated substance remediation activities, including activities shown on Form PC6; and

7) Price Center 7 for Interim Payments.

Price Centers 1 through 7 are reserved for DB Section “A” for the activities described above.

B) Use DB Sections “B,” “C,” etc., for construction DB Sections and construction Price Centers. Price Center numbering for DB Sections subsequent to DB Section “A” should always begin with Price Center 8. For example, DB Section “B” will begin with Price Center 8, as will DB Sections “C” and beyond. Thus, there will be only one each of Price Centers 1 through 7 for any given project. However, there may be multiple Price Centers 8, etc., for a project. For clarity, each Price Center 8 and above must be identified by DB Section and Price Center number (i.e., Price Center B-8 for DB Section “B,” Price Center 8, and so on).

C) Each construction Price Center shall represent a series of Work activities comprising a complete Project component when constructed. See Form SP.

D) Each Price Center shall have two or more PCPs.

See the ITP, Appendix C, for all Pricing Forms.

For all Price Centers except Price Centers 1, 2, 3, 4, 5, 6 and 7 (Forms PC1, PC2, PC3, PC4, PC5, PC6, and PC7), the Proposer/Design-Builder shall provide a description identifying the scope of Work for each Price Center in bulleted or narrative form on Form PCD. The Proposer/Design-Builder may include a list of the key components shown on Form SP in each Price Center description. The Proposer/Design-Builder must generally describe all the Work encompassed within each Price Center and clearly cross reference items of a similar nature that are included in other Price Centers.

109L-1.2.2 Mobilization

Mobilization shall be an activity in Price Center 1. Mobilization shall not exceed four percent of the Contract Price.

109L-1.2.3 Material Delivered To The Site

If the Proposer/Design-Builder plans to request payment for Material delivered to the Site, it must show delivery of the Material as an activity of the associated Price Center(s). See also DB Section 109L-6.3.
109L-1.2.4 Specific Rules For Price Centers
The following rules apply for Price Centers.

A) Price Centers 1 Through 7
   The Proposer/Design-Builder may add Project-wide activities to Forms PC1 through PC7, but shall not delete any of the activities shown on Forms PC1 through PC7.

B) Other Price Centers
   1) Price Centers shall not contain more than one Critical Path; and
   2) The Design-Builder may find it beneficial to place significant portions of the Project that will be completed by a separate Subcontractor and/or represent significant differences in crafts and/or trades, such as Utility Relocations, in separate Price Centers.

109L-1.3 Options

109L-1.3.1 Option 1 – Schedule of Values
The Department may exercise Option 1, Schedule of Values, by the date specified on the Appendix to the Form of Proposal. In exercising Option 1, the Department may delete, at its sole discretion, any items and their associated Unit Prices listed on Form SOV, Schedule of Values, and include the revised Form SOV in the Contract at Part 10.

Form SOV will be incorporated into the Contract at Part 10 when and if Department exercises the option. The Unit Prices shown on Form SOV will be the Unit Price for Orders on Contract for all additions or deletions of Work included in the items on Form SOV. The prices shown on Form SOV will include the cost of all construction labor, Equipment, Material, project management, and Design-Builder and Subcontractor markups. The Unit Prices shown on Form SOV do not include engineering or design costs.

109L-1.3.2 Other Options
[Add other options as required. Any extended warranty provisions must be proposed and priced as options.]

109L-1.4 Contract Periodic Payment Schedule

The PPS-C shows the planned amount payable to the Design-Builder for each month for Work carried out in the Price Centers, subject to conditions stated in the Contract. The PPS-C will be the basis for the amounts of periodic payments.

In its Proposal, the Design-Builder submitted a Proposed Periodic Payment Schedule (PPS-P) for the Work. The Design-Builder shall develop and submit the PPS-C to the Department’s Project Manager within 45 days of NTP for review and written acknowledgement. The Design-Builder shall develop the PPS-C in accordance with this DB Section 109L-1.3. The PPS-C, upon written approval of the Department’s Project Manager, will be incorporated into the Contract at Part 10.

109L-1.4.1 General Requirements for the PPS-C
The Design-Builder shall develop and submit the PPS-C broken down to each DB Section and Price Center, using Form PPS-C (Appendix 109L-A). The DB Sections and Price Centers in the PPS-C shall match those shown on Form PCD. The Design-Builder shall make no changes in PCVs except as authorized by Orders on Contract.
The PPS-C shall cover the entire period of the Contract in monthly increments, through Final Acceptance, using months and years on the Gregorian calendar, starting at the date of NTP.

The Design-Builder shall make the cumulative payment percentages shown on the PPS-C compatible with the progress of the Work indicated in its proposed Baseline Progress Schedule.

All Price Centers, regardless of measurement and payment method, shall be shown on the PPS-C.

109L-1.4.2 Developing the PPS-C

A) The Design-Builder shall distribute the PCV of each Price Center over the period of the Contract within the limitations described in this DB Section 109L-1.4.2 to indicate the Design-Builder’s desired payment schedule;

B) There will be no advance payment and there will be no separate Price Center for mobilization. Mobilization costs shall be included in Price Center 1;

C) The sum of the PCVs shall equal the Contract Price;

D) The Design-Builder shall determine the monthly cumulative payment distribution of the PCV over the duration of the Contract for each Price Center. The resulting curve shall be the PPS-C for each Price Center;

E) The time-price curve for each Price Center shall be developed in such a manner that the amount planned to be earned for any month preceding the date of a PCP shall not be less than 10% of the PCV;

F) The Design-Builder shall do the following to determine the PPS-C for the Contract:
   1) For each Price Center, list each monthly cumulative payment for each month for that Price Center; and
   2) For each month, sum the planned cumulative payments for the Price Centers to determine the planned maximum cumulative Contract payment for each month of the Contract.

109L-1.4.3 Review of the PPS-C

In addition to the procedure for revision of the PPS-C pursuant to DB Section 109L-1.4.2, the Department’s Project Manager will carry out a detailed examination and review of the PPS-C, the PCPs, and the dates stipulated for their achievement and an assessment of the extent to which the Work has been carried out up to the date of such review, in the following events:

A) The Department’s Project Manager accepts a revised Baseline Progress Schedule containing a change to the sequence or timing of the Work; or

B) The Department’s Project Manager grants an extension of time in accordance with DB Section 104-4.1 and 109L-15; or

C) The Design-Builder adopts a recovery schedule in accordance with DB Section 108-1(D); or

D) The Department’s Project Manager orders a suspension of the Work or any part thereof; or

E) The Department’s Project Manager instructs a change under DB Section 104-3; or

F) Following the suspension of payment pursuant to DB Section 109L-7.1(C), the relevant PCP has not been achieved within three months of the date stipulated in the Schedule of PCPs; or
G) There is a significant change in a PCV by reason of a determination of the Department’s Project Manager in accordance with the Contract; or

H) There is a change in the Work as described in Part 5 – Special Provisions, Special Provision 104A.

109L-1.4.4 Cooperation

The Design-Builder shall cooperate with and, to the best of the Design-Builder’s ability, assist the Department’s Project Manager in making any such detailed examination pursuant to DB Section 109L-1.4.3. The Design-Builder shall provide all such information as may be reasonably required in connection therewith at no increase in Contract Price or extension in time. If, as a result of this detailed examination, the Department’s Project Manager is of the opinion that, in relation to any Price Center, the relationship between periodic payments and progress of the Work and the degree of control over periodic payments envisaged at the date of concurrence of the Design-Builder’s Proposal has not been or will not be maintained, then the Department’s Project Manager may give 30 days written notice to the Design-Builder to prepare a revised PPS-C and/or a revised Schedule of PCPs that will, in the Department’s Project Manager’s opinion, restore, so far as reasonably practicable, said relationship and degree of control. On the expiration of the said notice and after considering any representations the Design-Builder may have made in the meantime, the Department’s Project Manager shall, if still of the opinion that revisions ought to be made, revise the PPS-C and/or the Schedule of PCPs in any manner that the Department’s Project Manager sees fit, based on the rate of progress of the Work which the Department’s Project Manager anticipates and with the objective of restoring, so far as is reasonably practicable, said relationship and degree of control.

109L-1.5 Progress Check Point Descriptions and Schedule of Progress Check Points

The Design-Builder shall establish and describe PCPs that define significant events and/or reflect certain or significant accomplishments towards the completion of Work within each Price Center that can be readily identified without resorting to measurement of quantities.

For each Price Center, the Design-Builder shall identify and list the PCPs that are reflective of the Baseline Progress Schedule. For each PCP identified, the Design-Builder shall provide a detailed description of the Work to be accomplished, using Form PCP, Description/Schedule of PCPs.

The Design-Builder shall show its designated PCPs and Department-designated PCPs on Form PCP.

The Design-Builder shall develop a numbering system for PCPs that readily ties each PCP to its specific Price Center. The Design-Builder will number PCPs within the same Price Center sequentially over time.

If the Design-Builder plans to request payment for Material, products, or components delivered to the Site, it must provide for each Price Center a specific description of the Material, products, or components, including estimated quantities of each. Material, products, or components of a similar type, such as different sizes of Culvert, may be combined in a single PCP for a given Price Center. The Design-Builder shall list similar Material within separate Price Centers separately for each Price Center.

The Design-Builder shall complete the Schedule of PCPs by selecting events which represent the completion of significant activities, including delivery of Material, products, or components to the Site, to be undertaken by the Design-Builder and that are in accordance with the proposed methods and sequence of design and construction.

The Design-Builder shall not describe PCPs in terms of “percent complete.”
The Design-Builder shall enter the scheduled month of completion for each PCP in each Price Center in the column provided. The Design-Builder shall express the months in terms of months after NTP.

Individual PCPs shall meet the following requirements:

A) There shall be PCPs at the start and completion of Work in a Price Center;
B) If the duration of the Work on a Price Center exceeds six months, the Design-Builder shall identify and describe additional interim PCPs so that PCPs are not more than three months apart;
C) PCPs shall signify the completion of elements of the Work that can be readily identified as being completed without resorting to conventional measurement of quantities;
D) The Design-Builder shall relate PCPs to activities on the Critical Path, where practicable;
E) There shall be no further periodic payments for a Price Center after achieving the last PCP in a Price Center;
F) For Price Center 1, show PCPs for each activity in (1) through (4) below in accordance with due dates established by the Department when such dates are specified in the Contract. Otherwise the PCPs dates shall be as designated by the Design-Builder on Form PCP for each of the following:

1) Submittal (or resubmittal) of and issuance of the Department’s Project Manager’s written acceptance or approval (if specified) for the following items:
   a) Safety Plan,
   b) Quality Plan,
   c) Baseline Progress Schedule, and
   d) Other plans to be submitted;
2) Provision of the following:
   a) Facilities and Equipment for the Department, and
   b) The Design-Builder’s temporary facilities;
3) Removal of temporary and Design-Builder provided facilities and Site cleanup, landscaping, and restoration. This PCP may be scheduled after the Substantial Completion Date; and
4) Periodic audits and updates of the Quality Plan and Safety Plan.

For Price Center 1, PCPs shall be at three month intervals covering all activities not covered in (1) through (4) above.

G) For preconstruction engineering and design (Price Center 2), the following particular rules apply:

1) There shall be PCPs at the start of design and at the receipt of the Department’s Project Manager’s written acknowledgement after the 100% Design Review per DB Section 111 for each Design Unit identified by the Design-Builder;
2) The Design-Builder may include additional intermediate PCPs; and
3) The final PCP shall be the submission and Approval of As-Built Plans;
H) Show the month each PCP is to be completed on Form PCP;
I) For PCPs relating to payment for Material delivered to the Site, indicate the planned month of delivery of the Materials as described on Form PCP;
J) Include Department designated PCPs on Form PCP;
K) For Price Center 3, the submittal of the MPT Plan and its updates shall be PCPs. The Design-Builder shall show major traffic shifts and detour changes as PCPs;
L) For Price Center 4, environmental monitoring and mitigation, the submittal of specified Plans shall be PCPs. The Design-Builder shall set PCPs for on-going activities at no greater than three month intervals;
M) For Price Center 5, the submittal of the community interaction plan shall be a PCP. The Design-Builder shall set PCPs for on-going activities at no greater than three month intervals; and
N) For Price Center 6, Hazardous Materials remediation, submittal of Plan(s) and report(s) and PCPs as may be required if harmful and/or Hazardous Materials are encountered.
O) There will be no PCPs for Price Center 7.

109L-1.6 Revisions During the Contract

109L-1.6.1 Revisions to Price Centers

In the event that revisions to the Price Centers are required during the Contract, the following procedures shall apply:

A) Where new Price Centers are required, the Design-Builder shall revise and submit the following to the Department’s Project Manager for written Approval:
   1) Form SP;
   2) Form PCD; and
   3) Form PCP;

B) Where revisions to existing Price Centers are required, the Design-Builder shall revise and submit the following to the Department’s Project Manager for written Approval:
   1) The appropriate revised Price Center description on Form PCD;
   2) Any change to Form SP;
   3) Revisions to Form PCP to reflect new PCPs or changes in PCPs; and
   4) Revised Price Centers 1, 2, 3, 4, 5, and/or 6 on Forms PC1, PC2, PC3, PC4, PC5, and/or PC6.

109L-1.6.2 Revisions to Schedule of Prices

The Design-Builder shall revise the affected PCVs and Form SP to incorporate any change to the Contract Price. The Design-Builder will update Forms SP and PCD, including Forms PC1, PC2, PC3, PC4, PC5, and/or PC6, as appropriate, and submit them to the Department’s Project Manager for written Approval.

109L-1.6.3 Adjustments to Schedule of Progress Check Points (Form PCP)

In the event that revisions to the Schedule of PCPs (Form PCP) are required during the Contract, the following procedures shall apply:
A) In the event that a PCP is not achieved, the Department’s Project Manager may order the Design-Builder to revise and submit the Baseline Progress Schedule and the Schedule of PCPs (Form PCP) to update the following:

1) The date by which the non-achieved, changed, or added PCP(s) will be achieved; and/or
2) The schedule for any affected subsequent PCP which may not be achieved by the originally designated date;

B) The Design-Builder shall revise the Schedule of PCPs (Form PCP) to show changes to affected PCPs;

C) In the event of a revision of the Baseline Progress Schedule, the Design-Builder shall revise dates of the affected PCPs;

D) In the event of changes to Work, the Design-Builder shall make such changes, additions, or deletions to only those affected PCPs so identified in the ordered change;

E) In the event that a PCP is changed as result of a time extension in accordance with DB Sections 104-4, 104-5, and 109L-15, the Design-Builder shall change those dates affected by the time extension;

F) In the event that a PCP is changed as a result of a suspension of Work order in accordance with DB Section 109L-15.2, the Design-Builder shall change those dates affected by the suspended Work; and

G) In the event that the Design-Builder’s progress exceeds that shown on the Schedule of PCPs, and payment is made at an accelerated rate in accordance with DB Section 109L-6.7, the Design-Builder shall revise the Schedule of PCPs (Form PCP), as necessary, to reflect any planned changes to the Schedule of PCPs.

109L-1.6.4 Revisions to the PPS-C

If the Design-Builder’s progress is such that PCP(s) are completed prior to the date(s) shown on the Schedule of PCPs (Form PCP) and payment is made at an accelerated rate in accordance with DB Section 109L-6.7, the Design-Builder shall adjust the PPS-C for the affected Price Center(s) and submit the revised PPS-C to the Department’s Project Manager for written Approval.

The Design-Builder may submit a request to the Department’s Project Manager to allow a change to its PPS-C for a Price Center to reflect changes in timing of the Work within a given Price Center. No change in PCVs will be permitted except to reflect changes in Contract Price made through Orders on Contract. The Design-Builder shall accompany any such request with the following:

A) Proposed revisions to the Baseline Progress Schedule to reflect the change in schedule; and

B) Proposed revisions to the PCP descriptions and/or Schedule of PCPs (Form PCP) consistent with the requested change in the PPS-C.

The Department, in its sole discretion, may consent to the requested change but will be under no obligation to do so.

Documentation of any changes in the PPS-C will be made as a no-cost Order on Contract.

When revisions are made to the PPS-C in accordance with the Contract, the Department’s Project Manager may reduce or extend the period over which periodic payments may be made.
109L-2  MEASUREMENT/DETERMINING PROGRESS

Unless specified otherwise in the Contract Documents, there will be no measurement of quantities to determine payment due, except for any Unit Price items.

The Design-Builder shall measure Unit Price items as specified in DB Sections 109L-2.7 and 109L-6.2, or per the Project Specifications developed by the Design-Builder and accepted by the Department for items that have Unit Prices.

For Price Centers and/or Orders on Contract paid on a Force Account basis, the Design-Builder shall substantiate progress with submittal of statements specified in DB Section 109L-9.2.2.

For Price Centers and/or Orders on Contract paid on a Unit Price basis, the Design-Builder shall substantiate progress with submittal of invoice documents specified in DB Section 109L-9.2.1.

For all Work paid on a Lump sum basis, the achievement of PCPs shall be determined as follows:

109L-2.1  Price Center 1

A) Where a PCP requires submittal of a bond, the PCP is met when the bond has been provided in the amount and under the terms required in the Contract and by a Surety which the Department accepts;

B) Where a PCP requires the submittal of insurance certificates or similar documents, the PCP is met when the document has been delivered to the Department’s Project Manager and content of the document is shown to meet the Contract requirements and the Department’s Project Manager notifies the Design-Builder in writing of that determination;

C) Where a PCP requires the submittal of a specified Plan or similar document, the PCP is met when the Plan has been submitted to the Department’s Project Manager for Consultation and Written Comment and the Department’s Project Manager issues the written comment(s) relative to the Plan or document;

D) Where a PCP requires an audit and/or update of a specified Plan, the PCP is met when the report of the audit and/or Plan update is submitted to the Department’s Project Manager for Consultation and Written Comment and the Department’s Project Manager issues the written comment(s);

E) If Design Plans or documents are returned to the Design-Builder without the Department’s Project Manager’s written acknowledgement, the Design-Builder shall not have met the PCP;

F) Mobilization shall be invoiced at the end of the period following submittal of the Baseline Progress Schedule and the PPS-C, that the Department’s Project Manager acknowledges in writing, meets the Contract requirements.

G) For continuing activities listed in Table 109L-1, the PCPs, which shall be at three month intervals, are met when the specified standards and/or requirements, such as those listed in Table 109L-1, are met.
### TABLE 109L-1
PRICE CENTER 1 CONTINUING ACTIVITIES STANDARDS

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>REQUIREMENT/STANDARD</th>
</tr>
</thead>
</table>
| Project Management and Construction Management | • Monthly progress reports prepared and submitted in accordance with DB Section 108-1.3;  
• Key personnel are on Site and meet qualifications requirements of Part 5 – Special Provisions, Special Provision 108B;  
• Meetings conducted and attended, and minutes prepared in accordance with, DB Section 105-16;  
• Baseline Progress Schedule submitted and maintained in accordance with Part 5 – Special Provisions, Special Provision 108A;  
• Required notices given to the Department’s Project Manager in timely manner; and  
• Contract submittal list submitted and updated in accordance with DB Section 108-1.8. |
| Quality Control of Management and Construction | • Quality Plan and updates submitted and receive Department’s Project Manager’s written acknowledgement in accordance with DB Section 113.  
• Management and construction activities conducted in accordance with the Quality Plan;  
• Sampling and testing conducted in accordance with DB Section 105-8; and  
• Documentation prepared and maintained in accordance with DB Section 112-10. |
| Security                                      | • Site Security Plan and updates submitted and Department’s Project Manager’s written acknowledgement of Plan received in accordance with DB Section 107-8.2; and  
• Security facilities maintained and security services provided in accordance with the Site Security Plan. |
| Facilities and Equipment provided for Department | • Facilities and Equipment provided, maintained, and cleaned, and Utilities provided and paid for, in accordance with Part 5, Special Provision 637, and Part 9, DB Section 637. |
| Safety                                        | • Safety Plan and updates submitted and received Department’s Project Manager’s written acknowledgement in accordance with DB Section 107-7.5; and  
• Construction Work conducted in accordance with DB Section 107-7 and the Safety Plan, including submittal of required reports. |
| Communications                                | • Courier service provided in accordance with Part 5 – Special Provisions, Special Provision 637. |
| Design-Builder’s temporary facilities and Site maintenance | • Site and facilities maintained in accordance with DB Section 107. |
| Insurance                                     | • Specified levels of insurance maintained in accordance with DB Section 107-25 and Part 5 – Special Provisions, Special Provision 107. |
109L-2.2 Price Centers Associated with Engineering and Design

The PCPs are met when the requirements for preconstruction engineering, design and design management, and design QC, including design reviews, have been achieved for the applicable Design Unit including the specified reports, documentation and QC records, the certifications of the Designer and the Design QC Manager, and the Department’s Project Manager’s written acknowledgement. In the case of design studies and/or reports, the PCP is met when the Department’s Project Manager issues a written acknowledgement regarding the study or report.

Progress will be determined on a cumulative percent complete basis consistent with the percent complete shown on Form DUS (see DB Section 111-3) as agreed between the Design-Builder and the Department’s Project Manager.

109L-2.3 Price Centers 3 Through 5

The PCPs are met when specified plans, reports, and/or updates are submitted and the Department’s Project Manager issues a written acknowledgement that they meet Contract requirements.

Progress Check Points for MPT are met when MPT measures, meeting Contract requirements, are implemented and when planned traffic switches are made.

109L-2.4 Price Center 6, Hazardous Materials Remediation

There will typically be no PCPs for Price Center 6, Hazardous Materials Remediation, except for any specified investigations, reports, and plans. Progress will be determined by measurement of quantities.

109L-2.5 Price Center 7, Interim Payments

Progress and payment will be calculated per Part 5, Special Provision 697.

109L-2.6 Price Centers Associated with Construction

A) Whether the PCP is identified by the Design-Builder in its Schedule of PCPs (Form PCP) as requiring the completion of an entire Price Center or partial completion of Work associated with a Price Center, the PCP is met only when all components within the PCP are constructed in accordance with Contract requirements.

B) The Design-Builder must comply with the QC requirements before the PCP is met.

C) The PCP will not be considered met until temporary Erosion Control measures are in place.

D) PCPs will not be considered met until applicable environmental requirements have been met.

109L-2.7 Unit Priced Work

In computing amounts in estimates or Work done under Unit Prices, all estimates, including the final, will be made for actual quantities of Work performed and Material placed in accordance with the requirements contained in the Project Specifications, Design Plans, and standard sheets (except as provided under DB Section 109L-6.3) as determined as per DB Section 109L-6.2, and the resulting quantities involved in the Contract shall be accepted as final, conclusive, and binding upon the Design-Builder. If quantities of earthwork are to be paid under a Unit Price basis, the planimeter shall be considered one instrument of
acceptable precision, and the quantities computed from areas obtained by its use shall be accepted by all parties hereto as accurate. However, arithmetical computations, utilizing any type of computing device and software shall also be considered instruments of acceptable precision. The choice of instrument shall be that of the Department’s Project Manager and may vary by contract as deemed appropriate.

109L-3 OVERTIME DISPENSATION REQUIREMENTS FOR NON-FEDERAL-AID CONTRACTS

All Proposers should base their Proposals and Work progression on the assumption that overtime dispensation pursuant to Article 8 of the New York State Labor Law for any Workers, laborers, and mechanics to Work more than eight hours in any one Calendar Day or more than five days in any one week will not be granted for any operation for the duration of the Contract. Subsequent to award, where the RFP has imposed specific scheduling and/or phasing requirements or where it is determined by the Department to be in the best interest of the public, the Department may process, for approval by NYSDOL, requests for overtime dispensation on certain specific operations and, in the event that NYSDOL approves such overtime dispensation, there shall be no adjustment in the Contract Price for such dispensation.

109L-4 CHANGES TO CONTRACT PRICE

The Contract Price shall be increased or decreased only by an Order on Contract issued in accordance with DB Section 104-3 and DB Section 109L-9.

The Design-Builder shall revise the PCVs in accordance with the terms of an Order on Contract and submit the revisions to the Department’s Project Manager for written Approval.

The Department’s Project Manager may decide the applicable Price Center for the purpose of any revision in accordance with this DB Section 109L-4 if and insofar as the same is not identified in the pricing documents, and shall notify the Design-Builder in writing upon making any such decision.

Notwithstanding this DB Section 109L-4, the Department’s Project Manager may decide not to include a sum payable to the Design-Builder pursuant to the Contract in a PCV, in which case the Department’s Project Manager shall notify the Design-Builder of the decision and the Design-Builder may apply for payment of the sum in accordance with DB Section 109L-6.

109L-5 CONTRACT PAYMENTS

The attention of the Design-Builder is specifically called to the provisions of Sections 70, 71, and 79-a of the New York State Lien Law that apply to funds being received by a Design-Builder for a public improvement. These provisions declare that the funds received by the Design-Builder shall constitute trust funds in the hands of the Design-Builder and shall be applied first to the payment of certain claims.

In accordance with Article 9 of Part 1 - Agreement, payments to the Design-Builder for Work satisfactorily performed will be made monthly. No monthly payment will be made unless the value of the Work done is equal to five percent of the Contract Price or $1,000.00, whichever is the lesser. At the Design-Builder’s request, semi-monthly estimates may be rendered provided the value of the Work performed in a two week interval is in excess of $50,000.00 or if, in the opinion of the Department, it is to the best interests of the State to do so.

This Contract may be funded by monies from other governmental or non-governmental entities which may include municipalities, Counties, towns, villages, or authorities. If the Contract is funded by monies
from the New York Thruway Authority, separate payment may be made by both the State of New York and the New York State Thruway Authority.

No certificate approving or authorizing the first partial payment or, in the event there shall be no first partial payment, no certificate approving or authorizing any final payment, shall be made to a Foreign Contractor unless such Foreign Contractor has furnished satisfactory proof that all taxes due by such Foreign Contractor under the provisions of Articles 9, 9A, 16, and 16A of the New York State Tax Law have been paid. The certificate of the State Tax Commission to the effect that all such taxes have been paid shall be conclusive proof of the payment of such taxes.

109L-5.1 Scope of Payment

The Design-Builder shall receive and accept compensation provided for in the Contract as full payment for furnishing all Material and for performing all Work under the Contract in a complete and acceptable manner and for all risk, loss, damage, or expense of whatever character arising out of the nature of the Work or the prosecution thereof.

109L-5.2 Payment Concept

A) Payment will be calculated using the PPS-C except for Work performed under other specified means, such as Unit Prices and/or Force Account (see DB Sections 109L-6.2 and 109L-9.2.2).

B) The Design-Builder will be paid monthly based on the percentages and amounts shown on the PPS-C for each Price Center developed in the manner described in DB Section 109L-1.3.2 except as provided in DB Section 109L-7.1.

C) If Work defined for a PCP in a Price Center is not completed by the date shown on the Schedule of PCPs (Form PCP), payment will be suspended at the previous month’s level for the affected Price Center(s). Payments will be resumed in the affected Price Center upon meeting of the designated PCP.

Payment will be based on the Price Proposal and the PPS-C. No payment will be made based on the PPS-P and no payment will be made until the PPS-C is incorporated into the Contract.

Requirements relating to requests for payment for the Work are set forth in DB Section 109L-6.

Payment on such requests will be made as follows:

Except for Price Centers paid on a Force Account or Unit Price basis, the PPS-C sets out the maximum accumulative percentage of each PCV (or part thereof) in relation to each month for which the Design-Builder may apply for payment in accordance with this DB Section 109L-5.1.2, subject to the achievement of relevant PCPs. Payment for Price Centers paid on a Force Account or Unit Price basis shall be determined per DB Section 109L-9.2.2 and DB Section 109L-6.2, respectively.

109L-5.3 Progress Payments

Unless otherwise specified in a particular Pay Item, no payment will be made for Work until its completion in accordance with the Specification.
109L-5.4  **No Payment on Design-Builder’s Non-Compliance**

In accordance with Article 9 of the Agreement, Contract Documents Part 1, no estimate for the purpose of payment will be completed so long as any lawful or proper direction to the Design-Builder by the Department’s Project Manager or his/her designee concerning the Work or material has not been complied with. *See also DB Section 109L-7.1(B)4.*

109L-6  **REQUESTS FOR PERIODIC PAYMENT**

The Design-Builder shall submit all requests for periodic payment to the Department’s Project Manager with the monthly progress report (see DB Section 108-1.3) signed by the Design-Builder’s Project Manager or Deputy Project Manager, except that the request for final payment must be signed by the Design-Builder’s representative or designated Project Principal. The Design-Builder shall submit the request by the fifth day of each month (if a Holiday, the next Work Day) or other mutually agreed date.

The Design-Builder’s Project Manager, QC Manager, and Design Manager shall execute the certifications on Form PP(L).

There will be no advance payments.

Mobilization will be paid per DB Section 109L-2.1(F).

The Design-Builder shall submit the request for interim payment using the format illustrated in Form PP-L (Appendix 109L-A). The Design-Builder will complete the request for interim payment in accordance with the instructions shown on Form PP-L. The maximum cumulative payments at any point in time shall not exceed the sum of planned cumulative payment for each Price Center as shown on the PPS-C, except when the Design-Builder meets PCPs in advance of the dates shown on the Schedule of PCPs (Form PCP). In such case, the Design-Builder shall adjust the maximum payment to incorporate the cumulative payment shown on the PPS-C for PCP(s) achieved in advance of the date(s) shown on the Schedule of PCPs (Form PCP). *See also DB Section 109L-6.7.*

The Design-Builder shall complete and submit, as part of its request for interim payment, the certificate of achievement of PCPs on Form PP-L, listing the PCPs the Design-Builder considers to have been achieved in the previous month. The Design-Builder’s Project Manager or Deputy Project Manager and the Design-Builder’s QC Manager shall sign the draft certificate of achievement of PCPs. The request for interim payment will have no effect until countersigned by the Department’s Project Manager pursuant to DB Section 109L-7.

109L-6.1  **Payment Requests with the Monthly Progress Report**

Each application for interim payment shall contain the following:

A) The amount claimed to be payable using Form PP-L, setting out the percentage and amount of each PCV claimed according to the PPS-C, including amounts due under Force Account Price Centers and/or Orders on Contract;

B) Any other amount claimed to be payable or deducted pursuant to a Determination of the Department’s Project Manager, identifying the relevant Determination; and

C) A PCP certificate included on Form PP-L indicating the PCPs the Design-Builder considers to have been achieved during the preceding month and certifying compliance with Contract requirements. The certification shall be signed by the Design-Builder’s Project Manager/Deputy Project Manager; QC Manager and Design Manager.
The Design-Builder shall make payment application for any Work where PCPs have been met in advance of the time or date shown on the Schedule of PCPs (Form PCP), subject to meeting all preceding PCPs in the applicable Price Center, in accordance with DB Section 109L-6.7.

109L-6.2 Unit Price Work

The Design-Builder shall submit a summary table of quantities with the request for periodic payment indicating location, item number and description, quantity, Unit Price, and total amount due for the period covered by the invoice. The Design-Builder will attach copies of quantity measurement notes or field book entries stamped and signed by a New York-licensed professional engineer or surveyor assigned to the Design-Builder’s construction QC organization. The Design-Builder’s Project Manager or Deputy Project Manager and the Construction QC Manager must sign and date the summary table.

The Design-Builder shall measure quantities per DB Section 109L-2.7.

109L-6.3 Partial Payment for Material Delivered to the Site

Upon application by the Design-Builder, using Form 109L-6A (Appendix 109L-A), and Approval by the Department’s Project Manager, payments for the actual cost of certain Material may be made to the Design-Builder prior to incorporation of such Material in the permanent Work. To be eligible for partial payment, Material must meet all of the following conditions:

A) Be included on the List of Materials in this DB Section 109L-6.3;
B) Have a minimum Material cost of $5,000.00;
C) Be Material that will be incorporated into permanent Work;
D) Be in a condition which is ready for on-site installation without further fabrication or processing;
E) Be delivered and stored at the Site of the Work or at a site and in a manner approved by the Department’s Project Manager; and
F) Be Material which will be stored a minimum of 60 days.

With application for partial payments, the Design-Builder shall provide documentation as follows:

1) Bill(s) of sale or vouchers indicating the actual dollar value paid by the Design-Builder for the Material as stored;
2) Certification of title (Form 109L-6B - Appendix 109L-A) showing that title to the Material, without encumbrances, is in the name of the Design-Builder and that title is warranted to the New York State Department of Transportation;
3) Documented evidence of acceptability of the Material; and
4) If the Material is stored on private property, a release and waiver covering such Material (Form 109L-6C - Appendix 109L-A), and providing access to the storage site, which release and waiver shall be executed by the property owner in favor of the New York State Department of Transportation or its agents.

When applying for partial payment of products which are claimed to be in short supply or unique to an individual project, the Design-Builder shall include documentation supporting that claim, to the satisfaction of the Department’s Project Manager. The amount of partial payments shall not exceed the
total invoice amount for stored Material, nor shall the partial payment for Material relating to any Contract Work item exceed 85% of the price for that item. The quantity of Material for which payments are made shall not exceed the estimated quantity for that item. The making of partial payments shall not be deemed to be a Final Acceptance of Material, nor shall it relieve the Design-Builder of responsibility for such Material. The Design-Builder shall be responsible for assuring that only those Materials which comply with the Specifications are incorporated into the Project. All costs associated with handling, transportation, and storage of Material, including any storage site rental, security, and weather protection, shall be borne by the Design-Builder and included in the prices proposed for the Contract Work. Any Material, other than that which is determined by the Department’s Project Manager to be unique to the Project, which are not incorporated into the Work, shall remain the property of the Design-Builder.

Partial payments made for such unused Material shall be withdrawn with no further obligation by the State.

LIST OF MATERIALS

- Iron, steel, and aluminum products (including all metal components of railings and bridge superstructures);
- Precast and prestressed concrete products;
- Pipe and underdrain products;
- Concrete and stone curb or masonry products;
- Concrete, steel, and timber piles and appurtenances;
- Timber products;
- Traffic signal, traffic control, signing, and lighting components;
- Cable, wire, and conduit;
- Impact attenuator components;
- Material in short supply; or
- Material manufactured to meet specific, unique requirements of the Project (to be determined by the Department’s Project Manager).

109L-6.4 Equipment Used to Construct the Project

The Department shall not pay for direct costs of Equipment used to construct the Project. The Design-Builder shall allocate costs for Equipment, whether new, used, or rented, as part of the activities with which the Equipment is associated.

109L-6.5 Bond Premiums

The amount payable to the Design-Builder for bond premiums shall be a dollar-for-dollar pass through of the Design-Builder’s costs (not to exceed the amount shown on Form PC1 for such premiums).

109L-6.6 Permits

The amount payable to the Design-Builder for permits shall be a dollar-for-dollar pass-through of the Design-Builder’s costs (not to exceed amount shown on Form PC1 for permits). The Design-Builder shall provide backup documentation supporting each cost in this category to the Department prior to any payment.
109L-6.7 Accelerated Payment

The Design-Builder will be entitled to payment at a rate in excess of that shown on the PPS-C if a PCP is completed prior to the date shown on the Schedule of PCPs (Form PCP), provided all PCPs preceding the aforementioned PCP on the Schedule of PCPs (Form PCP) for that Price Center have also been completed. Interim payment will be based on the percentages shown on the PPS-C for the date when the completed PCP was planned to be met.

See also DB Sections 109L-1.5.3 and 109L-1.5.4 for resulting adjustments to the Schedule of PCPs (Form PCP) and PPS-C.

109L-7 REVIEW AND PROCESSING OF REQUESTS FOR PERIODIC PAYMENT

Upon receipt of a request for periodic payment, the Department’s Project Manager will proceed in accordance with this DB Section 109L-7. At the same time, the Department’s Project Manager will countersign the certificate of PCPs achieved (Form PP-L) for PCPs met.

Any adjustments by the Department’s Project Manager to a request for periodic payment shall be reasonable and in accordance with the Contract Documents.

Upon resolution of any problems with any draft certificate of PCPs that resulted in an adjustment in the amount of a prior request for interim payment, or upon satisfaction of any conditions that were the basis for such an adjustment, the Design-Builder may include the amount of the adjustment in the next request for periodic payment.

109L-7.1 Payment Limitations and Partial Suspension of Payments

A) There will be no advance payments or payments for mobilization except as specified in DB Section 109L-2.1(F);

B) The Department will not pay for construction Work, including Work being paid on a Force Account basis, unless the following conditions are met:

1) Design Plans and Project Specifications that have been released for construction per DB Section 111-12, are on Site for the Work being constructed;

2) Design Plans and Project Specifications have been checked and reviewed in accordance with DB Section 111-12 and design documentation maintained in accordance with DB Section 111-18;

3) Construction Work has been inspected and sampling and testing conducted in accordance with DB Section 112-2;

4) Items covered by Non-Conformance Reports issued by the Department, the Design QC Manager or Construction QC Manager are corrected and/or resolved to the satisfaction of the Department; and

5) Construction documentation is completed and records and reports submitted and/or retained in accordance with DB Section 112-10.

C) If the Design-Builder does not meet the PCP by the date indicated on the Schedule of PCPs (Form PCP), all payment on that Price Center in which the PCP appears will be suspended at the level of the previous month’s payment until the date the PCP is met, at which time the payment shall be brought up to the appropriate level through the next request for interim payment;
D) As a condition precedent to consideration by the Department’s Project Manager of any periodic payment for Work described in Price Center 1 for the preceding month, the monthly progress report completed in accordance with DB Section 108-1.3 must accompany each such application;

E) As a condition precedent to consideration by the Department’s Project Manager of any periodic payment for Work described in Price Center 1 for the preceding month, all certified payrolls of the Design-Builder and all Construction Subcontractors shall be up to date and submitted to the Department;

F) The Department may suspend payment for Price Centers’ 1, 3, 4, and/or 5 Work for any period if the Design-Builder’s performance of Price Centers’ 1, 3, 4, and/or 5 continuing activities during the period resulted in any of the following:

1) Serious disruptions to necessary MPT and access through the Site;
2) Serious disruptions to the Department’s access to the Site or use of facilities provided for the Department’s use;
3) Unacceptable safety performance as evidenced by the Design-Builder’s accident record;
4) Non-compliance with environmental requirements that leads to citations, fines, and/or other penalties by environmental authorities;
5) Serious disruptions to procedures and documentation required by the Quality Plan and/or specified in the Contract;
6) Continued reports of blocked vehicular and/or pedestrian access to properties; or
7) Continued report of failure to comply with the community interaction plan and/or requirements of Part 4, Performance Specification ___.

G) The Department’s Project Manager may determine that the three month PCPs for Price Centers’ 1, 3, 4, and/or 5 continuing activities have not been met and may suspend payment for Price Centers’ 1, 3, 4, and/or 5 Work at the end of the three month period covered by the PCP if there is a continuing history of non-compliance and failure to correct deficiencies noted in the Department’s Project Manager’s monthly assessment of the Design-Builder’s performance for Price Centers’ 1, 3, 4, and/or 5 continuing activities listed in DB Sections 109L-2.1 and 109L-2.2; and

H) No payment will be made under Price Centers or Orders on Contract being paid on a Force Account basis for design or construction Work necessitated to correct deficiencies noted on a non-conformance report. The Design-Builder shall clearly delineate in its records and on the Force Account report (see DB Section 109L-9.2), personnel and Equipment used on any corrective Force Account Work on such deficiencies.

If the Design-Builder fails to actively prosecute Work within a Price Center, the Department’s Project Manager may suspend payment in that Price Center at the previous month’s level or, as agreed between the Design-Builder and the Department’s Project Manager, adjust the payment to a level commensurate with actual progress made.

109L-7.2 Certification for Periodic Payment

Within 14 days of receipt of a request in accordance with DB Section 109L-6, the Department’s Project Manager shall issue to the Department, with a copy to the Design-Builder, a periodic payment certificate (Form CONR30b-DB - Appendix 109L-A) showing the amount of any periodic payment the
Department’s Project Manager considers payable by the Department to the Design-Builder. Such periodic payment certificate shall be the sum of the following:

A) The amounts shown to be due by reference to the PPS-C; and

B) The amounts determined by the Department’s Project Manager to be due in respect of the following:
   1) Additional cost incurred and payable in accordance with the Contract;
   2) Work executed pursuant to a Force Account Order on Contract; and
   3) Any other amount or allowance to which the Design-Builder is entitled under the Contract, unless account has been or will be taken of such amount or allowance by way of a revision of a PCV under DB Section 109L-1.5.2;

less:

C) The retention monies as provided for in DB Section 109L-8;

D) Any amounts certified for payment on certificates previously issued; and

E) Any amounts recoverable from the Design-Builder in accordance with the Contract, including any amount withheld for Price Center 1 because the Design-Builder failed to provide the monthly progress report in the form and detail required in the Contract or failed to provide a revised Baseline Progress Schedule that the Department’s Project Manager has accepted.

At the same time, the Department’s Project Manager shall countersign the certificate of PCPs (Form PP-L) to be based on the draft submitted by the Design-Builder pursuant to DB Section 109L-6, amended as necessary, certifying the PCPs the Department’s Project Manager considers the Design-Builder to have met. The Department’s Project Manager shall have power to omit from any such certificate the value of any Work with which the Department’s Project Manager may, for the time being, be dissatisfied. The Department’s Project Manager may by any certificate delete, correct, or modify any sum or statement of fact previously certified by him or her.

109L-7.3 Cap on Periodic Payment

On some projects, if there is a need, periodic payments may be limited by a cumulative cap set forth on the PPS-C. If a cap on payment is in place on a project, at no time shall the Design-Builder’s cumulative total progress payments exceed the cumulative total expenditure shown on the PPS-C except for the Design-Builder’s accelerated performance as defined and provided in DB Section 109L-6.7. The initial PPS-C set forth in DB Section 109L-1.3 hereto is subject to revision from time to time as appropriate to account for any changes in the Contract Price as evidenced by Orders on Contract.

109L-7.4 Payment by Department

Within 30 days after receipt by the Department of an acceptable request for periodic payment (such acceptability as determined by the Department), the Department will pay the Design-Builder the amount of the request approved for payment by the Department’s Project Manager, less any applicable retention and less any amounts that the Department is otherwise entitled to withhold. If a cap on payment is in place on the Project, in no event shall the Department have any obligation to pay the Design-Builder any amount which would result in payment for any activity in excess of the value of the activity shown on the PPS-C, except as provided in DB Section 109L-6.7.
109L-7.5  Adjustment for Cost of Fuel, Asphalt, & Steel

Refer to New York State Department of Transportation Web site at: www.dot.state.ny.us/constr/fule/fule_home.html.

109L-7.6  Pay Adjustment Factors for Quality

Payment will be adjusted for Materials quality per Standard Specification Section 401-4. Pay adjustments for Work quality shall be made as provided in individual Part 7 Sections.

Where a Unit Price is listed in Form SOV (Option 1), the Pay Adjustment to the item shall be equal to:

\[(\text{Unit price}) \times [(\text{Pay Adjustment Factor})-1.0] \times (\text{Quantity of Materials failing to meet the Contract Specifications}).\]

If a Unit Price is not included in Form SOV (Option 1) the Pay Adjustment shall be negotiated.

Pay adjustments applied to items for deficient Work accepted by the Department shall not relieve the Design-Builder of meeting any warranty requirements of the Contract.

109L-8  RETENTION

Pursuant to the New York State Highway Law, DB Section 38(7)(a) and (b), the Department shall retain five percent from each progress payment made to the Design-Builder.

The failure by the Department to deduct any of these sums from an interim payment shall not constitute a waiver of the Department’s right to such sums.

109L-8.1  Request for Release of Retention Upon Substantial Completion of the Contract

Pursuant to the New York State Highway Law, DB Section 38(7), if the Commissioner determines that the Contract is substantially complete, and that the withholding of the retention would be an injustice to the Design-Builder, the Commissioner may direct the Department’s Project Manager to include in the final accounting such uncompleted items and pay for them at the Price Center prices in the Contract upon the Design-Builder’s depositing with the Commissioner a certified check drawn upon a legally incorporated bank or trust company equal to at least double the value of such uncompleted Work, or, with the Approval of the Comptroller, securities as are listed in subdivision three of DB Section 139 of the New York State Finance Law, equal to at least double the value of such uncompleted Work. The inclusion of the retention in the final accounting is contingent upon the certification of the Department’s Project Manager that the essential items in the Contract have been completed in accordance with the terms of the Contract.

The Design-Builder’s deposit may be used by the Commissioner to complete the uncompleted portion of the Contract and shall be returned to the Design-Builder if the Design-Builder completes the uncompleted Work within a specified number of Work Days after it has been notified to proceed with the Work.

109L-8.2  Release of Retention Upon Final Acceptance

Pursuant to the New York State Highway Law DB Section 38(7), upon completion and Final Acceptance of the Contract Work, the Commissioner shall, pending final payment, pay not to exceed 70% of the amount of the retention.
109L-9 EXTRA WORK, FORCE ACCOUNT WORK, AND RECORD KEEPING

109L-9.1 Contract Item Charges

The Department reserves the right to order changes in the scope of the Contract Work as is necessary to complete the Project, in accord with the intent of the Contract Documents.

A) Lump Sum Work. Lump sum Contract adjustments shall be based on negotiations between the Design-Builder and the Department.

B) Unit Priced Work. Payment shall be made at the Contract Unit Price for all Work less than or equal to twice the original Contract quantity. Once this limit is exceeded, any additional Work shall be considered to be new Work, with payment determined in accordance with DB Section 109L-9.2.

109L-9.2 New Item Charges

109L-9.2.1 Agreed Prices

Agreed prices for new items of Work or Material may be incorporated in the Order on Contract as the Commissioner may deem them to be just and fair and beneficial to the State. These prices must be supported by a complete price analysis in the Order on Contract, or if approved by the Department’s Project Manager, by reference to the weighted average bid or proposal prices for similar types and quantity of Work from other recent contracts. The price analysis will be based on an estimated breakdown of charges listed in DB Section 109L-9.2.2 unless some other basis is approved by the Commissioner. Agreed prices may be lump sum or Unit Priced Work.

109L-9.2.2 Force Account Charges

A) Design-Builder Charges. Where there are no applicable Unit Prices for Extra Work ordered and agreed prices cannot be readily established or substantiated, the Design-Builder shall be paid the actual and reasonable cost of the following:

1) Necessary Material (including transportation to the Site). Material is all product incorporated in the temporary or permanent Work. The following items consumed in progressing the Work are also considered to be Material for which reimbursement with an allowance for profit and overhead will be made. The items are oxygen, acetylene, propane, welding rods, grinding wheels, and saw blades. Separate reimbursement will not be made for all other products which may be consumed in progressing the Work and reimbursement for these items is considered to be included in the reimbursement for overhead. Material used, if acquired by direct purchase, must be documented by bills or acceptable invoices. All prices on used Material incorporated in either temporary or permanent Work shall be billed at a fair value, less than the original cost when new. A reasonable salvage credit shall be given for substantial salvageable Material recovered. Salvage value of substantial Material recovered shall be determined by the Department’s Project Manager in coordination with the Design-Builder.

2) Necessary construction and non-construction labor costs including supplemental benefit payments. Each class of labor shall be billed separately at actual payroll rates. Average rates based on different classes of labor will not be accepted.

3) Necessary payroll taxes and insurance payments and other such reasonable charges that are paid by the Design-Builder pursuant to existing written agreements with its Employees and/or labor organizations.
4) Sales taxes, if any, required to be paid on Material not permanently incorporated into the Work under an Order on Contract.

5) Equipment, truck, and plant rentals, other than small tools. The Design-Builder shall be reimbursed for the number of hours that the Equipment, truck, or plant is actually used on a specified Force Account job. Equipment used by the Design-Builder shall be specifically described by the Manufacturer, model number, and date of manufacture and be of suitable size and suitable capacity required for the Work to be performed. In the event the Design-Builder elects to use Equipment of a higher rental rate than the Equipment suitable for the Work, payment will be made at the rate applicable to the suitable Equipment. The Equipment actually used and the suitable Equipment upon which the rental rate is based will be recorded as a part of the record for Force Account Work. The Department’s Project Manager shall determine the suitability of the Equipment. If there is a differential in the rate of pay of the operator of oversize or higher rate Equipment, the rate paid for the operator will likewise be related to the suitable Equipment.

a) Design-Builder Owned Equipment, Trucks, and Plant - The Design-Builder shall be reimbursed for its ownership costs and for its operating costs for self owned Equipment at the rates listed in “Equipment Rental Rates” published by Equipment Watch of San Jose, California, applied in the following manner:

- Ownership Costs - It is mutually understood that the rates for ownership costs reimburse the Design-Builder for all non-operating costs of owning the Equipment, truck, or plant, including depreciation on the original purchase, insurance, applicable taxes, interest on investment, storage, overhead, repairs, moving the Equipment onto and away from the Project or Work Site, and profit. Reimbursement will be made for the hours of actual use as described below:
  - Less than eight hours of actual use, the product of the actual number of hours used or fraction thereof multiplied by the hourly rate, or the daily rate, whichever is less;
  - Between eight hours and 40 hours of actual use, the product of the actual number of hours used divided by eight multiplied by the daily rate, or the weekly rate, whichever is less;
  - Between 40 and 176 hours of actual use, the product of the actual number of hours used divided by 40 multiplied by the weekly rate;
  - Over 176 hours of actual use, the product of the actual number of hours used divided by 176 multiplied by the monthly rate.

- Operating Costs - The rate for operating costs includes fuel, lubricants, other operating expendables, and preventative and field maintenance. Operating cost does not include the operator’s wages. The Design-Builder shall be reimbursed the product of
the number of hours of actual use multiplied by the estimated operating cost per hour.

- Rates - The rates used shall be those in effect at the time the Force Account Work is done as reflected in the then current publication of “Equipment Rental Rates.” When Force Account type analysis is used to establish agreed prices the rates used shall be those in effect when the agreed price is developed by the Design-Builder and submitted to the Department’s Project Manager.

- Area Adjustment Factor - The geographic area adjustment factor shown on the map at the beginning of each section of “Equipment Rental Rates” shall not be applied to the Equipment rates subsequently listed in each section, and shall not be used as a basis for payment.

- Non-Established Rates - In the event that a rate is not established in “Equipment Rental Rates” for a particular piece of Equipment, truck, or plant, the Commissioner shall establish rates for ownership costs and operating costs for that piece of Equipment, truck, or plant that is consistent with its cost and expected life.

b) Rented Equipment, Trucks, and Plant - In the event that the Design-Builder does not own a specific type of Equipment and must obtain it by rental, it shall be paid the actual rental rate for the Equipment for the time that the Equipment is used to accomplish the Work or is required by the Department’s Project Manager to be present, not to exceed the adjusted rental rate in “Equipment Rental Rates” plus the reasonable cost of moving the Equipment onto and away from the Project Site.

The Design-Builder shall also be reimbursed for the operating cost of the Equipment unless reflected in the rental price. Such operating cost shall be determined in the same manner as specified for Design-Builder owned Equipment above.

In the event that area practice dictates the rental of Equipment with an operator or dictates the rental of fully fueled and maintained Equipment, truck, or plants, payment will be made on the basis of an invoice for the rental of the Equipment with an operator or for fully fueled and/or maintained Equipment, trucks, or plants including all costs incidental to its use, including costs of moving to and from the Site, provided the rate is substantiated by area practice.

c) Maximum Amount Payable - The maximum amount of reimbursement for the ownership costs of Design-Builder owned Equipment, trucks, or plant, or the rental cost of rented, Equipment, trucks, or plant, is limited to the original purchase price of the Equipment, truck, or plant for any Force Account Work as listed in “Equipment Rental Rates” published by Equipment Watch. In the specific event when the ownership or rental reimbursement is limited by the original purchase price, the Design-Builder shall, nevertheless, be reimbursed for the operating cost per hour for each hour of actual use.
6) Profit and Overhead. Profit and overhead cost shall be computed at 20% of the following:

d) Total direct labor cost (actual hours Worked multiplied by the basic hourly wage rate) plus supplemental benefit payments, payroll taxes, insurance payments, and other labor related fringe benefit payments as defined in paragraphs 2 and 3 of this DB Section 109L-9.2.2(A), but not including the overtime additive payments. Profit and overhead shall not be paid on the premium portion of overtime; and

e) Total cost of Material as defined in paragraph 1 of this DB Section 109L-9.2.2(A), including the cost of transportation to the Project Site.

f) Overhead for construction firms shall be defined to include the following:
   • Premium on bond;
   • Premium on insurance required by the State other than workers’ compensation insurance, including premium on public liability and property damage insurance and unemployment insurance; federal old-age benefits; other payroll taxes; and such reasonable charges that are paid by the Design-Builder pursuant to written agreement with its Employees;
   • All salary and expenses of executive officers, supervising officers, or supervising Employees;
   • All clerical or stenographic Employees;
   • All charges for minor Equipment such as computer hardware and software; survey Equipment; small tools, including shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, and wrenches; and other miscellaneous supplies and services; and
   • All drafting room accessories such as paper and tracing cloth and reproduction costs.

B) Subcontractor Charges. When the Work is performed by a Subcontractor, the Design-Builder shall be paid the actual and reasonable cost of such subcontracted Work as outlined above in DB Section 109L-9.2.2(A) items 1 through 5, but profit and overhead shall be figured at 25% unless some other basis is approved by the Commissioner.

C) Service Charges. When Work is performed by, and a fee is paid to, a service provider, the Design-Builder shall be paid the actual cost of the service fee plus a maximum five percent for Contract supervision, overhead, and profit. This five percent shall be applied once to the service fee regardless of the firm making direct payments to the service provider. For the purposes of this DB Section, “services” shall be considered to include professional fees, testing fees, dumping fees, Utility charges, and other specialized Work which is not accounted through labor, Equipment, and Material in paragraphs A) and B) of this DB Section 109-9.2.2. For Work reimbursed under Force Account procedures, service fee schedules shall be approved by the Department’s Project Manager. Overhead for firms providing professional services shall include those items included in their respective overhead rate for GSO (Non-FAR) or base field (Non-FAR) as
appropriate to its contract with the Design-Builder. Overhead shall not be paid on the
premium portion of overtime.

109L-9.2.3 Force Account Report

Payment for Force Account Work will be made on the basis of the following reports.

A) The Design-Builder will deliver to the Department’s Project Manager a daily summary of
Force Account Work done on the Contract using Forms MURK 11b (DB-C) and/or
MURK 11b (DB-D) [Appendix 109L-A]. This summary will be delivered to the
Department’s Project Manager not later than closing time on the day following that for
which the Work is reported. The summary shall contain the following:

1) A list of Materials used indicating the amount and nature of each Material. The
cost (if known) should also be included. This must be documented later by proper
receipts.

2) A list of Equipment used indicating the number of hours used and the kind, type,
and size of Equipment.

3) A list of personnel (design and construction) by name, including the hours
worked, the labor classification at which they were used on the Force Account
Work, and the location of the Work.

4) A statement of the Work accomplished by Force Account for that day.
   a) This summary will be dated and signed by the Design-Builder’s
      authorized representative and the Department’s Project Manager.
   b) The contract number and other identification as well as the name of the
      Design-Builder shall appear on the statement.
   c) The Department’s Project Manager will make any notations, remarks, or
      comments on this form that may assist in final payments.

B) Within five Calendar Days after the end of each pay period, the Design-Builder shall
deliver to the Department’s Project Manager a Force Account summary of labor used on
the Work, using MURK 12c (DB-C) and MURK 12c (DB-D) (Appendix 109L-A), which
shall include the following:

1) For construction labor and non-construction labor employed by construction
firms, the name, hourly rate of pay, hours worked, fringe benefits, and/or other
items as shown on the actual payroll.

2) For other non-construction labor, the name, rate of pay, and the hours worked.

C) On completion of the specific Force Account Work, the Design-Builder shall, within 10
Calendar Days, deliver to the Department’s Project Manager a Force Account
summation, using MURK 13d (DB-C) and MURK 13d (DB-D) (Appendix 109L-A), wherein all Material, Equipment, and labor charges are shown and totaled together with
such other expenditures as are concerned with the Force Account item. This summation
shall be dated and signed by the Design-Builder’s authorized representative and the
Department’s Project Manager.

D) In the event the Design-Builder fails to deliver the required Force Account
documentation to the Department’s Project Manager within the time period specified in
DB Section 109L-9.2.3(B), and as a result the Order on Contract for the Force Account
Work is not fully approved at the date of Final Acceptance, the number of Calendar Days
of the time period between Final Acceptance and the issuance of the Force Account
Order on Contract attributable to the Design-Builder’s late Force Account submissions, will extend the required payment date by an equal period of time.

109L-10 DISPUTE RESOLUTION AND DISPUTED WORK PROVISIONS

It is the goal of the Department to resolve disputes that may arise under the Contract in a timely, just, and fair manner consistent with the terms of the Contract. Towards this goal, the Department is specifying these dispute resolution and disputed Work provisions. The dispute resolution process may be undertaken at any time from the Contract Award to the submission of the final estimate for payment by the Comptroller. The process recognizes and will take into consideration the risks and controls inherent in construction which the Design-Builder or the Department have agreed to assume pursuant to the terms of the Contract.

If the Design-Builder considers its disputes unresolved after following the requirements of this DB Section, then at any time prior to the submission of the final agreement for payment to the Comptroller, the Design-Builder may request in writing a meeting with the Commissioner, or his/her designated representative, to review any outstanding dispute or items of dispute that have not been previously resolved to the satisfaction of the Design-Builder through the dispute resolution process. If requested by the Design-Builder, the Department will schedule a contract closeout meeting to review outstanding disputes or items of dispute that have not previously been resolved. Unresolved disputed item(s) or portions thereof shall only be considered in connection with the Contract closeout process set forth in DB Section 109L-10.7. If, after the payment of the final agreement, any dispute(s) or portions thereof remain unresolved, the Design-Builder shall retain the option of filing a claim in accordance with New York State law. If the Design-Builder fails to comply with the requirements of this DB Section, any claim of the Design-Builder with respect thereto shall be deemed waived.

109L-10.1 Time Related Disputes

Whenever the Design-Builder believes that it is or will be entitled to additional compensation for time related disputes, whether due to delay, Extra Work, disputed Work, breach of the Contract, or other causes, the Design-Builder shall follow the procedures set forth in this DB Section. All subcontracts or supply or Equipment contracts shall incorporate the provisions of this DB Section. If such subcontracts or supply or Equipment contracts do not have similar provisions, then the State payments to the Design-Builder for such subcontract or supply or Equipment Work shall be limited to only that which are provided by the provisions of this DB Section as if it were in effect for such subcontract or supply or Equipment contract.

A) This DB Section is intended to cover all such events which include termination for convenience (DB Section 105-6), major deductions or increases in scope of Work, and suspension of Work (DB Section 105-1), as well as actions, forces, or factors, whether they be termed “delay,” “disruption,” “interference,” “inefficiencies,” “impedance,” “hindrance,” “acceleration,” or otherwise.

B) Strict compliance with the notice provisions and the record keeping provisions of this DB Section shall be an essential condition precedent under the Contract to any recovery of time related damages by the Design-Builder whether it be under the Contract provisions, court actions and proceedings, or otherwise.

C) Except for situations that come within the terms of DB Section 109L-15, within 10 Work Days after the Design-Builder has knowledge or should have had knowledge of an event, matter, or occasion that will result in time related damages, the Design-Builder must provide the Department’s Project Manager with written notice of a dispute for time related damages.
D) The Department shall have no liability and no adjustment will be made for any time related damages which accrued more than 10 Work Days prior to the filing of such a notice with the Department’s Project Manager. Failure of the Design-Builder to give such written notice in a timely fashion will be grounds for denial of the dispute and the Department does not have to show prejudice to its interest before such denial is made, in the event the Design-Builder fails to provide the required written notice within the 10 Work Day period. In the event the Design-Builder fails to maintain and submit such specified records, the Design-Builder hereby agrees to waive the dispute for compensation, notwithstanding the fact that the Department may have actual notice of the facts and circumstances which comprise such dispute and is not prejudiced by said failure.

E) As directed by the Department’s Project Manager, the Work shall continue during the pendency of the dispute. The Department’s Project Manager shall make the initial determination in writing on the dispute and the Design-Builder, if it considers the issue unresolved, shall promptly notify, within 10 Work Days after receipt of the Department Project Manager's decision, the Regional Director in writing of its position relative to the dispute. If the Regional Director does not resolve the dispute to the satisfaction of the Design-Builder, the latter shall promptly, within 10 Work Days after receipt of the Regional Director’s decision, notify the Commissioner, in writing with copies to the Department’s Project Manager and the Regional Director, of its contentions relative to the dispute, indicating the substance of previous communication on the issue with the Department’s Project Manager and the Regional Director and its rebuttal of their previous findings or determinations.

F) The Commissioner, or his/her designee, shall make a finding thereon and notify the Design-Builder of same in writing.

G) If time related damages are presumed to have been incurred, and after giving the Department notice of a dispute for time related damages, the Design-Builder must keep daily records, certified by the Design-Builder’s Design QC Manager and/or the Construction QC Manager, of all labor, Material, and Equipment costs and hours incurred for the affected operations. These daily records must identify each operation affected and the specific locations where Work is affected. On a weekly basis, beginning the week following the date of giving notice of a dispute for time related damages, the Design-Builder shall meet with the Department’s Project Manager and present the daily records for the preceding week. If the Department's Project Manager disagrees with the accuracy, applicability, or reasonableness of any portion of the Design-Builder's submission, he/she shall promptly notify the Design-Builder who shall correct its records. If there is a dispute as to records, the Design-Builder must follow the requirements of DB Section 109L-10.4. The dispute shall first be submitted to the Regional Director and, if unresolved, will be submitted in writing to the Commissioner or his/her designee whose decision shall be final and conclusive subject to the Design-Builder's right to assert a claim in New York State Court of Claims. Lack of substantial compliance with the requirements to attend weekly meetings or present its records will constitute a waiver by the Design-Builder of said dispute for time related damages.

H) After giving notice of a dispute for time related damages, the Design-Builder shall prepare and submit to the Department’s Project Manager, if requested, weekly written reports until complete resolution of the dispute, which shall be available at the next scheduled job meeting, providing the following information:
1) Potential effect to the Design-Builder's schedule caused by the time related dispute;

2) Identification of all operations that have been affected or delayed, or are or may be affected or delayed;

3) Explanation of how the Department's act or omission affected or delayed each operation and estimation of how much more time is required to complete the Project;

4) Itemization of all extra costs being incurred, including the following:
   a) An explanation as to how those extra costs relate to the effect or delay and how they are being calculated and measured;
   b) Identification of all Project employees for whom costs are being compiled; and
   c) Identification of all Manufacturer's numbers of all items of Equipment for which costs are being compiled.

I) In addition, after submitting the required notice specified in this DB Section, the Design-Builder shall complete its dispute submission by complying with DB Section 109L-10.8, when such information is ascertainable by the Design-Builder, and DB Section 109L-10.9.

See DB Section 109L-10.6 for the review time periods for disputes to the Commissioner and DB Section 109L-10.7 for the closeout process.

109L-10.2 Time Related Dispute Compensation

A) As limited by DB Section 109L-9, the following elements of damage, and only the following elements, will be recoverable by the Design-Builder as “time related dispute damages” provided that they are actual and reasonable:

1) Documented additional or escalated Work Site direct labor expenses, including Project-related non-construction labor expenses and professional services fees;

2) Documented additional or escalated costs for Material;

3) Documented additional or escalated Equipment costs less appropriate credits, as such are determined in accordance with this DB Section;

4) Documented costs of extended Work Site overhead (field costs, including field supervision). Work Site overhead includes the job superintendent, office engineer, and clerical staff, but not working foremen;

5) An additional 10% of the total of items (1), (2), (3), and (4), above, for home office overhead and 10% for profit thereon. However, when DB Sections 104-4 and 104-5 apply, no anticipated profits shall be allowed, and where DB Section 109L-15.1.1 applies, no profit or anticipated profits shall be allowed;

6) Documented additional or escalated insurance and bond costs; and

7) When the Work is performed by a Subcontractor, the Design-Builder shall be paid the actual and reasonable cost of such subcontracted Work as outlined above in (1) through (4) and the Design-Builder's main office overhead and profit shall be figured at 15% and 10% respectively (except for professional services, the allowance for the Design-Builder shall be five percent for supervision, overhead,
and profit). However, where DB Sections 104-4 and 104-5 apply, no anticipated profits shall be allowed, and where DB Section 109L-15.1.1 applies, no profit or anticipated profits shall be allowed.

B) Equipment, truck, or plant rentals, other than small tools:

1) Equipment used by the Design-Builder shall be specifically described by the Manufacturer, model number, and date of manufacture and be of suitable size and capacity required for the Work to be performed. In the event the Design-Builder elects to use Equipment of a higher cost than the Equipment suitable for the Work, payment will be made at the actual cost rate applicable to the suitable Equipment unless otherwise provided for in this DB Section. The Department’s Project Manager shall determine the suitability of Equipment. For purposes of computing the Design-Builder’s self-owned Equipment, truck, or plant costs, the rate used shall be based on the rate listed in “Equipment Rental Rates” published by Equipment Watch, with the appropriate adjustments noted in DB Section 109L-9.2.2.

2) In the event that a rate is not established in “Equipment Rental Rates” for a particular piece of Equipment, truck, or plant, the Commissioner shall establish a rate for ownership costs and operating costs for that piece of Equipment, truck, or plant that is consistent with its cost and expected life.

3) The Design-Builder shall be reimbursed for its operating costs for self-owned Equipment based on actual cost data. Operating costs shall include fuel, lubricants, other operating expendables, and preventive and field maintenance. Operating costs do not include the operator’s wages. In the event, after documented and demonstrated due diligence, actual operating costs are not ascertainable, then the Design-Builder will be compensated utilizing not more than 50% of the operating costs set forth in “Equipment Rental Rates” and the Design-Builder shall be reimbursed the product of the number of hours of actual use multiplied by the operating cost per hour.

4) The rate for idle Equipment and stand-by Equipment shall be based upon the rate of depreciation specified in the Design-Builder’s books and records, or 50% of the rate set forth in “Equipment Rental Rates” published by Equipment Watch with the appropriate adjustments noted in DB Section 109L-9.2.2 of these Specifications, whichever is greater. In the event the Equipment is fully depreciated, the Commissioner will pay the actual ownership costs based upon Department audit of the Design-Builder’s books and records.

5) The maximum amount of reimbursement for the ownership costs of Design-Builder owned Equipment, trucks, or plant, or the rental cost of rented Equipment, trucks, or plant, is limited to the original purchase price of the Equipment, truck, or plant as listed in “Equipment Rental Rates” published by Equipment Watch. In the specific event when the ownership or rental reimbursement is limited by the original purchase price, the Design-Builder shall, nevertheless, be reimbursed for the operating cost per hour for each hour of actual use.

6) For purposes of rented Equipment, the provisions of DB Section 109L-9.2.2(A)(5)(b) are controlling.
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C) The parties agree that, in any dispute for time related damages, the Department will have no liability for the following items and the Design-Builder further agrees it shall make no claim for the following items:

1) Profit, in excess of that provided in DB Section 109L-10.2(A)(5) and (7);
2) Loss of anticipated or unanticipated profit;
3) Labor inefficiencies and loss of productivity;
4) Home office overhead in excess of that provided in DB Section 109L-10.2(A)(5) and (7);
5) Consequential damages, including, but not limited to, interest on monies in dispute, including interest which is paid on such monies; loss of bonding capacity, bidding opportunities, interest on retention, or investment; or any resultant insolvency;
6) Indirect costs or expenses of any nature;
7) Direct or indirect costs attributable to performance of the Work where the Design-Builder, because of situations or conditions within its control, has not progressed in a manner satisfactory to the Department’s Project Manager; and
8) Attorney’s fees or claims preparation expenses.

D) Remedies Exclusive: With respect to time related dispute compensation provisions, the parties agree that the State shall have no liability to the Design-Builder for expenses, costs, or items of damage other than those which are specifically identified as payable under DB Section 109L-10.2. In the event any legal action is instituted against the State by the Design-Builder on account of any such dispute for additional compensation, whether on account of time related dispute, delay, acceleration, breach of contract, or otherwise, the Design-Builder agrees that the State’s liability will be limited to those items which are specifically identified as compensable under DB Section 109L-10.2. The Design-Builder further agrees to make no claim for expenses other than those which are specifically identified as compensable under DB Section 109L-10.2. Nothing in this DB Section is intended to create any liability of the State not existing at common law or pursuant to the terms of this Contract or to prevent the Design-Builder from filing a claim in the New York State Court of Claims.

109L-10.3 Acceleration Disputes

The Design-Builder may not maintain a dispute for costs associated with acceleration of the Work unless the Department has given prior express written direction by the Department’s Project Manager to the Design-Builder to accelerate its effort. The Design-Builder shall always have the basic obligation to complete the Work in the time frames set forth in the Contract. For purposes of this DB Section, lack of express written direction on the part of the Department shall never be construed as assent. If the Design-Builder does accelerate its Work efforts pursuant to a written order or express written Approval by the Department’s Project Manager, the Design-Builder shall be compensated for its effort in the same manner and as limited by DB Section 109L-10.2. The Department, in determining whether or not any compensation under this Section is warranted, will evaluate the facts and circumstances which led to the acceleration to determine whether they were in the Design-Builder's control.

If the Design-Builder is claiming a “constructive acceleration,” it must follow the requirements of DB Section 109L-10.1.
See DB Sections 109L-10.6 for the review time periods for disputes to the Commissioner and 109L-10.7 for the closeout process.

109L-10.4 Disputed Work

If the Design-Builder is of the opinion that any Work ordered by the Department’s Project Manager to be done as Contract Work is Extra Work and not Contract Work, or that any order of the Department’s Project Manager exceeds the Work requirements of the provisions of the Contract, the Design-Builder shall promptly, within 10 Work Days of receipt of the order or direction, notify the Department’s Project Manager in writing of its contentions thereto. The Design-Builder must progress the Work as required and ordered. In the meantime, the Design-Builder, if it considers the issue unresolved, shall promptly, within 10 Work Days of receipt of the Department’s Project Manager's written decision, notify the Regional Director in writing of its position relative to the dispute. If the Regional Director does not resolve the dispute to the satisfaction of the Design-Builder, the latter shall promptly, within 10 Work Days of receipt of the Regional Director's written decision, notify the Commissioner, in writing with copies to the Department’s Project Manager and the Regional Director, of its contentions relative to the dispute, indicating the substance of previous communication on the issue with the Department’s Project Manager and the Regional Director and its rebuttal of their previous findings. The Commissioner, or his/her designated representative, shall make a finding thereon and notify the Design-Builder of same in writing. If such work is determined by the Commissioner, or his/her designee, to be Extra Work in accordance with DB Section 104-03, compensation will be made pursuant to DB Section 109L-9. In addition, after submitting the required notice specified in this DB Section, the Design-Builder shall complete its dispute submission by complying with DB Sections 109L-10.8, when such information is ascertainable by the Design-Builder, and 109L-10.9. This DB Section shall cover all such applicable Extra Work under DB Section 109L–15.

During the progress of such disputed Work, the Design-Builder and Department’s Project Manager shall keep daily records and make reports of all labor, Material, and Equipment used in connection with such Work and the cost thereof as specified in DB Section 109L-9.2.2. If the Department’s Project Manager or Regional Director fails to reply within 60 days, the Design-Builder may take the dispute to the next level.

If the Commissioner or his/her designated representative determines that the Work in question is Contract Work and not Extra Work or that the order complained of is proper, he/she shall again direct the Design-Builder to continue the disputed Work and the Design-Builder must promptly comply.

The Design-Builder's right to pursue a dispute under this DB Section for extra compensation or damages will not be affected in any way by the Design-Builder's complying with the directions of the Commissioner or Department’s Project Manager to proceed with the Work, provided the Design-Builder continues to keep and furnish the Department’s Project Manager with Force Account reports as specified in DB Section 109L-9.2.3.

If the Commissioner, or his/her designated representative, determines that such Work is Extra Work and not Contract Work or that the order complained of is not proper, then the Commissioner, or his/her designated representative, shall have prepared, if necessary, an Order on Contract covering such Work as soon as is practical after the Determination is made. Payment will be made for such Work via agreed price or Force Account pursuant to DB Section 109L-9.2.2. The Commissioner, or his/her designee, will notify the Design-Builder in writing of the date upon which the Department has approved the Order on Contract. Performance of Work until receipt of the Order on Contract by the Design-Builder shall be considered disputed Work. The Design-Builder must progress the Work of the Contract, including the Work covered by any such Order on Contract, as directed by the Department’s Project Manager.
Adjustments to Contract Items, adjustments to the time of performance, or the addition of new items to the Contract necessitated by such determination may be made up until the time the final agreement is submitted for payment to the Comptroller, provided that all the requirements of DB Sections 109L-9 and 104-3 are complied with. In addition, documented, additional, actual, and reasonable costs incurred by the Design-Builder pursuant to following a written order to perform Work (that was subsequently contained in an Order-on-Contract which was disapproved) will be considered as reimbursable. This Work will be considered disputed work for which the Design-Builder will be compensated. Eligibility for compensation shall cease upon notification of the Order-on-Contract's disapproval. Failure by the Design-Builder to promptly notify, in writing, the Department’s Project Manager, the Regional Director, and the Commissioner of its contentions relative to any dispute or to maintain and furnish Force Account reports for disputed Work shall constitute a waiver of the disputed Work. See DB Sections 109L-10.6 for the review time periods for disputes to the Commissioner and 109L-10.7 for the closeout process.

109L-10.5 Auditing of Records

The Design-Builder which has filed a dispute must have the following records available for audit at any time following the filing of such dispute, whether or not such dispute is part of a suit pending in the courts of this State. If a dispute is filed on behalf of a Subcontractor or Supplier, such Subcontractor or Supplier must also have the following records available for audit any time following the filing of such dispute, whether or not such dispute is part of a suit pending in the courts of this State. The audit may be performed by employees of the Department or by an independent auditor appointed by the Department. The audit may begin on 10 Work Days' notice to the Design-Builder, Subcontractor, or Supplier as is appropriate. The Design-Builder, Subcontractor, or Supplier shall cooperate with the auditors. The Department will maintain the audit, its backup, reports, schedules, and conclusions as confidential material. Failure of the Design-Builder, Subcontractor, or Supplier to maintain and retain sufficient records shall constitute a waiver of that portion of such dispute that cannot be verified and shall bar recovery.

Without limiting the generality of the foregoing, the auditors shall have available to them, and the Design-Builder agrees to provide access to, the following documents:

A) Daily time sheets, job superintendent diaries or log sheets, and foreman's daily reports.
B) Union agreements and reports, if any.
C) Insurance policies, welfare and benefits records, or plans for union and non-union personnel.
D) Payroll register.
E) Individual Employee earnings records.
F) Payroll tax returns.
G) Material invoices, purchase orders, and all Material and supply acquisition contracts.
H) Material cost distribution work sheet.
I) Equipment records (list of company Equipment, rates, depreciation schedules, daily Equipment reports or logs, fueling logs or records, Equipment lease/purchase agreements, and Equipment purchase invoices).
J) Vendor rental agreements and Subcontractor invoices, agreements, and back charge records.
K) Subcontractor payment certificates.
L) Canceled checks (payroll and vendors).
M) Job cost ledger or report.
N) Job payroll ledger, petty cash journal, and supporting vouchers.
O) General ledger, general journal (if used), and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals.
P) Cash receipts, cash disbursements journal, and purchase journal.
Q) Audited and unaudited financial statements for all years reflecting the operation on this Project.
R) Depreciation records on all company Equipment whether such records are maintained by the company involved, its accountant, or others.
S) If a source other than depreciation records is used to develop costs for the Design-Builder’s internal purposes in establishing the actual cost of owning and operating Equipment, all such other source documents.
T) All documents which reflect the Design-Builder's actual overhead during the years this Project was being performed.
U) All documents related to the preparation of the Design-Builder's Proposal including the final calculations on which the Proposal was based.
V) All documents which relate to each and every dispute together with all documents which support the amount of damages as to each dispute.
W) Work sheets used to prepare the dispute establishing the cost components for items of the dispute including, but not limited to, labor, benefits and insurance, Material, Equipment, and Subcontractors and all documents which establish the time periods, the individuals involved, and the hours and rates for the individuals.

In the event the Design-Builder fails to substantially furnish the above required reports and accounting records, such failure shall constitute a waiver of the dispute for payment other than for payment at Contract Prices for the Work performed.

109L-10.6 Review Time Periods for Disputes to the Commissioner

A) For all disputes of $50,000.00 or less, the Department shall respond in writing within 45 Days of receipt of the dispute. If any additional documentation supporting the dispute or relating to the subject matter of the dispute is required the Department may request said documentation in writing within 30 Days of receipt of the dispute. The Design-Builder shall provide such information within 30 Days unless another time period is agreed to. The Department's written response to the additionally documented dispute shall be submitted to the Design-Builder within 15 Days after receipt of said additional documentation or within a period of time no greater than that taken by the Design-Builder in producing said additional documentation, whichever is greater. If the Design-Builder disputes the Department's written response, or the Department fails to respond within the time prescribed, the Design-Builder may so notify the Department in writing within seven Days of receipt of the Department's response, or within seven Days of the Department's failure to respond. Upon the Design-Builder's request, the Department shall schedule a meeting or conference. By agreement between the Department and the Design-Builder, such time periods may be modified.
For disputes over $50,000.00 and less than or equal to $250,000.00, the Department shall respond in writing within 60 Days of receipt of the dispute. If any additional documentation supporting the dispute, or relating to the subject matter of the dispute is required, the Department may request said documentation in writing within 30 Days of receipt of the dispute. The Design-Builder shall provide such information within 30 Days unless another time period is agreed to. The Department's written response to the additionally documented dispute shall be submitted to the Design-Builder within 30 Days after receipt of said additional documentation, or within a period of time no greater than that taken by the Design-Builder in producing said additional documentation, whichever is greater. If the Design-Builder disputes the Department's written response, or the Department fails to respond within the time prescribed, the Design-Builder may so notify the Department in writing within 15 Days of receipt of the Department's response, or within 15 Days of the Department's failure to respond. Upon the Design-Builder's request, the Department shall schedule a meeting or conference. Within 30 Days the Design-Builder will be notified of the date of the meeting or conference. By agreement between the Department and the Design-Builder, such time periods may be modified.

For disputes over $250,000.00, and disputes that have an undetermined value, the Department shall respond in writing within 90 Days of receipt of the dispute. If any additional documentation supporting the dispute or relating to the subject matter of the dispute is required the Department may request said documentation in writing within 30 Days of receipt of the dispute. The Design-Builder shall provide such information within 30 Days unless another time period is agreed to. The Department's written response to the additionally documented dispute shall be submitted to the Design-Builder within 60 Days after receipt of the said additional documentation, or within a period of time no greater than that taken by the Design-Builder in producing said additional documentation, whichever is greater. If the Design-Builder disputes the Department's written response, or the Department fails to respond within the time prescribed, the Design-Builder may so notify the Department in writing within 30 Days after the receipt of the Department's response, or within 30 Days of the Department's failure to respond. Upon the Design-Builder's request, the Department shall schedule a meeting. Within 30 Days the Design-Builder will be notified of the date of the meeting or conference. By agreement between the Department and the Design-Builder, such times periods may be modified.

If any dispute or portion thereof remains unresolved following the meeting(s) and the payment of the final agreement, the Design-Builder may file a claim in accordance with law and the provisions of the Contract.

109L-10.7 Closeout Process

A) A dispute or claim, or a portion thereof, that has been previously submitted to the Department under DB Section 109L-10.4 and which remains unresolved to the satisfaction of the Design-Builder may be submitted for Department review in connection with the closeout procedure. The closeout meeting process involves meeting(s) with the Design-Builder and its representatives and Department personnel to amicably resolve all remaining disputes of the Contract. In lieu of pursuing the closeout meeting process the Design-Builder may elect to utilize the following process.

1) The Commissioner, after consultation with the four major contractor associations in the State who represent the majority of the contractors performing work for the Department, shall appoint a Department employee to determine what method of dispute resolution is appropriate for each Contract that has unresolved disputes.
over $50,000.00. Such person, referred to as the gatekeeper, shall establish universal criteria, subject to Approval of the Commissioner after consultation with the four major contractor associations, which will be used in connection with the review of the disputes. The outcome of the review will either be the closeout meeting process, or alternate dispute resolution methods that are consistent with law, including, but not limited to, facilitation methods or a Disputes Review Board (DRB), as such is described hereafter. The gatekeeper shall advise the Department and the Design-Builder how he or she would proceed with processing such dispute(s) in an attempt to resolve the matter. The decision of the gatekeeper shall be final and shall not be subject to review under Article 78 of the C.P.L.R., except for the option of filing a claim in accordance with law.

2) A facilitator may be used or a DRB may be established to assist in resolving disputes arising out of the performance of the Contract. The facilitator shall be one person, agreed to by the Department and the Design-Builder, who is knowledgeable in public work construction matters and who shall try to bring the parties to a mutually agreeable resolution of the disputes. The DRB shall consist of three persons who are knowledgeable in public work construction matters. The DRB membership shall be selected in the following manner: one shall be selected by the Department, one selected by the Design-Builder, and one mutually selected by the Department and the Design-Builder. The DRB shall make a recommendation as to the resolution of the disputes. The expenses of the facilitator, DRB, or any other method shall be equally shared by the Department and the Design-Builder. The records made and recommendations or action of the facilitator, the DRB, or any other dispute resolution method, shall be off the record, non binding, confidential, and may not be used in any future litigation.

B) If any dispute or claim, or portion thereof, remains unresolved following the meeting(s) or conference(s) and the payment of the final agreement, the Design-Builder may file a claim in accordance with law and the provisions of the Contract.

109L-10.8 Required Content of Dispute Submission

All disputes must be submitted in writing to the Department’s Project Manager, and must be in sufficient detail to enable the Department’s Project Manager to ascertain the basis and the amount of each dispute. As a minimum, the following information must be provided when such information is ascertainable by the Design-Builder:

A) Time Related Dispute Submissions.

1) A description of the operations that were delayed, the reasons for the delay, and how they were delayed, including the report of all scheduling experts or other consultants, if any.

2) An as-built chart, Critical Path method scheme, or other diagram or chart depicting in graphic form how the operations were or are presumed to be adversely affected.

3) The date on which actions resulting in the dispute occurred or conditions resulting in the dispute became evident.

4) A copy of the notice of dispute required per DB Section 109L-10.1(C) for the specific dispute by the Design-Builder.
5) To the extent known, the name, function, and activity of each Department official, employee, or agent involved in, or knowledgeable about, facts that gave rise to such dispute.

6) The name, function, and activity of each Design-Builder or Subcontractor official or Employee involved in, or knowledgeable about, facts that gave rise to such dispute.

7) The identification of any pertinent documents, and the substance of any material oral communication relating to such dispute.

8) A statement as to whether the additional compensation or extension of time, if requested, is based on the provisions of the Contract or is an alleged breach of the Contract.

9) The amount of additional compensation sought and a breakdown of that amount into the categories specified as payable under DB Section 109L-10.2 above.

10) If an extension of time is also requested, the specific days for which it is sought and the basis for such request as determined by an analysis of the construction progress schedule.

B) For Other Disputes Including Acceleration Disputes.

1) A detailed factual statement of the dispute providing all necessary dates, locations, and items of Work affected by the dispute.

2) The date on which actions resulting in the dispute occurred or conditions resulting in the dispute became evident.

3) A copy of the notice of dispute required for the specific dispute by the Contract pursuant to DB Sections 109L-10.3 and 109L-10.4.

4) The name, function, and activity of each Department official, employee, or agent involved in, or knowledgeable about, facts that gave rise to such dispute.

5) The name, function, and activity of each Design-Builder or Subcontractor official, Employee, or agent involved in or knowledgeable about facts that gave rise to such dispute.

6) The specific provisions of the Contract which support the dispute and a statement of the reasons why such provisions support the dispute.

7) The identification of any pertinent documents and the substance of any material oral communications relating to such dispute.

8) A statement as to whether the additional compensation or extension of time requested is based on the provisions of the Contract or an alleged breach of the Contract.

9) If an extension of time is also requested, the specific days for which it is sought and the basis for such request as determined by an analysis of the construction schedule.

10) The amount of additional compensation sought and a breakdown of that amount shall conform to the requirements of DB Section 109L-10.2 except for acceleration disputes which shall conform to the requirements and categories specified in DB Section 109L-10.3 above.
109L-10.9 **Required Certification of Disputes**

When submitting any dispute over $50,000.00, the Design-Builder must certify in writing, under oath, and in accordance with the formalities required by the Contract, as to the following:

A) That supporting data is accurate and complete to the Design-Builder’s best knowledge and belief; and

B) That the amount of the dispute and the dispute itself accurately reflects what the Design-Builder in good faith believes to be the Department’s liability.

If the Design-Builder is an individual, the certification shall be executed by that individual.

If the Design-Builder is not an individual, the certification shall be executed by the following:

1) A senior company official in charge at the Design-Builder’s plant or location involved; or

2) An officer or general partner of the Design-Builder having overall responsibility for the conduct of the Design-Builder’s affairs.

109L-11 **ACCEPTANCE AND SUBSTANTIAL COMPLETION**

109L-11.1 **Partial Acceptance**

If at any time during the prosecution of the Project the Design-Builder satisfactorily completes a unit or portion of the Project, such as a structure, an interchange, or a section of road or pavement, the Design-Builder may request the Department’s Project Manager to make an Inspection of that unit. If the Department’s Project Manager finds upon Inspection that the unit has been satisfactorily completed in compliance with the Contract, the Department’s Project Manager may accept that unit as being completed, and the Design-Builder may be relieved of further responsibility for the unit, unless before Final Acceptance of the Work, latent defects are discovered. If latent defects are discovered in the accepted unit, then the Design-Builder will remain responsible for that unit. Such partial acceptance shall in no way void or alter the terms of this Contract.

Devices intended to be used for traffic safety and control that are permanently installed in their final position with all ancillary components and being used by the traveling public shall be accepted when installed in accordance with the Design Plans and Project Specifications, prior to completion of the remaining Work on the job.

Permanently installed items accepted on this basis are limited to guardrails, impact attenuators, traffic signal systems, signs, lighting, raised pavement markers, concrete wall barriers, concrete bridge parapets, bridge railings, guard cable, guardrail anchorages, permanent pavement markings, and fencing. All required performance tests and guarantees shall remain applicable.

Damage, theft, or vandalism to the items by the public after Final Acceptance will be repaired or replaced by the State or by the Design-Builder in conformance with DB Section 104-3. When the damage to an item is such that only partial repair or replacement is required and the Work is to be done by the Design-Builder, payment shall be made as provided in DB Section 109L-9.2. Items damaged due to negligence of the Design-Builder shall be repaired or replaced at no cost to the State.

The Design-Builder shall erect the items in a logical sequence and time frame within the life of the Project, and items constructed prematurely will not be accepted until such time in the life of the Project that the device becomes effective for its intended use.
109L-11.2 Substantial Completion

When the Design-Builder considers that the Project is substantially complete, the Design-Builder shall notify the Department’s Project Manager in writing.

Prior to receiving a certificate of Substantial Completion for the entire Project, the Design-Builder must complete any specified training for Department personnel.

Within seven days of receipt of the Design-Builder’s written application for a certificate of Substantial Completion, the Department’s Project Manager, in the company of the Design-Builder, will inspect the Project covered by the notice. During the Inspection, the Work will be examined and QC documentation will be reviewed. The Department’s Project Manager will prepare a written list of outstanding items, if any, to be completed or corrected before issuance of the certificate of Substantial Completion and a separate written list of items to be completed or corrected prior to Final Acceptance. The list shall be included in the QA/QC documentation with an agreed date of correction for each deficiency.

If there are no outstanding items to be completed or corrected before Substantial Completion of the Project, the Design-Builder shall, following Inspection:

A) Submit to the Department’s Project Manager special guarantees, Warranties, maintenance agreements, final certifications, and similar documents required under the Contract;
B) Deliver tools, spare parts, instructions, and similar items required to operate and maintain the Work; and
C) Make changeover of locks to all Equipment and facilities and deliver keys and/or combinations to the Department’s Project Manager.

The Design-Builder shall complete or correct the outstanding items, if any, to be done before issuance of the certificate of Substantial Completion and request re-inspection by the Department’s Project Manager in writing.

Within seven Days of the Design-Builder’s request for re-inspections, the Department’s Project Manager will re-inspect the Project and issue a certificate of Substantial Completion if the outstanding items noted for Substantial Completion during the Inspection are completed or corrected.

109L-11.3 Final Acceptance

Upon receipt of written notice from the Design-Builder of the projected completion date of all of the requirements for the Project, the Department’s Project Manager will inspect or review any remaining portions of the Project not inspected at the time of issuance of the certificate of Substantial Completion and review any activities required under the Contract not completed at the time of Substantial Completion on the projected completion date to verify that all Work items, including surveys and As-Built Plans and Design Acceptance, have been completed.

The Design-Builder shall prepare and submit As-Built Plans of the following types in electronic format on CD-ROMs and one reproducible hard copy set:

A) Plan and profile sheets;
B) Signing and striping;
C) Pavement typical sections;
D) All bridge Plans;
The Design-Builder shall also submit the final tabulation of Materials and labor used on Form FHWA-47M (see DB Section 108-1.10).

Upon verification that all items have been completed, the final Inspection by the Department’s Project Manager and the Regional Director shall be scheduled and conducted within 14 Calendar Days. If the Inspection discloses Work, in whole or in part, as being unsatisfactory, the Department’s Project Manager will give the Design-Builder the necessary written instructions within the time limit set by the Department’s Project Manager. Upon correction of the Work, the Department’s Project Manager will make an additional Inspection and notify the Design-Builder accordingly as soon as reasonably possible thereafter.

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

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

109L-12 FINAL AGREEMENT AND PAYMENT

The final agreement [FormC47-B (DB) – Final Agreement, Appendix 109L-A] will not be drawn and finalized until all Work required under the Contract has been satisfactorily completed and all claims presented and all accounts for Extra Work and Material have been rendered; considered; and, if agreed to, made a part of such final agreement. The value of such Work and Material shall be computed under and according to the terms of the Contract. Work remaining to be accomplished under an uncompleted Work agreement, shall be considered as completed Work for the purpose of the final agreement. The Commissioner, or his/her designee, will have final Approval of the final agreement as prepared and certified as to its correctness by the Department’s Project Manager and approved by the Regional Director, less any and all deductions authorized to be made by the Commissioner under the Contract. The right is reserved to the Commissioner to reject the whole or any portion of the final agreement, should said certification of correctness by the Department’s Project Manager be found to be inconsistent with the terms of the Contract or otherwise improperly given.

Payment pursuant to such final agreement less any deductions authorized to be made by the Comptroller shall constitute the final payment to the Design-Builder.
109L-13 TIMELY PAYMENT

DB Section 179 of the New York State Finance Law requires the Department to make final payment on Highway projects within 75 Calendar Days after Final Acceptance by the Commissioner. If the Department unjustifiably fails to pay the final payment within the prescribed 75 Calendar Days, it may be required to pay interest for each day in excess of the 75 Calendar Days.

In order to enable the Department to process the final payment properly and expeditiously, the Design-Builder is advised that all of the following documents and submissions, as the same may be appropriate to this Contract, are considered to be necessary to enable the processing of the final payment as described above:

A) Form 109-11B, General Release (Appendix 109L-A);
B) Outstanding claims and disputes;
C) Extra Work cost accounts;
D) Final labor affidavits;
E) Approved original reproducibles of As-Built Plans;
F) Material certifications;
G) Certified payrolls;
H) Federal Highway Administration record of Material, Supplies, and Labor (Form FHWA-47);
I) Tax clearance for Foreign Contractors; and

The Design-Builder is advised that the above list is general in nature, that every item may not be applicable to the Contract, and that a submission not shown above may be required to enable the processing of the final payment. It should be noted that any time taken beyond the date of Final Acceptance to satisfy or furnish the above information shall extend the required payment date by an equal period of time.

The Department, in accordance with DB Section 179 of the New York State Finance Law, has determined that a 30 Calendar Day review period, after Final Acceptance of the Project, is required for final payments after which time the 75 day interest-free processing period will commence.

109L-14 ACCEPTANCE OF FINAL PAYMENT

The acceptance by the Design-Builder, or by anyone claiming by or through it, of the final payment shall constitute and operate as a release to the State from any and all claims of any liability to the Design-Builder for anything theretofore done or furnished for, relating to, or arising out of the Work done, and for any prior act, neglect, or default on the part of the State or any of its officers, agents, or employees unless the Design-Builder serves a detailed and verified statement of claim upon the New York State Department of Transportation not later than 40 Days after the mailing of such final payment. Such statement shall specify the items and details upon which the claim will be based and any such claim shall be limited to such items. Should the Design-Builder refuse to accept the final payment as tendered by the Comptroller, it shall constitute a waiver of any right to interest thereon.
109L-15 CHANGED CONDITIONS AND DELAY PROVISIONS

109L-15.1 Compensable Delays and Changed Conditions

A) The provisions of this Contract permit monetary compensation for delays and interference in certain defined instances. The Design-Builder agrees that the only claims it may make for extra compensation caused by delay or interference affecting the performance or the scheduling of Contract Work are for those instances arising out of the following:

1) Differing site conditions;
2) Suspension of Work [other than stop orders pursuant to DB Section 109L-15.2(A)];
3) Significant changes in the character of the Work; and
4) Situations not referenced in DB Section 109L-16 and which are not within the contemplation of the parties at the time of entering into the Contract.

B) In addition, these aforementioned provisions may also form the basis for Extra Work compensation pursuant to DB Section 109L-9 and DB Section 109L-10. Failure of the Design-Builder to adequately progress the completion of the Work will be considered in determining whether the aforementioned instances are the primary causes of delay. In all such instances, for any claim asserted under this DB Section, the Design-Builder shall keep detailed written records of the costs and agrees to make them available to the Department at any time for purposes of audit and review.

C) Any dispute relating to such claims shall be promptly submitted to the Department’s Project Manager in writing, pursuant to the notice provisions of the Contract. Failure by the Design-Builder to notify the Department’s Project Manager in writing pursuant to the provisions of this Contract, or to maintain and furnish cost records of such claims, shall constitute a waiver of the claim.

109L-15.2 Suspensions of Work Ordered by the Department’s Project Manager

A) The Department’s Project Manager may stop by written order any Work or any part of the Work under the Contract if the methods or conditions are such that unsatisfactory Work might result (including progressing construction in the absence of Design Plans, Project Specifications, and/or Working Plans that have not been reviewed and released for construction per DB Section 111-12); if improper Material or procedures are being used; if the Design-Builder fails to comply with any Contract requirement or with any provision of the Specifications, its Proposal, the Plans, or any State or federal law or regulation; if the conditions of the Project are considered to be sufficiently deficient as to seriously affect the safety of the public or the persons employed for the construction of the Project; or if major non-conformance with the MPT Plan is causing serious disruptions to traffic operations. The Design-Builder shall not be entitled to any additional monetary compensation for such a Work stoppage.

B) If the performance of all or any portion of the Work is suspended or delayed by the Department’s Project Manager in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the design-build industry) and the Design-Builder believes that additional compensation and/or Contract Time is due as a result of such suspension or delay, the Design-Builder shall submit to the Department’s Project Manager in writing a request for adjustment within seven Calendar Days of
receipt of the notice to resume Work. The request shall set forth the reasons and support for such adjustment. The record keeping requirements of DB Sections 104-16 and 105-5 must be complied with in connection with any requests for reimbursement.

C) Upon receipt, the Department’s Project Manager will evaluate the Design-Builder's request. If the Department’s Project Manager agrees that the cost and/or time required for the performance of the Contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of, and not the fault of, the Design-Builder, its Suppliers, or Subcontractors at any approved tier, and not caused by weather, the Department’s Project Manager will make a cost and/or time adjustment (excluding profit) and modify the Contract in writing accordingly. The Design-Builder will be notified of the Department’s Project Manager's determination whether or not an adjustment of the Contract is warranted.

D) No Contract adjustment will be allowed unless the Design-Builder has submitted the request for adjustment within the time prescribed.

E) No Contract adjustment will be allowed under this DB Section to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this Contract.

F) This DB Section shall be governed by the notice provisions set forth above, and the record keeping and other requirements of DB Sections 104-16, 105-5, and 109L-10. Additional compensation via Orders-on-Contract shall be made for time related costs, if any, pursuant to DB Section 109L-10.2. For any increased costs of the Work resulting from a suspension of Work, payment shall be made pursuant to DB Section 109L-9.2, but the Equipment compensation shall be governed and controlled by the provisions of DB Section 109L-10.2.

109L-16 NON-COMPENSABLE DELAYS

The Design-Builder agrees to make no monetary claim for, and has included in its prices for the Work under the Contract, any extra/additional costs attributable to any delays, inefficiencies, or interferences in the performance of the Contract caused by or attributable to items (A) through (L) set forth below.

A) The Work or the presence on the Project Site of any third party, including, but not limited to, that of other contractors or personnel employed by the State; by other public bodies; by railroad, transportation, or Utility companies or corporations; or by private enterprises, or any delay in progressing such Work by any third party as indicated or disclosed in the Contract Documents or ordinarily encountered or generally recognized as inherent in the Work.

B) The existence of any facility or appurtenance owned, operated, or maintained by any third party, as indicated or disclosed in the Contract Documents or ordinarily encountered or generally recognized as inherent in the Work.

C) The act, or failure to act, of any other public or governmental body or railroad, transportation or Utility companies or corporations, including, but not limited to, approvals, permits, restrictions, regulations, or ordinances attributable to the Design-Builder's design, submission, action or inaction, or the Design-Builder's means and method of construction.

D) Restraining orders, injunctions, or judgments issued by a court which were caused by the Design-Builder's submissions, action or inaction, or means and method of construction.

E) Any labor boycott, strike, picketing, or similar situation.
F) Any shortages of supplies or Material required by the Contract Work.

G) Climatic conditions, storms, floods, droughts, tidal waves, fires, hurricanes, earthquakes, landslides, or other catastrophes. However, payment may be made for repairing damage to the Work caused by an “occurrence” as provided in DB Section 107-26.2.

H) Contract quantities in excess of the original Contract quantity for Unit Priced Work, additional Contract Work, or Extra Work which does not significantly affect the overall completion of the Contract, delays in the review or issuance of Orders on Contract or field change sheets, or delays within the established time periods for Consultation and Written Comment for Design Documents, Working Plans, other submittals and construction details, means, and methods.

I) Variations in soil moisture content from that represented in reports, borings, or tests conducted by the Department and included in the Contract Documents.

J) Any situation which was within the contemplation of the parties at the time of entering into the Contract.

K) Award of the Contract by the State more than 90 days beyond the Proposal Due Date [Instruction to Proposers (ITP), Section 1.6.2] or the Final Revised Proposal Date (Addendum to ITP), if any, whichever is later.

L) Correcting any Materials or Work rejected either by the Design-Builder or the Department, or, for the time being, Work unsatisfactory to the Department for which payment has been withheld. Refer to DB Sections 109(L or S)-7.2; DB Sections 109(L or S)-15.2(A); DB Section 106-6; and DB Section 108-8(C).
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STATE HIGHWAY

Articles of Agreement made this ________ day of ________________, 200__, between
____________________________________________________________________________

party of the first part, and the State of New York, party of the second part, to be attached to and
form a part, of the Contract between parties hereto, dated the ________________ day of
________________, 200__, pursuant to chapter 63, Laws of 1936, as amended; Chapter 867,
Laws of 1923, and Chapter 348, Laws of 1926.

For the

WITNESSETH:

The party of the first part, __________________________________________, hereby agrees to
furnish all materials and labor hereinafter described at the prices hereinafter, mentioned, in accordance
with the terms of the original contract, the requirements contained in this Agreement and the orders of the
State Department of Transportation.

And, in consideration of not being required to furnish the items deduced by this Agreement, which were
found to be unnecessary for the proper completion of the Work, hereby consents to the deduction of said
items:

The party of the second part, the State of New York represented by the State Department of
Transportation, hereby agrees to pay ________________________________, party of the first
part, the prices mentioned in this Agreement for the materials and labor actually ordered and performed,
in the same manner as is provided for the monthly payments in the Contract hereinbefore referred to.
FINAL AGREEMENT

Contract No. ________________________________

Federal Project No. __________________________

Highway No. ________ County of ________________

Attached to and forming part of agreement dated ________________

Net (Increase/Decrease) $____________________

The said Contract and all plans, specifications and papers appertaining thereto shall form a part of this Agreement.

IN WITNESS WHEREOF, we have hereunto subscribed our names the day and year first above written.

___________________________________________
Design-Builder

By: ________________________________________

Title: _______________________________________

Approved: ______________, 200__

________________________________
Regional Director

PEOPLE OF THE NEW YORK
STATE DEPARTMENT OF
TRANSPORTATION
CONSTRUCTION DIVISION

Amount: ____________________________

Approved _____________, 200__

________________________________
For the State Comptroller

Approved ________________________, 200__

________________________________
Deputy Chief Engineer – Construction Division
# REQUEST FOR PARTIAL PAYMENT OF STORED MATERIALS (DB)

## SECTION A: COMPLETED BY DESIGN-BUILDER

<table>
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<td>Description:</td>
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<td>Design-Builder:</td>
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<td>Price Center Number:</td>
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<td>Materials Description:</td>
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<td>Materials Stored At:</td>
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<td>Scheduled Installation on Project:</td>
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## SECTION B: COMPLETED BY DEPARTMENT

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<tr>
<td>Bill of Sale or Voucher</td>
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<td>Certification of Title (to Design-Builder)</td>
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<td>Warranty of Title (to Department)</td>
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<td>Evidence of Acceptability</td>
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<td>Verify Storage</td>
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<td>Waiver and Release (if stored on private property)</td>
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<td>Payment Recommended By:</td>
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<tr>
<td>Payment Approved By:</td>
<td>Department’s Project Manager</td>
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Contract Form
FORM 109-06B
CERTIFICATION OF TITLE
TO MATERIALS STORED, OR TO BE STORED,
FOR INCORPORATION INTO DEPARTMENT OF
TRANSPORTATION PROJECT

WHEREAS, __________________________ hereafter referred to as the “Design-Builder,” is engaged in the performance of the DB Contract, hereafter referred to as the “Contract,” with the New York State Department of Transportation, hereafter referred to as the “Department,” and

WHEREAS, in accord with the Design Plans and Project Specifications, the Design-Builder has purchased certain Materials for incorporation into the Contract Work from __________________________, hereafter referred to as the “Vendor,” and

WHEREAS, these Materials referred to are as follows:

DESCRIPTION of Materials and quantities:

and,

WHEREAS, to comply with the provisions of the Contract Documents regarding partial payments (DB Section 109L-06.3) requiring certification of the Design-Builder’s absolute legal title to the Materials described above and warrant of title to the same Materials to the Department, the Design-Builder and the Vendor have entered into the following agreement.

NOW, THEREFORE, and in consideration of the forgoing premises, the Design-Builder and the Vendor agree, with the intention of being bound hereby, as follows:

1. The Vendor has executed this document for the purpose of acknowledging that: the Vendor has made an outright sale and transfer of title for the above Materials to the Design-Builder free of all restrictions, filings, or liens; the Vendor is the lawful owner of the above Materials and has the right make such transfer of title; and the Vendor will not in the future make any claims whatsoever to such title.

2. The Design-Builder certifies and represents that he is the lawful holder of the absolute legal title to the above Materials, and has full legal right, power, and authority to sell and transfer such title without restrictions, filings, or liens of any kind on the part of the Vendor and/or any Subcontractor.

3. The Design-Builder, Vendor, and/or any Subcontractor and their successors and assigns, will and do by these presents warrant title to the above described Materials to the New York Department of Transportation.
4. In the event that the Vendor has sold the above described Materials to a Subcontractor of the Design-Builder, this Certification of Title is hereby amended at all applicable points to reflect this fact. By the execution of this certification, any such Subcontractor is acknowledging that: such Subcontractor has made an outright sale and transfer of title for the above Materials to the Design-Builder free of all restrictions, filings, or liens; such Subcontractor is the lawful owner of the above Materials and has the right to make such transfer of title; and such Subcontractor will not in the future make any claims whatsoever to such title.

IN WITNESS WHEREOF, the parties hereto have caused this Certification of Title to be executed this day of __________, 200____.

ATTEST: DESIGN-BUILDER

_____________________________

By _________________________

Title _________________________

ATTEST: SUBCONTRACTOR

_____________________________

By _________________________

Title _________________________

ATTEST: VENDOR

_____________________________

By _________________________

Title _________________________
FORM 109-06C
RELEASE AND WAIVER
FOR MATERIALS STORED ON PRIVATE PROPERTY

CONTRACT INFORMATION

CONTRACT NO:

DESCRIPTION:

DESIGN-BUILDER:

STORAGE INFORMATION

STORAGE SITE:

OWNER’S NAME:

MATERIALS STORED:

WHEREAS, the undersigned certifies to be property owner, or authorized representative thereof, of the above described storage site.

WHEREAS, the undersigned has contracted and leased to the Design-Builder indicated above who holds a Contract with the New York State Department of Transportation the right to store and remove the above listed Materials at said storage site, and

WHEREAS, these listed Materials are the same as those for which the Design-Builder is asking payment in whole or part from the Department in advance for removal of such Materials from said storage site.

NOW, THEREFORE, in consideration of such payment being made to said Design-Builder, I/we do hereby release any and all claims which I/we have or can claim to have upon the above listed Materials for any and all sums of money which may be due to me from said Design-Builder for the privilege of storing such Materials on said storage site,

FURTHER, I/we do hereby consent and agree that in the event of the failure of said Design-Builder to fulfill and perform said Contract with the Department, or if said Contract is canceled in part or in whole
by the Department such that the Design-builder is prohibited from completing said Contract, then the Department or any substitute party or Design-Build er may remove all such Materials from the above storage site without further payments due to me for use of said storage site.

FURTHER, I/we do hereby agree that for purposes of Inspection, sampling, inventory, removal, or other reasons as determined necessary by the Commissioner of Transportation or Department officers; employees; agents; contractors; or contractors’ agents, officers, and employees shall have the right to enter upon the storage site at any and all times with Equipment and vehicles to take therefrom any or all of said stored Materials stored by the above Contract, and that such right of ingress, egress, and regress to and from the storage site shall be without obstruction, objection, or hindrance, and without further payment due for such rights, and

FURTHER, I/we do hereby waive any and all claims upon such stored Material or upon rights to remove the same.

THE FORGOING INSTRUMENT shall bind the property owner(s), their successors and assigns, and their legal representatives.

ATTEST: ___________________________ L.S.

Date

________________________________ L.S.

Date

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _______ day of __________, 200__.

_______________________________
Notary Public
New York State Department of Transportation

Form PP(L)
Request for Periodic Payment and Periodic Certifications
Summary Sheet

(1) Payment Request No. ____  (4) Date Request Received By Dept's Proj Mgr. _________________
(5) Contract Price: _________________
(3) Date Request Submitted: _________________

<table>
<thead>
<tr>
<th>Price Center Code</th>
<th>Price Center Value</th>
<th>(8) Cumulative Amount Earned at End of Last Period</th>
<th>(9) Planned Cumulative Payment per PPS-C</th>
<th>(10) Not Used</th>
<th>(11) Actual Cumulative Amount Earned End of This Period</th>
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<td>Section F Total</td>
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<td>(17) Net Due This Period</td>
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Progress and Quality Certification:
We hereby certify that all Work performed meets Contract requirements, that the indicated Progress Check Points have been met and that the cumulative amount earned at end of the period covered by this request and certificate are correct to the best of our knowledge.

For the Design-Builder:
Signed: ____________________________
Printed or Typed Name: ____________________________
Date: ____________________________

Designer's Certification:
I hereby certify that responsible design staff have examined the site and the Work under construction and have, based on their professional judgment, determined that the site conditions appear to be consistent with those represented by the design documents and that the Work is progressing in accordance with the Design Plans and Project Specifications.

Signed: ____________________________
Printed or Typed name: ____________________________
Date: ____________________________

Department Endorsement:
I hereby confirm the achievement of the cumulative amount earned to date indicated herein and concur with this request and certificate except as noted below or attached.

For Department: ____________________________
(Signature) ____________________________
(Date) ____________________________

Design-Builder's Project Manager or Deputy QC Manager

______________________________
Design Manager

______________________________
Project Engineer
New York State Department of Transportation

Form PP(L)
Request for Periodic Payment and Periodic Completion Certificate
Section A

(1) Payment Request No. ___
(2) Period of: _______________________
(3) Date Request Submitted: _______________________

<table>
<thead>
<tr>
<th>(6) Price Center Code</th>
<th>(7) Cumulative Amount Earned at End of Last Period</th>
<th>(8) Planned Cumulative Payment per PPS-C</th>
<th>(9) All Scheduled PCPs Met Yes or No</th>
<th>(10) Actual Cumulative Amount Earned End of This Period</th>
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<tbody>
<tr>
<td>PC1, Preliminary &amp; General Requirements</td>
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<td>PC2, Engineering &amp; Design</td>
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<td>PC3, Maintenance &amp; Protection of Traffic</td>
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<td>PC4, Environmental Monitoring &amp; Mitigation</td>
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<td>PC5, Public Information/ Community Relations</td>
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<td>PC6, Hazardous &amp; Contaminated Materials Remediation</td>
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Project Check Points Met this Period Section A (enter PCP Code)(13)

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Form PP(L)
Request for Periodic Payment and Periodic Completion Certificate
Section B

(1) Payment Request No. _____
(2) Period of: ______________________
(3) Date Request Submitted: ______________________

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<th>Price Center Code</th>
<th>Price Center Value</th>
<th>Cumulative Amount Earned at End of Last Period</th>
<th>Planned Cumulative Payment per PPS-C</th>
<th>All Scheduled PCPs Met</th>
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(12) Total: 0

Progress Check Points Met this Period: Section B (enter PCP Code)(13)
Form PP(L)
Request for Periodic Payment and Periodic Completion Certificate
Section C

(1) Payment Request No. __

(2) Period of: __________________________

(3) Date Request Submitted: __________________________

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<thead>
<tr>
<th>(6) Price Center Code</th>
<th>(7) Price Center Value</th>
<th>(8) Cumulative Amount Earned at End of Last Period</th>
<th>(9) Planned Cumulative Payment per IPS-C</th>
<th>(10) All Scheduled PCPs Met Yes or No</th>
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(12) Total

Progress Check Points Met this Period Section C (enter PCP Code)(13)

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### Form PP(L)
Request for Periodic Payment and Periodic Completion Certificate

#### Section D

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<td>Price Center Code</td>
<td>Price Center Value</td>
<td>Cumulative Amount Earned at End of Last Period</td>
<td>Planned Cumulative Payment per PPS-C</td>
<td>All Scheduled PCPs Met Yes or No</td>
<td>Actual Cumulative Amount Earned End of this Period</td>
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</table>

Progress Check Points Met this Period  Section C (enter PCP Code)(13)
Form PP-L
Instructions

A. All amounts shall be in US$.

B. Request for Periodic Payment Sheet

1. Enter Payment Request Number (numbered sequentially starting with "1")
2. Enter month and year covered by this payment request
3. Enter date this payment request submitted to Department's Project Manager
4. Enter date received by Department's Project Manager
5. Enter Contract Price
6. Enter Price Center Code from PPS-C for each Price Center in the Section
7. Enter Price Center Value from PPS-C for each Price Center
8. Enter Amount Earned at End of Previous Period
9. Enter Planned Cumulative Amount Earned from PPS-C for each Price Center. Enter "N/A" for any Price Center being paid on a unit price or force account basis
10. If "Yes" in Column (10), enter amount shown in Column (9); if "No" in Column (10), enter amount shown in Column (8)
11. Total the amounts shown in (11) and enter in (12).
12. Enter total of Column (11)
13. Enter the PCP code of each PCP achieved (met) during the period.
14. Enter total of column (8)
15. Subtract (14) from (12)
16. Multiply (15) by 0.05
17. Subtract (16) from (15)

C. Periodic Certifications
The Design-Builder's Representative, QC Manager and Design Manager shall sign and date the Certifications

D. Department's Endorsement
The Department's Project Manager will sign and date the Department endorsement for the Periodic Completion Certificate

D. See Section 109 for documentation required for Unit Priced and Force Account Work.

E. Add additional worksheets for additional project sections as required.
GENERAL RELEASE

The undersigned, _________________________________________________, a corporation duly incorporated under the laws of the State of _______________________, and duly authorized to do business in the State of New York, in consideration of payment of the sum of $__________________, of which $_______________ is retainage, and in addition $__________________ in securities being held in lieu of retainage monies, the receipt of which is hereby acknowledged, does, for itself, its successors and assigns, hereby fully released and discharge the State of New York, the Department of Transportation of the State of New York and all offices, agents and employees of the State of New York from all claims, demands, accounts, contracts and liabilities of every kind or nature in law or in equity arising out of a contract designated as _____________________________________________, or arising out of the performance of the said contract, or arising out of the completion and acceptance of the said contract, or in any other way connected with the said contract, and in case any claim shall have been filed by the undersigned with the clerk of the Court of Claims for any such claim arising out of the said contract, the undersigned further consents that an order may be made by said Court without notice to the undersigned dismissing the claim upon the merits.

IN WITNESS WHEREOF, the ___________ day of ________________ has hereunto set his hand and affixed the seal of his corporation.

___________________________________  
Name and Title

STATE OF ____________

COUNTY OF ____________

On this ____ day of ________, 200__, before me personally came ______________________, to me know, who being by me duly sworn, did depose and say that he resides in ________________________; that he is the ______________________ of the corporation described in and which executed the foregoing instrument; that he know the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name by like order.

_______________________________  
Notary Public
# Daily Record of Work Authorized, Not Included in Contract (Construction)

**New York State Department of Transportation**

## Daily Record of Work Authorized, Not Included in Contract (Construction)

<table>
<thead>
<tr>
<th>Contract No.:</th>
<th>Fed. Project No.:</th>
<th>Design-Builder:</th>
<th>Date:</th>
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</table>

Price Center and Description:

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<tr>
<th>Laboratory</th>
<th>Labor Classification</th>
<th>Hours</th>
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<th>O.T.</th>
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**Statement of Work Accomplished:**

CERTIFICATION: I certify to the best of my knowledge and belief that the account herein shown is an accurate statement of the labor used and direct expenses incurred on this day.

Signed: ________________________________

For Design-Builder Date ________________________________

For Dept. of Transportation Date ________________________________
# DAILY RECORD OF WORK AUTHORIZED, NOT INCLUDED IN CONTRACT (DESIGN)

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<th>Fed. Project No.:</th>
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Price Center and Description:

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</table>

Total for Day

Total for Day

Total for Day

**STATEMENT OF WORK ACCOMPLISHED:**

**CERTIFICATION:** I certify to the best of my knowledge and belief that the account herein shown is an accurate statement of the labor used and direct expenses incurred on this day.

Signed: 
For Design-Builder Date 
For Dept. of Transportation Date
DAILY RECORD OF FORCE ACCOUNT WORK (CONSTRUCTION)

<table>
<thead>
<tr>
<th>Contract No.:</th>
<th>Fed. Project No.:</th>
<th>Design-Builder:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

Price Center and Description:

<table>
<thead>
<tr>
<th>Name</th>
<th>Labor Classification</th>
<th>Hours</th>
<th>Total</th>
<th>O.T.</th>
<th>Description</th>
<th>Stock</th>
<th>Bare Cost</th>
<th>Trans Taxes</th>
<th>Description</th>
<th>Cost</th>
<th>Hours</th>
<th>Cost</th>
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<tbody>
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</tbody>
</table>

Total for Day: Total for Day: Total for Day

STATEMENT OF WORK ACCOMPLISHED:

CERTIFICATION: I certify to the best of my knowledge and belief that the account herein shown is an accurate statement of the labor used and direct expenses incurred on this day.

Signed: ________________________________
For Design-Builder Date ________________________________
For Dept. of Transportation Date
# DAILY RECORD OF FORCE ACCOUNT WORK (DESIGN)

<table>
<thead>
<tr>
<th>Contract No.:</th>
<th>Fed. Project No.:</th>
<th>Design-Builder:</th>
<th>Date:</th>
</tr>
</thead>
</table>

Price Center and Description:

<table>
<thead>
<tr>
<th>LABOR (EXEMPT)</th>
<th>LABOR (NON-EXEMP)</th>
<th>DIRECT EXPENSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>Labor Classification</td>
<td>Hours</td>
</tr>
<tr>
<td></td>
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<td>Total</td>
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Total for Day

<table>
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<tr>
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</tr>
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</table>

CERTIFICATION: I certify to the best of my knowledge and belief that the account herein shown is an accurate statement of the labor used and direct expenses incurred on this day.

Signed: ____________________________  ____________________________
For Design-Builder                      Date                        For Dept. of Transportation  Date
# FORCE ACCOUNT SUMMARY OF LABOR
## (CONSTRUCTION)

**Contract No.**  
**Fed. Project No.**  
**Design-Build Item No.**

<table>
<thead>
<tr>
<th>Name</th>
<th>Hourly Rate</th>
<th>Hours for Period</th>
<th>Regular (Direct) Wages</th>
<th>Premium Wages</th>
<th>Gross Wages</th>
<th>$ Per Week Limitation Per man</th>
<th>$ Per Week Limitation</th>
<th>Wages Over $_____</th>
<th>Wages Over $_____</th>
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<td></td>
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<td></td>
<td>Basic (Regular)</td>
<td>Premium Additive</td>
<td>Total (Premium)</td>
<td>Premium (Direct)</td>
<td>O. T. Wages</td>
<td>Gross Wages</td>
<td>$ Per Week Limitation</td>
</tr>
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<table>
<thead>
<tr>
<th>Fringe Benefits</th>
<th>Total for Period</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

**Period Covered from _____ to ________**
<table>
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<tr>
<th>Contract No.</th>
<th>Fed. Project No.</th>
<th>Design-Builder</th>
<th>Price Center</th>
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<tbody>
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</table>

<table>
<thead>
<tr>
<th>Hourly Rate</th>
<th>Hours for Period</th>
<th>Regular (Direct) Wages</th>
<th>Gross Wages</th>
</tr>
</thead>
<tbody>
<tr>
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**EXEMPT**

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**NON-EXEMPT**

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</table>

**Total for Period**

|             |                  |                        |             |
**FOR FORCE ACCOUNT SUMMATION (CONSTRUCTION)**

<table>
<thead>
<tr>
<th>Contract No.</th>
<th>Fed. Project No.</th>
<th>Design-Builder</th>
<th>Price Center</th>
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</table>

<table>
<thead>
<tr>
<th>Period</th>
<th>Regular (Direct) Wages</th>
<th>Premium Wages</th>
<th>Gross Wages</th>
<th>$ Per Wk. Limitation</th>
<th>$ Per Wk. Limitation</th>
<th>Wages Over $</th>
<th>Wages Over $</th>
<th>Fringe Benefits</th>
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</tbody>
</table>

**Totals**

**NOTE:** Use category (either $ Limitation or Gross Wages) mandated by your insurance policy.

<table>
<thead>
<tr>
<th>LABOR</th>
<th>AMOUNT</th>
<th>MATERIAL</th>
<th>EQUIPMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Date</td>
<td>Indent. No.</td>
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<tr>
<td></td>
<td></td>
<td>Material Cost</td>
<td></td>
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</tbody>
</table>

**TAXES AND INSURANCE**

- **F.I.C.A.**  % x [Gross Wages less Wages over $___]
- **N. Y. S. and Fed. Unempl.**  % x [Gross Wages less Wages over $___]
- **Workers’ Compensation**  % x [Gross Wages less Wages over $___] or [Gross Wages] *See Note Above
- **P. L. and P. D. Insurance**  % x [Gross Wages less Wages over $___] or [Gross Wages] *See Note Above

**SUBTOTAL**

<table>
<thead>
<tr>
<th>P. &amp; O. 20%</th>
<th>Total Materials</th>
<th>Total Equip. Cost</th>
</tr>
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<tbody>
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</table>

**CERTIFICATION:** I certify, to the best of my knowledge and belief, that the equipment used on this work was of the proper size, that material taken from stock as designated above is charged at fair market value, and that account herein shown is an accurate statement of materials and equipment used.

Signed ____________________________
For Design-Builder

Signed ____________________________
For Dept. of Transportation

Date ____________________________

**TOTAL LABOR**

**TOTAL FORCE ACCOUNT**

<table>
<thead>
<tr>
<th>Labor</th>
<th>Materials</th>
<th>Equipment</th>
<th>TOTAL</th>
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**TOTAL**

**MURK 13d (DB-C) Form**
# FORCE ACCOUNT SUMMATION (DESIGN)

<table>
<thead>
<tr>
<th>Period</th>
<th>Regular (Direct) Wages</th>
<th>Premium Wages</th>
<th>Gross Wages</th>
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<td>Totals</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Labor</th>
<th>Amount</th>
<th>Direct Expenses</th>
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<tbody>
<tr>
<td>Regular Wages</td>
<td></td>
<td>Date</td>
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<td>OHE</td>
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<td>Cost</td>
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<tr>
<td>Premium Wages</td>
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<tr>
<td>Subtotal</td>
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<td>Fee</td>
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<tr>
<td>Total Labor</td>
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</tbody>
</table>

**25% if work is done by Subcontractor

TOTAL FORCE ACCOUNT

<table>
<thead>
<tr>
<th>Labor</th>
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<tbody>
<tr>
<td>Direct Expenses</td>
<td></td>
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<tr>
<td>TOTAL</td>
<td></td>
</tr>
</tbody>
</table>

Signed ____________________________           _______________________________
For Design-Builder                                      For Department of Transportation

Date ______________________________         _______________________________
[ DATE ]

[ DESIGN-BUILDER NAME ]
[ ADDRESS ]

RE: [ D # ]
[ PROJECT DESCRIPTION ]

Dear [ DESIGN-BUILDER NAME ]:

Attached for your review is a summary of final contract quantities for the subject contract. [Include only if there are unit priced items in the Contract.]

In accordance with Section 109 of the Contract Documents, the final agreement for the project referenced herein will not be drawn and finalized "until all work required under the contract has been satisfactorily completed, all claims presented and all accounts for extra work and materials have been rendered, considered, and if agreed to, made a part of such final agreement".

Additionally, in accordance with Specification Section 109-13, certain documents and submissions are considered to be necessary to enable timely processing of the final payment. As of the date of this letter, the following have not yet been received and may delay the processing of the final payment:

[List any missing documentation. If all documentation has been submitted, modify this letter accordingly.]

As Design-Builder for the subject contract, you are hereby required to promptly submit to this office any exceptions or disputes relative to the proposed final contract payment, accounts for extra work and materials, together with supporting measurements and/or data, and any other documentation listed above. In order to be considered as a part of the final agreement, your reply with supporting documentation must be received by this office within fifteen (15) days of the date of this letter. If this deadline presents a serious problem, please notify this office by certified mail within fifteen (15) days of the date of this letter as to when you will forward the required information.

If we do not receive any notification from you within fifteen (15) days of the letter, we will assume you are in agreement with the final contract payment and have no disputes. We will, therefore, proceed with the processing of the final estimate.

Very truly yours,

________________________________
Your name
Department’s Project Manager

cc: [NAME], Regional Construction Engineer, Region [#]
     File

Contract Form
# REQUEST FOR PARTIAL PAYMENT OF STORED MATERIALS

## SECTION A: COMPLETED BY DESIGN-BUILDER

<table>
<thead>
<tr>
<th>Date</th>
<th>Contract ID: D</th>
<th>PIN</th>
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<tbody>
<tr>
<td>Description:</td>
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<tr>
<td>Design-Builder:</td>
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<td></td>
</tr>
<tr>
<td>Price Center Number:</td>
<td></td>
<td></td>
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<tr>
<td>Materials Description:</td>
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<td></td>
</tr>
<tr>
<td>Value of Payment Requested:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Materials Stored At:</td>
<td></td>
<td></td>
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<tr>
<td>Scheduled Installation on Project:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Submitted By:</td>
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</tbody>
</table>

## SECTION B: COMPLETED BY DEPARTMENT

<table>
<thead>
<tr>
<th>Verify Submissions:</th>
<th>Date</th>
<th>Check By</th>
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</thead>
<tbody>
<tr>
<td>Bill of Sale or Voucher</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certification of Title (to Contractor)</td>
<td></td>
<td></td>
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<tr>
<td>Warranty of Title (to NYSDOT)</td>
<td></td>
<td></td>
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<tr>
<td>Evidence of Acceptability</td>
<td></td>
<td></td>
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<tr>
<td>Verify Storage</td>
<td></td>
<td></td>
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<tr>
<td>Waiver &amp; Release (if stored on private property)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Verify Scheduled Installation</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

Payment Recommended By: ____________________________  
DPM

Payment Approved By: ____________________________  
RDOT
(Project Name)
DESIGN-BUILD PROJECT

PIN ____________

DB CONTRACT DOCUMENTS
PART 2

DB SECTION 110
ESCROWED PROPOSAL DOCUMENTS
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SECTION 110
ESCROWED PROPOSAL DOCUMENTS

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| DB 110-4 | REPRESENTATION .......................................................................................................................... 2 |
| DB 110-5 | CONTENTS OF ESCROWED PROPOSAL DOCUMENTS ........................................................................ 2 |
| DB 110-6 | FORM OF ESCROWED PROPOSAL DOCUMENTS ............................................................................. 2 |
| DB 110-7 | REVIEW BY THE DEPARTMENT ..................................................................................................... 3 |
| DB 110-8 | SUBCONTRACTOR AND SUPPLIER PRICING DOCUMENTS ............................................................ 3 |
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SECTION 110
ESCROWED PROPOSAL DOCUMENTS

DB 110-1  GENERAL

Upon Award of the Contract, designated representatives of the Department and Design-Builder shall jointly retrieve the Escrowed Proposal Documents from the designated escrow agent, and shall deliver to the Department one copy of all documentary information used in preparation of the Proposal Price, which shall be held in a locked fireproof cabinet supplied by the Design-Builder and located in the Department’s offices, with the key held only by the Design-Builder. Notwithstanding the foregoing, at the Design-Builder’s option and at the Design-Builder’s sole expense, the Escrowed Proposal Documents may remain with another depository reasonably acceptable to the Department located in the Project vicinity, pursuant to instructions incorporating the provisions of this DB Section 110. Concurrently with submission of quotations or revisions to quotations provided in connection with formally proposed Amendments to this Contract and concurrently with approval of each Order-on-Contract, if appropriate, one copy of all documentary information used in preparation of the quotation or Order-on-Contract shall be added to the cabinet to be held with the other Escrowed Proposal Documents. The Escrowed Proposal Documents will be held in such cabinet or otherwise maintained subject to DB Section 110-2 until all of the following have occurred:

A) One hundred eighty days have elapsed from Final Acceptance or termination of the Work, as applicable;
B) All disputes regarding this Contract have been settled; and
C) Final payment on this Contract has been made by the Department and accepted by the Design-Builder.

DB 110-2  AVAILABILITY FOR REVIEW

The Escrowed Proposal Documents shall be available during business hours for joint review by the Design-Builder and the Department, in connection with review changes in the Baseline Progress Schedule and/or PPS-C, negotiations of price adjustments and Orders-on-Contract, and the resolution of disputes. The Department shall be entitled to review all or any part of the Escrowed Proposal Documents in order to satisfy itself regarding the applicability of the individual documents to the matter at issue. The Department shall be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters, provided that the Department has executed and delivered to the Design-Builder a confidentiality agreement specifying that all proprietary information contained in such documents will be kept confidential; that copies of such documents will not be distributed to any third parties other than the Department’s agents, attorneys, and experts, and other dispute resolvers hereunder; and that all copies of such documents (other than those delivered to the dispute resolvers) will be either destroyed or returned to the depository (or to the Design-Builder, if the Escrowed Proposal Documents have been returned to it) upon final resolution of the negotiations or disputes. The foregoing shall in no way be deemed a limitation on the Department’s discovery rights with respect to such documents.

DB 110-3  PROPRIETARY INFORMATION

The Escrowed Proposal Documents are, and shall always remain, the property of the Design-Builder, subject to the Department’s right to review the Escrowed Proposal Documents as provided herein. The Department acknowledges that the Design-Builder may consider that the Escrowed Proposal Documents constitute trade secrets or proprietary information. This acknowledgment is based upon the Department’s understanding that the information contained in the Escrowed Proposal Documents is not known outside
the Design-Builder’s business; is known only to a limited extent and by a limited number of Employees of the Design-Builder; is safeguarded while in the Design-Builder’s possession; and may be valuable to the Design-Builder’s construction strategies, assumptions, and intended means, methods, and techniques of construction. The Department further acknowledges that the Design-Builder expended money in developing the information included in the Escrowed Proposal Documents and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. The Department acknowledges that the Escrowed Proposal Documents and the information contained therein are being provided to the Department only because it is an express prerequisite to Award of this Contract. Thus, the Escrowed Proposal Documents will at all times be treated as proprietary and confidential information and will be used only for the purposes described in this DB Section 110.

At the Design-Builder’s request, confidentiality agreements will be executed and delivered to the Design-Builder by the Department’s employees or agents who review or have access to the Escrowed Proposal Documents.

DB 110-4 REPRESENTATION

The Design-Builder represents and warrants that the Escrowed Proposal Documents provided with the Proposal constitute all of the information used in the preparation of its Proposal and agrees that no other Proposal preparation information will be considered in resolving disputes or claims. The Design-Builder also agrees that the Escrowed Proposal Documents are not part of the Contract and that nothing in the Escrowed Proposal Documents shall change or modify the Contract.

DB 110-5 CONTENTS OF ESCROWED PROPOSAL DOCUMENTS

The Escrowed Proposal Documents shall, inter alia, clearly itemize the estimated costs of performing the Work required by the Contract Documents. All Work shall be separated into sub-items as required to present a complete and detailed estimate of all costs. Crews, Equipment, quantities, and rates of production shall be detailed. Estimates of costs shall be further divided into the Design-Builder’s usual cost categories such as direct labor, repair labor, Equipment ownership and operation, expendable Material, permanent Material, and subcontract costs, as appropriate. Plant and Equipment and indirect costs shall also be detailed in the Design-Builder’s usual format. The Design-Builder’s allocation of plant and Equipment, indirect costs, contingencies, markup, and other items to each direct cost item shall be clearly identified. The Escrowed Proposal Documents shall include all assumptions, quantity takeoffs, rates of production and progress calculations, quotes from Subcontractors and Suppliers, memoranda, narratives, and all other information used by the Design-Builder to arrive at the Proposal Price or Order-on-Contract price, as applicable.

DB 110-6 FORM OF ESCROWED PROPOSAL DOCUMENTS

The Design-Builder shall submit the Escrowed Proposal Documents in the format actually used by the Design-Builder in preparing its Proposal. It is not intended that the Design-Builder perform any significant extraordinary work in the preparation of these documents prior to the Proposal Due Date. However, the Design-Builder represents and warrants that the Escrowed Proposal Documents related to the Proposal have been personally examined prior to delivery to escrow by an authorized officer of the Design-Builder and that they meet the requirements of DB Section 110-5 and are adequate to enable a complete understanding and interpretation of how the Design-Builder arrived at its Proposal Price. The Design-Builder further represents, warrants, and covenants that the Escrowed Proposal Documents related to each Order-on-Contract will be personally examined prior to delivery to escrow by an authorized officer of the Design-Builder and that they meet the requirements of DB Section 110-5 and will be
adequate to enable a complete understanding and interpretation of how the Design-Builder arrived at its Order-on-Contract price.

**DB 110-7  REVIEW BY THE DEPARTMENT**

The Department may at any time conduct a review of the Escrowed Proposal Documents to determine whether they are complete. In the event the Department determines that any data is missing, the Design-Builder shall provide such data within three business days of the request, and at that time it will be date stamped, labeled to identify it as supplementary Escrowed Proposal Documents information, and added to the Escrowed Proposal Documents. The Design-Builder shall have no right to add documents to the Escrowed Proposal Documents except upon the Department’s request. At the Department’s option, which may be exercised at any time, the Escrowed Proposal Documents associated with any Order-on-Contract or Contract Amendment shall be reviewed, organized, and indexed in the same manner described in the Instructions to Proposers.

**DB 110-8  SUBCONTRACTOR AND SUPPLIER PRICING DOCUMENTS**

The Design-Builder shall require each Subcontractor and/or supplier to submit to the Design-Builder a copy of all documentary information used in preparing its sub-bid or sub-proposal immediately prior to executing the subcontract, to be held by the same escrow depository which is holding the Escrowed Proposal Documents and which shall be accessible by the Design-Builder and its successors and assigns (including the Department) and other dispute resolvers on terms substantially similar to those contained herein. Each such subcontract shall include a representation and warranty from the Subcontractor stating that its Escrowed Proposal Documents constitute all the documentary information used in preparation of its sub-bid or sub-proposal.
This page is intentionally left blank.
(Project Name)
DESIGN-BUILD PROJECT

PIN ____________

DB CONTRACT DOCUMENTS
PART 2

DB SECTION 111
DESIGN MANAGEMENT
AND
DESIGN QUALITY ASSURANCE/QUALITY CONTROL
<table>
<thead>
<tr>
<th>Section</th>
<th>General Changes</th>
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<tr>
<td>111-19.2, -19.3</td>
<td>Revised CADD referenced to HDM Chapter 20</td>
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# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
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</thead>
<tbody>
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NEW YORK STATE DEPARTMENT OF TRANSPORTATION

DB SECTION 111
DESIGN MANAGEMENT AND
DESIGN QUALITY ASSURANCE/QUALITY CONTROL

DB 111-1 GENERAL DESIGN-BUILDER RESPONSIBILITIES

The Work shall be performed in accordance with the details as shown on the Design Plans, Project Specifications and Working Plans prepared by the Design-Build, subject to Department’s Consultation and Written Comment.

It shall be the Design-Build’s sole responsibility to provide Design Plans, Project Specifications and Working Plans of such a nature to develop a finished product in accordance with the Contract requirements. The Design-Build shall verify pertinent dimensions in the field prior to the review of Design Plans, Project Specifications and Working Plans. Review of the Design-Build’s Design Plans, Project Specifications and/or Working Plans by the Department shall not relieve the Design-Build of the responsibility for the satisfactory completion of the Work.

Design Plans, Project Specifications and Working Plans shall be subject to the Department’s Consultation and Written Comments per DB Section 111-12 before beginning construction Work covered by the Plans, and shall not be thereafter amended or altered without the prior approval of the Design-Build’s Designer and subsequent Consultation and Written Comment by the Department.

The Contract Price includes the cost of furnishing all Design Plans and Working Plans.

The Design-Build shall perform the following:

A) Manage the design and design Quality Control (QC) of the Work;
B) Coordinate with and obtain necessary approvals from authorities having jurisdiction for temporary road diversions and detours, shutdowns, temporary diversions, Utility Relocations, temporary sidewalk closures, and pedestrian detours; and
C) Ensure that the Designer properly checks the designs of the Project and that the Design QC Manager certifies QC procedures in accordance with the Contract.

The procedures for the checking of design of permanent components also apply to design of major temporary components and construction sequences that affect the permanent components of the Project.

DB 111-2 DESIGN-BUILDER’S DESIGN ORGANIZATION AND OBLIGATIONS

DB 111-2.1 Designer

The Design-Build shall appoint a suitably qualified and experienced Designer, which may be a consultant or an in-house design team, to undertake the design of the permanent components and the major temporary components of the Project. The Design-Build shall require the Designer to have or establish an office in the Project vicinity and maintain all necessary representation throughout the duration of the Contract to ensure the Designer can meet all its obligations under the Contract.
**DB 111-2.2 Location of Design-Builder’s Designer**

The Designer may perform production design Work in the Project vicinity or elsewhere. However, the design personnel designated in Form KP (ITP, Appendix A) shall be in the Project vicinity for the duration of the design.

**DB 111-2.3 Completeness of Design**

The Designer shall determine the following:

A) Effects of all loading requirements;
B) Dimensions of all elements;
C) Structural redundancies, where they exist;
D) Sub-soil interaction to support the loads from above;
E) Effects of seismicity;
F) Effects of fatigue;
G) Durability and maintainability requirements;
H) Details of required QA/QC procedures, monitoring, and controls; and
I) Effects of hydrology, design flows, and scour depths.

Design will be considered complete upon the Department’s Design Acceptance following submittal and review of the As-Built Plans.

**DB 111-2.4 Design Manager**

The Design-Builder shall designate and assign a Design Manager to manage all Work performed by the Design-Builder’s Designer. The Design Manager shall be in the Project vicinity as required for the design Work and shall be present as required thereafter to manage design support during construction, design changes, and completion of As-Built Plans.

The Design Manager and/or staff working under the direct supervision of the Design Manager shall conduct an assessment and evaluation of design such that the Design Manager can certify to the Design-Builder and to the Department that the design satisfies the Contract requirements, including the following requirements:

A) Accuracy;
B) Adequacy;
C) Conformance to standards of practice;
D) Compliance with codes and standards;
E) Cost effectiveness;
F) Quality; and
G) Fitness for purpose and/or function as specified and/or implied in the Contract.

The Design Manager shall include such written certification for all Work being subjected to a Design Review per DB Section 111-12.
The Design Manager’s activities shall include, as a minimum, assessment and evaluation of the following:

1) Design reports;
2) Analytical approach;
3) Drawing details for conformity to Contract requirements;
4) Project Specifications for conformity to Contract requirements;
5) Design and Working Plans;
6) Major temporary components’ effect on permanent components;
7) Field design changes;
8) Design approvals for Materials and procedures; and
9) As-Built Plans for conformity with final design and Contract requirements.

**DB 111-2.5 Responsible Engineer**

The Designer shall designate and assign a Responsible Engineer for each Design-Builder-designated Design Unit. The Responsible Engineer(s) shall sign and seal design reports, Design and Working Plans, and Project Specifications for the assigned Design Unit(s). Responsible Engineers shall be New York-licensed Professional Engineers.

Responsible Engineers shall be in the Project vicinity as necessary to coordinate the Work on assigned Design Units. The Responsible Engineer shall be present in the Project area for, and shall attend all Design Reviews for, assigned Design Unit(s).

*See DB Section 101-03.167 for the definition of Responsible Engineer.*

**DB 111-2.6 Design Quality Control Manager**

The Design-Builder shall assign a Design QC Manager, one of the key personnel specified in Part 5 – Special Provisions, Special Provision 108B. The Design QC Manager shall report to the Design-Builder’s QC Manager.

The Design QC Manager shall be responsible for the QC of all Work conducted by the Designer. The Design QC Manager shall be in the Project vicinity as required throughout the design process and shall be present as required thereafter to manage design QC related to design support during construction, design changes, and completion of As-Built Plans.

The Design-Builder’s Design QC Manager shall assess and evaluate the Design-Builder’s design QC activities in order to be able to certify to the Design-Builder and to the Department that the design QC activities comply with the Quality Plan and Contract requirements.

The Design-Builder shall ensure that the Design QC Manager carries out all duties expressed and implied in the Contract.

The Design QC Manager shall have QC responsibilities related to the following:

A) Design of permanent and major temporary components;
B) Changes in design of permanent components; and
C) As-Built Plans.

The Design QC Manager shall also perform the following activities:

1) Identify and report non-conformities/non-compliance;
2) Track, monitor, and report on status of outstanding design-related non-conformance reports;
3) Supply monthly report (see DB Section 111-18.3.1); and
4) Submit specified certificates (permanent components and major temporary components).

These responsibilities are further specified in DB Section 111-12.

**DB 111-2.7 Check by the Designer**

The requirement that the Design-Builder engage and use a Design QC Manager shall not relieve the Designer from carrying out all the checks and reviews that a professional and prudent designer would normally carry out on the type of Work that is actually being designed.

**DB 111-3 DESIGN UNITS**

The Design-Builder shall package all design and drawings for the Work into separate Design Units. Each Design Unit shall comprise similar and coherent significant parts of the Project that can be checked and reviewed as a self contained package with due consideration for accommodating interfaces with other Project components.

Within 30 days of NTP, the Design-Builder shall provide a written report updating information submitted with the Design-Builder’s Proposal and identifying each Design Unit. The written report shall include the following:

A) Design Unit description, including scope of design Work within each Design Unit, including limits and interface points;
B) Planned review stages and dates, including specific information to be reviewed, planned review dates (measured from NTP date) and percent complete represented by each review. See DB Section 109[S or L]-2.2 and Appendix 111A-Forms, Form DUS;
C) Responsible Engineer; and
D) Locations where design Work will be performed.

The Design-Builder shall submit any revisions to the information provided in response to this DB Section 111-3 in writing to the Department concurrent with the monthly progress report.

**DB 111-4 RELATIONSHIP OF EARLY CONSTRUCTION STARTS TO DESIGN DEVELOPMENT AND REVIEW**

It is the intent of the Department to allow construction to begin on a Design Unit prior to completion of final design. Construction on any Design Unit may begin at any time after the applicable readiness for construction Design Review. Construction may progress in increments determined by the Design-Builder, at Design-Builder’s risk, provided each increment of construction is covered by drawings and specifications that have been reviewed and meet the requirements for readiness for construction noted in DB Section 111-12.5.
DB 111-5  SCHEDULE FOR DESIGN CHECKS, REVIEWS, AND SUBMISSION OF CHECKED DESIGN

The Design-Builder is responsible for scheduling and conducting Design Reviews to meet design and/or construction needs of the Baseline Progress Schedule. It is recognized and anticipated that the Design Review process and frequency, duration and intensity of Design Reviews may vary with the complexity of the individual Design Units and the associated construction activities. The duration of Design Reviews shall be discussed and mutually agreed between the Department and Design-Builder during the Design Workshop (DB Section 111-16) and verified and modified by mutual agreement during the course of the Project. The Design-Builder shall give written notice of scheduled Design Reviews to the Design Compliance Engineer at least one week prior to any review.

The Design-Builder shall include the agreed Design Review schedule for all Design Units (including their components and elements) as part of the Baseline Progress Schedule. The Design Review schedule shall be reviewed monthly and dealt with in accordance with Part 5 – Special Provisions, Special Provision 108A until design Work is complete. The Design-Builder shall not schedule more than two concurrent Design Reviews without the Department’s written concurrence.

Except for As-Built Plans, “submissions” shall be in the form of sufficient copies [to accommodate participants in the Design Review(s)] of Design Plans and Project Specifications and supporting data and reports assembled for review in the Designer’s office. For final Design Reviews, “submissions” shall be in the form of two hard copies and one electronic copy of Design Plans and Project Specifications and supporting data.

The Design-Builder shall make specified submittals of checked designs in accordance with DB Section 111-12. Submissions shall be complete for each Design Unit, but may be combined for multiple Design Units at any one time upon the Department’s written concurrence. The Design-Builder shall submit each Design Unit for Consultation and Written Comment (see DB Section 105-15) in accordance with the Baseline Progress Schedule.

For each Design Unit designated by the Design-Builder, the Design-Builder shall include design checks and Design Reviews as indicated in Table 111, and such additional reviews as may arise as indicated in DB Section 111-12.2.4. The Design-Builder shall allow the time for the Department’s participation and input to any Design Review conducted by the Design-Builder’s Design QC Manager as agreed per this DB Section 111-5. The Design-Builder shall incorporate this schedule into Design-Builder’s Baseline Progress Schedule and report progress and updates in the monthly updates. The Design-Builder shall keep the Department up to date on exact timing of reviews and readiness for construction Design Reviews through the weekly progress meetings.

DB 111-6  REVISIONS TO DESIGN

The Design-Builder shall deal with any changes to design initiated by the Design-Builder and already checked by the Designer and certified by the Design QC Manager as an entirely new design. The Design-Builder shall not be entitled to any increase in the Contract Price or extension of time pursuant to DB Section 108-7 in such circumstances.

DB 111-7  DESIGN REVIEW PLAN

The Design-Builder shall prepare and submit a written Design Review Plan within 30 days of NTP for Consultation and Written Comment by the Department. The plan shall describe the level of design that the Designer will accomplish for each of the planned stages of design development and provide a
description and/or checklist for each Design Unit clearly identifying the design product that will be reviewed. Statements of percent complete will not be acceptable.

**DB 111-8 STAGES OF DESIGN DEVELOPMENT**

The Design-Builders shall make a single comprehensive design check and Design Review for each Design Unit at the stages of design development specified herein.

The following are the five stages of design development:

- **A)** Definitive Design;
- **B)** Readiness for construction or interim design;
- **C)** Final design;
- **D)** Working Plans; and
- **E)** As-Built Plans.

The intent of each stage of design development and Design Review is the following:

1) Verify that the design complies with the Contract requirements;
2) Allow components of Design Units to be released for construction; and/or
3) In the case of reviews of Working Plans, to allow construction to continue.

Design Reviews or design checks shall be completed as specified in DB Section 111-12, for each Design Unit (and for each component or element within a Design Unit) at each stage of design development.

The Design-Builders shall time the Design Review and submissions (where specified) to be consistent with the Baseline Progress Schedule.

**DB 111-9 DESIGN REVIEWS**

The Design-Builders shall invite the Department to participate in Definitive, readiness for construction, interim, and final Design Reviews. The Department may invite other Project Stakeholders to participate. The Design-Builders shall address and/or resolve the Department comments in consultation with the Department. Any Stakeholder comments will be forwarded to the Design-Builders by the Department and shall be addressed and/or resolved by the Design-Builders.

**DB 111-9.1 Definitive Design Review**

The Design Review of Definitive Design shall be the first Design Review after Award and is intended to verify that the design concepts proposed by the Design-Builders meet Contract requirements. The Definitive Design Review may also serve as a readiness for construction review (DB Section 111-9.2 and DB Section 111-12.5). The Definitive Design Review shall verify the following:

- **A)** The design concepts governing future design development are defined consistent with Contract requirements;
- **B)** The final Basic Project Configuration;
- **C)** The design concepts are substantiated and justified by adequate Site investigation and analysis;
D) Final Rights-Of-Way requirements;

E) The specific standards applicable to the proposed concepts are identified and appropriate;

F) The proposed design concepts are constructible;

G) The availability of required Materials/Equipment; and

H) The design meets Project quality requirements and required design QC procedures have been followed.

If the Definitive Design is amended subsequent to the Definitive Design Review, the Design-Builder shall re-check and re-certify the design as an additional Definitive Design Review. The Design-Builder will not be entitled to an increase in Contract Price or a time extension for the re-check and re-certification except when the amended design results from an Order-on-Contract requested by the Department.

See also DB Section 111-13 regarding design deviations and exceptions.

DB 111-9.2 Readiness for Construction Review

The Design-Builder and the Department shall use the Design Review(s) of readiness for construction design to verify that the concepts and parameters established and represented by Definitive Design are being followed and that Contract requirements continue to be met. The Design-Builder shall specifically highlight, check, and bring to the attention of the Department any changes to information presented at Definitive Design. The Design-Builder shall present the information for readiness for construction review to the Department for Consultation and Written Comment by the Department.

The Design-Builder shall not construct any permanent components or major temporary components until the design checks, Design Reviews, and Design QC Manager’s certifications have been completed for the relevant Design Unit and the Department’s provided Consultation and Written Comment (see DB Section 105-15) of the design. The Design-Builder shall not commence any construction until any design-related Non-Conformance Reports have been addressed and resolved to the satisfaction of the Department.

If the readiness for construction design includes design information for Work that can be released for continuation of construction, the results of the readiness for construction Design Review, upon completion of Department’s Consultation and Written Comment, may be used to satisfy a portion of the requirements of DB Section 111-12.5.

DB 111-9.3 Interim Reviews

If the Design-Builder does not initiate construction on a designated Design Unit prior to 100% completion of the design, the Design-Builder shall plan and conduct at least one interim review between the Definitive Design Review and completion of design for that Design Unit. The Design-Builder shall schedule such interim reviews at a time when design is at the 60% to 80% stage of completion.

The Design-Builder and the Department shall use the interim Design Review(s) to verify that the concepts and parameters established and represented by Definitive Design are being followed and that Contract requirements continue to be met. The Design-Builder shall specifically highlight, check, and bring to the attention of the Department any changes to information presented at Definitive Design. The Design-Builder shall submit the interim design for Consultation and Written Comment by the Department.
DB 111-9.4  Final Design Review

The Design-Builders shall schedule and conduct a final design review when the Design Plans and Project Specifications for a Design Unit are 100% complete. The Design-Builders shall specifically highlight, check, and bring to the attention of the Department any changes to information presented at previous design reviews. The Design-Builders shall submit final design for Consultation and Written Comment by the Department.

The Final Design Review, upon completion of Department’s Consultation and Written Comment, may be used to satisfy a portion of the requirements of DB Section 111-12.5, Readiness for Construction.

DB 111-10  WORKING PLANS

Working Plans shall comprise the development and production of working drawings. The Design-Builders shall check, review, and certify working drawings in accordance with DB Section 111-12.1 through 12.3 and DB Section 111-14, prior to their being issued for construction.

The Design-Builders shall invite the Department to participate in the review of Working Plans. The Department may invite the Stakeholders to participate in reviews of Working Plans.

Working Plans includes, but is not limited to, the following:

A) Working drawings;
B) Material and product data from Manufacturers; and
C) Calculations.

DB 111-11  AS-BUILT DESIGN

The Design-Builders shall submit the As-Built Plans for each Design Unit in accordance with DB Section 109-11.3 and DB Section 111-12.

See DB Section 111-12.4.2 for additional requirements relating to As-Built Plans and information.

DB 111-12  DESIGN CHECKS, CERTIFICATIONS, AND REVIEWS

The Designers’ organization shall check all design documents (drawings, plans, specifications, calculations, and reports) produced by the Design-Builders’ organization. The Design QC Manager will certify that these documents have been checked per Contract requirements and the Design-Builders Quality Plan. The Design QC Manager’s written certification shall provide the certification specified in DB Section 111-12.5.

The Design-Builders and the Department’s DCE shall follow the process shown in Figure 111A for Design Reviews conducted by the Design-Builders’ Design QC Manager (applies to all Design Reviews except As-Built Plan Design Reviews).
FIGURE 111A
DESIGN REVIEW FLOW CHART
(DESIGN-BUILDER’S DESIGN QC MANAGER CONDUCTS DESIGN REVIEW)

The Design-Builder and the Department’s DCE shall follow the process shown in Figure 111B for designs being submitted for the Department review (applies to review of As-Built Plans only).

FIGURE 111B
DESIGN REVIEW FLOW CHART FOR DEPARTMENT-CONDUCTED DESIGN REVIEWS

The Design-Builder shall conduct and complete the design checks, certifications, and reviews for each Design Unit by the entity specified in Table 111. The Department’s DCE will provide Consultation and Written Comment of the design prior to the Design-Builder releasing designs for construction. The Department may also issue design Non-Conformance Reports which must be addressed and resolved to the satisfaction of the Department prior to releasing the design(s) for construction.
The Design-Build shall conduct its Design Review or submit its design for review in accordance with Table 111, supported by a written certification issued by the Design QC Manager, at the stages of design development shown in Table 111 for each Design Unit in accordance with the Design Review schedule in the Baseline Progress Schedule.

**TABLE 111**
**DESIGN CHECKS, CERTIFICATIONS, AND REVIEWS**
**FOR PERMANENT AND TEMPORARY COMPONENTS**

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<th>STAGE OF DESIGN DEVELOPMENT</th>
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<th>DESIGN REVIEW</th>
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<td>Designer and Design QC Manager</td>
<td>Design QC Manager</td>
</tr>
<tr>
<td>Interim review(s)</td>
<td>Designer and Design QC Manager</td>
<td>Design QC Manager</td>
</tr>
<tr>
<td>Readiness for construction design</td>
<td>Designer and Design QC Manager</td>
<td>Design QC Manager</td>
</tr>
<tr>
<td>Final design</td>
<td>Designer and Design QC Manager</td>
<td>Design QC Manager</td>
</tr>
<tr>
<td>Working Plans and related documents</td>
<td>Designer and Design QC Manager</td>
<td>Design QC Manager</td>
</tr>
<tr>
<td>As-Built Plans</td>
<td>Designer and Design QC Manager</td>
<td>Department’s DCE</td>
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<tr>
<td>Major temporary components</td>
<td>Designer and Design QC Manager</td>
<td>Design QC Manager</td>
</tr>
<tr>
<td>Temporary components</td>
<td>Designer and checker</td>
<td>Not applicable</td>
</tr>
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</table>

**DB 111-12.1  Design-Build’s Independent Design Checks**

The Design-Build shall carry out independent design checks of permanent components, major temporary components, and effects of temporary components on the permanent components by senior engineers not involved in the production of the design being reviewed who have equal or greater qualifications and experience as the Responsible Engineer for the design being checked.

Independent design checks shall comprise design assessment and analytical checks as specified in DB Section 111-12.2 and DB Section 111-12.3.

**DB 111-12.2  Design Assessment**

Design assessment shall be the review of general compliance with the requirements of the Contract, taking into consideration the proposed method of construction, and shall cover the following areas:

A) Loads;
B) Codes and standards;
C) Methods of analysis;
D) Computer software and its validation;
E) Interface requirements;
F) Maintenance requirements;
G) Materials and Material properties;
H) Durability requirements;
I) Fatigue performance;
J) Hydrology; and
K) Design flows.

DB 111-12.3 Analytical Check

The independent design check shall include an independent analytical check using separate calculations (and without reference to Designer’s calculations) to establish the structural adequacy and integrity of critical structural members. This shall include, but is not limited to the following:

A) The structural geometry and modeling;
B) Material properties;
C) Member properties;
D) Loading intensities; and
E) Structural boundary conditions.

DB 111-12.4 Design Reviews

The Design-Builder’s time and cost impacts of revisions arising from Department’s and Stakeholders’ participation in Design Reviews and/or caused by Design-Builder’s non-compliance with Contract requirements, including the Department’s and Stakeholder’s time for reviewing revisions, shall be borne by the Design-Builder.

DB 111-12.4.1 Design Reviews Conducted by the Design-Builder’s Design Quality Control Manager

The Design-Builder shall notify and invite the Department to participate in all Design Reviews conducted by the Design QC Manager. The Department may also invite Project Stakeholders and affected Utility Owners to participate. The Department will provide Consultation and Written Comment (based on the Department and Stakeholder participation) regarding these Design Reviews.

For Design Reviews conducted by the Design QC Manager (see Table 111), the Design QC Manager shall provide a Design Review report for each Design Unit at the conclusion of each Design Review. The Design Review reports will identify any actions arising from the review. The report shall note items requiring corrective action on the Design Non-Conformance Report, Form NC-D (Appendix 111A). The Design QC Manager shall send the Design Non-Conformance Report to the Designer and a copy to the Department.

The Design-Builder shall conduct Design Reviews in the offices of the Designer and/or Design-Builder in the Project vicinity. The Responsible Engineer and any specialists with significant input to the design or review shall be present. The Design-Builder shall make available all drawings, copies of calculations, reports, or other items pertinent to the Design Review.

DB 111-12.4.2 As-Built Review

As-Built Plans and Project Specifications shall incorporate complete information that defines the Work as constructed to meet the Contract requirements.
The Design-Builder shall submit As-Built Plans complete for each Design Unit to the Department for review and Design Acceptance in accordance with DB Section 111-11. The Department review will be one of the processes to verify if the Project has been designed and constructed in accordance with Contract requirements and to see if As-Built Plans comply with Contract requirements.

The Design-Builder shall make all corrections noted in the review of As-Built Plans and resubmit the corrected As-Built Plans to the Department for review and Design Acceptance.

Design Acceptance by the Department will not occur until the As-Built Plans are submitted, reviewed and corrected to the satisfaction of the Department.

**DB 111-12.4.3 Design Review of Major Temporary Components**

The Design QC Manager shall conduct a Design Review of major temporary components that represent complex structures and that potentially can affect the safety, quality, and durability of the permanent components. The review shall include the effect of the major temporary components on the permanent components. The Design-Builder shall invite the Department to participate in the review. The Department may invite affected Stakeholders to participate in the review(s).

**DB 111-12.4.4 Additional Reviews**

The Department (with Stakeholder participation, if invited by the Department) may conduct additional “over-the-shoulder” reviews as considered necessary to ensure a continued and uniform consistency in the quality and effective incorporation of revisions to designs. The Design-Builder may also conduct reviews necessary to facilitate early release of designs for construction.

**DB 111-12.5 Readiness for Construction**

The Design-Builder may start construction of any element of the permanent components only after all the following items have occurred:

A) The Designer has conducted its design QC checks throughout the design process in compliance with the Quality Plan and certifies in writing that the design is complete to the appropriate level or stage of review, checked and ready to be released for construction;

B) The Design QC Manager has signed the title sheet for the drawings, certifying to the following (the title sheet can be formatted to include the items of certification):

1) Design checks have been completed;
2) Work conforms to Contract requirements;
3) Any deviations or design exceptions have been approved in writing by the Department (DB Section 111-13);
4) Design QC activities are following the Design-Builder’s Quality Plan; and
5) All outstanding issues or comments from Design Reviews have been resolved;

C) The Responsible Engineer has signed all drawings prepared under his/her direction. For those drawings and documents included in the submittal that are prepared by a Manufacturer or Supplier or other Persons not under his/her direct supervision, the
Responsible Engineer will affix a stamp that indicates the design shown on the sheet or document conforms to the overall design and Contract requirements;

D) The Design Manager has signed the title sheet to the drawings certifying to the items contained in DB 111-2.4(A)-(G). (The title sheet can be formatted to include the items of certification);

E) Design-Builders has verified the following:
   1) Design has undergone constructability review and is constructible as represented;
   2) Working Plans, Project Specifications and related documents for the portion of the Project to be constructed are complete and checked in accordance with this DB Section 111-12;
   3) The design and drawings for MPT and temporary erosion control and environmental measures applicable to the Work are complete; and
   4) Adequate stakes, lines, and/or monuments necessary to control the Work have been established on the Site; and

F) The Department will provide Consultation and Written Comment regarding the design and applicable MPT, temporary erosion control measures, and environmental requirements.

The Department’s Consultation and Written Comment will not constitute Approval or Design Acceptance of the design or subsequent construction.

Any Design Non-Conformance Reports issued by the Design QC Manager or the Department must be addressed and resolved by the Design-Builders to the satisfaction of the Department prior to any design being released for construction.

The Design-Builders may proceed with construction on the Project at Design-Builders’ risk to the extent Work is covered by relevant design documents that have been processed as shown in Figure 111A. Prior to construction proceeding further, the Design-Builders shall complete the next stage of design and Design Review and/or submission.

DB 111-12.6 Comment Resolution

Department and Stakeholder comments from Design Reviews will be recorded on Form DR (Appendix 111A) and transmitted to the Design-Builders. The Design-Builders shall record its proposed disposition and response to each comment and meet with the Department to resolve outstanding comments and dispositions. Final disposition and resolution will be documented on Form DR.

If the design review reveals non-conformance with Contract requirements, the Department will prepare Form NC-D (Design Non-Conformance Report (Appendix 111A) and submit it to the Design-Builders for action. The Design-Builders shall complete Form NC-D when the non-conformance is corrected and return Form NC-D to the Department.

All Design Reviews shall include a comment and non-conformance report resolution process where unresolved comments and non-conformance reports are discussed and a written action plan and schedule for resolution of unresolved comments and non-conformance reports is developed. The Design QC Manager will lead the process.
DB 111-13 DESIGN EXCEPTIONS

All deviations (design exceptions) from specified standards must be submitted to the Department for review and Approval. All requests for deviations and exceptions must be submitted with a justification report detailing the reasons to retain a non-standard or substandard feature or for providing an improvement that does not bring the feature up to standard. Requests for design deviations and exceptions must be submitted not later than the Definitive Design Review and Approved by the Department in writing before the affected Design Units will be released for construction (DB Section 111-12.3).

DB 111-14 DESIGN CHANGES BEFORE CONSTRUCTION

Design changes may occur prior to construction or may occur after final design, and may be initiated by the Design-Builder or the Department.

For all design changes requiring calculations, the Designer and the Design QC Manager shall conduct a documented check of all calculations. All design changes requiring alteration of design documents released for construction shall undergo all review procedures included for original design documents in the Design-Builder’s Quality Plan and DB Section 111-12.

DB 111-15 DESIGN SUPPORT DURING CONSTRUCTION

The Designer and Design QC Manager shall verify during construction that the conditions actually encountered are consistent with the design and related Design Plans, Working Plans, and Project Specifications. The Designer shall prepare necessary adjustments in the Design Plans, Working Plans, and Project Specifications, and the Design-Builder shall obtain required Department Consultation and Written Comment. The Design-Builder shall be responsible for obtaining Stakeholder permits or approvals. The Designer and Design QC Manager shall check any such changes in accordance with the Quality Plan. The Design QC Manager shall certify the change in writing as meeting the Contract requirements. The Design-Builder shall incorporate the adjustments in the As-Built Plans. The Design-Builder shall retain copies of the Design QC Manager’s written certifications and submit the certifications to the Department.

DB 111-16 DESIGN WORKSHOP

Within 45 days of NTP, the Design-Builder shall arrange a design workshop to familiarize the Designer’s personnel and the Department (and Stakeholders, if invited by the Department) review personnel with the design concepts, issues, status, and review procedures. The agenda shall include developing agreements regarding time allowed for design reviews (see DB Section 111-5). The Department and Design-Builder shall jointly develop the agenda of the workshop and how it will be organized (i.e., by Design Unit and engineering discipline). The intent of the workshop is to make the subsequent Design Reviews more effective and efficient for all parties.

All agreements, schedules, and understandings reached during the design workshop shall be documented in writing and signed off by the Design-Builder’s Project Manager and the Department.

DB 111-17 QUANTITY ESTIMATES

To facilitate determining sampling and testing requirements, the Design-Builder shall provide quantity estimates for the Work. The quantity estimates shall be in units that facilitate sampling and testing, i.e. the units shall be consistent with the units used to determine frequency of sampling and testing. For
example, if “X” numbers of compaction tests are specified to be taken for every “Y” cubic meters of embankment, the quantity estimate would need to be in cubic meters of embankment.

See also DB Section 111-19.4.

**DB 111-18 DESIGN DOCUMENTATION**

**DB 111-18.1 Progress Tracking**

The Design-Builders shall include engineering and design progress and changes in its Baseline Progress Schedule (including Work on any design change) in the monthly updates (DB Section 108-1).

**DB 111-18.2 Design Quality Records**

The Design QC Manager shall prepare and submit monitoring reports to the Department of all design issues and review comments resulting from the scheduled and additional checks and reviews, including “over-the-shoulder” reviews.

The Design-Builders shall also maintain an auditable record of all Quality Plan procedures. An independent auditor shall be able to determine by reviewing documentation if all procedures included in the Quality Plan have been followed.

The Design-Builders shall submit reports of checks and reviews within seven Calendar Days of the completion of the review.

The Design-Builders shall develop, implement, and maintain a log of design Non-Conformance Reports and/or notices indicating dates issued, reasons, status, or resolution and date of resolution.

The Design-Builders shall prepare and maintain daily records of design activities using Form MURK 2b (DB-DQC) (Appendix 111A) or other forms acceptable to the Department.

**DB 111-18.3 Design QC Manager Reports**

**DB 111-18.3.1 Monthly Report to the Department**

The Design QC Manager shall submit a monthly report directly to the Department by the third working day of the following month that includes the following:

A) Summary of reviews conducted;

B) Nonconforming Work and current status and/or disposition (based on design non-conformance log, DB Section 111-18.2); and

C) Submission(s) from Design-Builders and status.

**DB 111-18.3.2 Final Design Report**

Upon completion of the final design for each Design Unit, including all its components and elements, the Design QC Manager shall notify the Design-Builders, with a copy to the Department, of any outstanding monitoring report issues or unresolved review comments.
DB 111-19 DESIGN PLANS, WORKING PLANS, AND PROJECT SPECIFICATIONS

The Contract Price will include the cost of furnishing all Design Plans, Project Specifications, Working Plans, and As-Built Plans.

The Contract Documents establish the minimum standards of quality and define requirements that the design and construction must satisfy.

During the design process, the Design-Builder shall develop Project Specifications and Design Plans based on the Contract Documents that are applicable to the specific Materials, products, Equipment, procedures, and methods that the Design-Builder intends to use.

During the Design Reviews the Design Plans and Project Specifications will be evaluated by the Department to determine if they meet the Contract requirements.

DB 111-19.1 Plans

The Work shall be performed in accordance with the details as shown on the Design Plans prepared by the Designer and those Working Plans prepared by the Design-Builder. It shall be solely the Design-Builder’s responsibility to provide Working Plans of such a nature as to develop a finished product in accordance with Design Plans, Project Specifications, and Contract requirements. The Design-Builder shall verify pertinent dimensions in the field prior to conducting a Working Plans review. Participation in the review of the Design-Builder’s Design Plans and/or Working Plans by the Department (or Stakeholders, if invited by the Department) shall not relieve the Design-Builder of the responsibility for the satisfactory completion of the Work.

Working Plans shall be reviewed and approved in writing by the Designer before beginning the construction Work and shall not thereafter be amended or altered without prior written approval of the Designer and the Department’s Consultation and Written Comment.

All readiness for construction design, Final Design and As-Built Plans shall be signed and stamped/sealed by the appropriate Responsible Engineer and shall include, on the title sheet for the plans, certification signatures of the Design Manager and the Design QC Manager, (the title sheet can be formatted to cite the appropriate certification requirements of DB 111-2.4 and 111-12.5).

DB 111-19.2 Design and As-Built Plans Format and Organization

The Design-Builder shall organize and format Design and As-Built Plans per the Department’s CADD Standards and Procedures, Highway Design Manual, Chapter 20.

DB 111-19.3 CADD Standards

CADD formatting for Design and As-Built Plans shall conform to the Department’s CADD Standards and Procedures, Highway Design Manual, Chapter 20.

DB 111-19.4 Project Specifications

The Design-Builder shall prepare Project Specifications based on Contract requirements, including the Department’s Standard Specifications, Construction and Materials Section 200 through 700) (CD Part 9). The Design-Builder may perform the following activities:

A) Use the Department’s Standard Specifications as supplemented by the Contract;
B) Prepare supplements to the Standard Specifications; and/or
C) Prepare new Specifications to cover Work not covered by the Standard Specifications.

Project Specifications, including the Sections 200 through 700 of the Department’s Standard Specifications, will be reviewed by the Design-Builder and the Department during Design Reviews to verify that the Project Specifications provide a level of quality that meets or exceeds the Contract requirements and are suitable and appropriate to control the Work. Development and implementation of Project Specifications will not require an Order on Contract provided that the Project Specifications are of equal or greater quality than the Specifications presented in Contract Documents. The Design-Builder shall be responsible for demonstrating that the Project Specifications meet or exceed the standard of quality established by the Specifications in the Contract Documents. Any deviation that results in lesser quality will require Department approval and may require the execution of an Order-on-Contract. The Department shall determine, at its sole discretion, if the Project Specifications meet the Contract Requirements.

Project Specifications shall define the type and frequency of QC sampling and testing to be conducted for the Work covered by a Project Specification. Use DB Section 112 and the latest version of the Department’s Materials Inspection Manual in effect at time of submitting the Proposal to determine the type and frequency of QC sampling and testing.
(Project Name)
DESIGN-BUILD PROJECT

PIN _________

DB CONTRACT DOCUMENTS
PART 2

DB SECTION 111
DESIGN MANAGEMENT & DESIGN QC

APPENDIX 111A
FORMS
### DB SECTION 111
APPENDIX 111A – FORMS
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**Dispositions:**  
A = Will incorporate; B = Will evaluate; C = Delete comment; D = Will incorporate in next submittal

**Project QA File:** 

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(1) Provided information as necessary to reflect additional interim and/or readiness for construction reviews planned between Definitive Design and final Design Reviews.
FORM NC-D
DESIGN NON-CONFORMANCE REPORT
( DB Sections 111-12 and 111-18)

From: ___________________________________________ Date: ________________
(Name and initials of Design QC Manager or Department’s Project Manager or Designee)

To: ___________________________________________
(Names of Design-Builder and Responsible Engineer)

Project name/Number: ____________________________ Design Unit ID: __________

Copy: Department’s Project Manager

Transmittal/File No. ________ Applicable Contract Requirement: _________
(Part and Section Number)

The design Work on the referenced Design Unit is not in conformance with the noted Contract requirement for the reasons stated below (Attach additional sheets as necessary):

RESOLUTION: Date: _________________________

From: ___________________________________________
(Names and initials of Design-Builder’s Project Manager and Responsible Engineer)

To: Design Compliance Engineer and Department’s Project Manager

The above noted design non-conformance has been corrected and/or resolved as indicated below (attach additional sheets as necessary):

Acknowledgement of Receipt: ___________________________ Date: ________________
(Name and initials of Department’s Project Manager or Designee)

Comments by PD, if any: ____________________________ None __________________ [See attached sheet(s)]

Send copy of completed, acknowledged form to Design-Builder and Department’s Project Manager’s files.
DESIGN-BUILDER'S DAILY DESIGN QUALITY CONTROL PROJECT DIARY

PAGE NO. ________________________________

J O B S T A M P

SHEET NO. ___ OF ___ SHEETS

DATE

DAY OF WEEK

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DESIGN-BUILDER'S WORK HRS.

MAJOR CONTRACT OPERATIONS

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REMARKS:

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(Project Name)
DESIGN-BUILD PROJECT

PIN__________

DB CONTRACT DOCUMENTS
PART 2

DB SECTION 112
CONSTRUCTION
QUALITY CONTROL/QUALITY ASSURANCE
SECTION 112
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SECTION 112
CONSTRUCTION QUALITY CONTROL/QUALITY ASSURANCE

DB 112-1  GENERAL

Per DB Section 113, the Design-Builder shall develop and implement a quality program for all phases of the Project, including design, construction, maintenance, and environmental compliance. The Design-Builder, through its Design-Builder Quality Plan, shall have the primary responsibility for the quality of the Work, including all Work and products of Subcontractors, fabricators, Suppliers, and vendors both on-site and off-site. The Department, in its oversight role through Quality Assurance (QA), reserves the right to and will conduct verification oversight inspections, audits, sampling and testing, and Independent Assurance (IA).

The program shall be capable of ensuring that procurement, shipping, handling, fabrication, installation, cleaning, Inspection, construction, testing, storage, examination, repair, maintenance, and required modifications of all Materials, Equipment, and elements of the Work will comply with the requirements of the Contract Documents and that all Materials incorporated in the Work and all Equipment and all elements of the Work will perform satisfactorily for the purpose intended.

DB 112-1.1   Definitions
See DB Section 101 for definitions.

DB 112-1.2   Construction Quality Control Inspection

All construction processes, procedures, and workmanship shall be inspected by the Design-Builder’s Construction Quality Control (QC) Inspectors. The QC Inspectors shall include the observations, measurements, and documentation specified in Appendix 112A, and/or included in the Design-Builder’s Quality Plan. Inspection observations, measurement, results, non-conformances, and corrective actions shall be documented on the forms in Appendix 112F or on the Design-Builders forms acceptable to the Department. Inspection observation and documentation shall include description of construction activity and location by Specification section. See also DB Section 112-10.

DB 112-2   INSPECTION AND TESTING OF MATERIALS

DB 112-2.1   General

All Materials are subject to Inspection, sampling, and testing at any time before Final Acceptance of the Work.

References in the Contract to a New York test method or test designation of the American Association of State Highway and Transportation Officials (A.A.S.H.T.O.), the American Society for Testing and Materials (A.S.T.M.) or any other recognized national organization, shall mean the latest revision of that test method or Specification for the Work in effect on the day the RFP for the Work is dated unless otherwise noted. The Design-Builder shall comply with the latest modifications as published by the Department’s Materials Bureau (see EB03-005).

Materials will be sampled and tested by the construction QC testers and samplers. Copies of all test results will be furnished to the Design-Builder’s Project Manager, the QC Manager, and the Department’s Construction Compliance Engineer (CCE). When a test is done for the Design-Builder as process control assuring that his process and Materials source is producing an acceptable product, test results are not
furnished to the above stated individuals but are Design-Builder internal documents. These process control tests usually occur when an operation is begun and when changes occur in the source of Materials or method of production.

The Department’s CCE and Construction Compliance Monitors (CCMs) may observe any testing performed by the QC testers and samplers. If the CCE or CCMs observe a deviation from the specified sampling or testing procedures, the CCM shall verbally describe the observed deviation to the Construction QC Manager, followed by a written Non-Conformance Report covering the deviation to the Construction QC Manager and DB Project Manager within twenty-four hours. See also DB Sections 109 [L or S]-5.4.

**DB 112-2.2 Construction Quality Control Testing and Sampling**

The Design-Builder’s construction QC testers and samplers shall perform sampling and testing for process control and for acceptance of Materials to be used on the project. Construction QC testers and samplers shall be certified in accordance with NICET, to the level appropriate for the Work being sampled/tested. The Design-Builder shall maintain a list of construction QC testers and samplers that indicates what test certifications each person currently holds. Testers and samplers will be allowed 90 Days from Award of the Contract to obtain the certifications.

Testers and samplers will test and sample only those Materials for which they are certified to test. Reports of each test shall be recorded on the form prescribed for that test. All tests that do not pass specified requirements will be added to a log of failed tests. This log of failed tests will be used to assure that the Work is reconciled by a passing test as specified in Appendix 112B.

The minimum frequency of QC sampling and testing shall be consistent with Appendix 112B and the individual Project Specifications accepted by the Department’s Project Manager.

**DB 112-3 QUALITY ASSURANCE INSPECTION**

Quality Assurance Inspection will be performed by the Department designated CCMs assigned to the Project. This Inspection staff will verify that the construction QC Inspection occurs as specified, and that daily reports and other required Contract administration documents are prepared and provided as specified. Also, CCMs will prepare QA daily reports that describe the QA activities performed each day, conversations with Construction QC Manager, discussions with the Design-Builder, visits by agencies with regulatory responsibility and indications of acceptable or unacceptable work by the construction QC testers and samplers.

Department CCMs will perform periodic independent Inspection of the Work to verify that Work has been performed adequately and to the required accuracy. That accuracy pertains to assurance that the Work is constructed to established lines and grades and that any required measurements for payments are performed to the prescribed accuracy. Periodic QA Inspections will verify that critical methods of construction are followed and that all required safety procedures are followed by the Design-Builder.

The Construction Compliance Monitors will periodically audit sampling and testing results. The review, audit, and subsequent feedback to the Construction QC Manager are intended to assess the adequacy of the construction QC.

The Construction Compliance Monitors will provide information to the CCE regarding percent complete of Price Centers (PC) for smaller, less complex projects or verify that Progress Check Points (PCP) are met per the Design-Builder’s Schedule of PCPs for larger, more complex projects and verify quantities of any Unit Priced Work items. A monthly audit of PCPs (for larger, more complex projects only) and
New York State Department of Transportation

quantities of any Unit Priced Work items will be performed and any required correction will be made to the subsequent progress pay estimate. This review and audit will assure that the PCP achievement (for larger, more complex projects only) and correct quantities are shown. Documents for payment of Orders-on-Contract must also contain sufficient information to satisfy an audit. Documents for the closure of each Contract Item and each Order-on-Contract will be reviewed and included in the final pay estimate. See DB Section 109[S or L] regarding payment processing.

DB 112-3.1 Verification Sampling and Testing

Verification Sampling and Testing will be performed by Department or its designated representatives assigned to this Project. Verification samplers and testers shall be certified in accordance with the Department Technician Training and Certification Program. They will perform tests separate from the construction QC sampling and testing.

All sampling and testing for acceptance shall be in conformance with 23 CFR 637 and approved Department procedures using qualified, certified individuals.

The verification samples will be taken separately from the QC samples but from the same lot as the QC samples. The verification samples will include separate samples and witness samples.

At no time will the verification testing be done on the same Equipment as the QC testing. Verification Sampling and Testing will be performed as directed by the Department’s CCE and CCMs. The Verification samplers and testers will write reports on forms provided to them. The reports will detail the Work performed that Day. There will be an indication of the correlation between tests by the construction QC samplers and testers and the verification tests. There will be an indication of trends in the test results both in the correlation and quality of the Work. The verification samplers and testers should be aware of the status on the log of failed tests and communicate with the construction QC samplers and testers to attend the reconciling tests. The verification samplers and testers will be familiar with the Quality Plan and assure that construction QC samplers and testers adhere to that plan. A list of verification samplers and testers shall be maintained that indicates what test certifications each person currently holds.

DB 112-3.2 Independent Assurance Sampling and Testing

Independent Assurance sampling and testing is periodic testing, by a specially trained sampler/tester, to verify that sampling and testing are being performed correctly. The Work shall be performed by the Department or its designated representatives assigned to this Project. The concept of IA sampling and testing is to “Test the Tester” and the following two main areas are evaluated:

A) Test Equipment, and
B) Test procedures.

Prior to construction, a certified IA sampler and tester will verify that Equipment used for verification and QC testing is properly calibrated and in good working condition.

During construction, the IA sampler and tester must verify the reliability of the verification and construction QC samplers and testers through the following activities:

1) Verifying their current certifications;
2) Witnessing sampling and testing by the verification and construction QC samplers and testers; and/or
3) Splitting Materials samples and comparing the test results between the verification or construction QC sampler and tester and the IA sampler and tester.

For split-sample tests, the IA sampler and tester must use test Equipment not used by the verification or construction QC samplers and testers. It is recommended the IA tests be performed at laboratory facilities removed from locations where verification and construction QC tests are performed.

Independent Assurance sampling and testing are not to be used to verify Specification compliance on construction projects. Neither QA nor QC test samples will be used for IA sampling and testing.

**DB 112-4 INDEPENDENT REFEREE LABORATORY**

The Department will retain the services of an independent certified laboratory on an “on-call” basis to act as a “referee” laboratory for resolution of disputes regarding sampling and testing results reported by the Department’s verification samplers and testers and the Design-Builder’s QC samplers and testers. The services of the “referee” laboratory may be requested by the Department or by the Design-Builder. The sampling and testing results determined by the “referee” laboratory shall be final and binding on both parties and not subject to disputes resolution under DB Section 109[S or L]-10. The party whose sampling and testing results are not confirmed and/or supported by the “referee” laboratory (i.e., the unsuccessful party) shall be responsible for payment for the “referee” services. If the Department is the unsuccessful party, it will make payment directly to the “referee” laboratory. If the Design-Builder is the unsuccessful party, the cost of the “referee” laboratory services will be deducted from payment(s) otherwise due, and the Department will make payment to the “referee” laboratory on behalf of the Design-Builder.

The “referee” laboratory will not be associated with the Project in any capacity or be Affiliated with any party to the Contract or with any Principal Participant and/or Design-Builder. The “referee” laboratory shall not be a department, agency, or office of any Stakeholder.

**DB 112-5 COMPETENCE**

If a concern arises as to the competence of any certified individual, this concern must be documented in writing to the Design-Builder’s Project Manager and the Department’s Project Manager. The concern will be investigated as deemed necessary by the Department’s Project Manager. If this investigation substantiates the concern, corrective action or decertification will be implemented in accordance with procedures established by the Department.

**DB 112-6 DESIGN-BUILDER PROCESS QUALITY CONTROL**

The Design-Builder shall provide process control measures adequate to produce a constructed product of acceptable quality that conforms to the Contract Documents. The Design-Builder shall perform process control sampling, testing, and Inspection during all phases of the Work at a rate sufficient to assure that the Work conforms to the Contract requirements.

The Department will not take samples or test for process QC and will in no manner assist in controlling the Design-Builder's production operations. The Design-Builder shall provide personnel and Equipment capable of providing a product that conforms to specified requirements and shall provide personnel and Equipment capable of verifying and documenting this conformance. Continual production of non-conforming Work will not be allowed.
DB 112-7  DESIGN-BUILDER'S CONSTRUCTION QUALITY CONTROL ORGANIZATION

The Quality Plan shall provide the information regarding the construction QC organization.

All QC sampling and testing staff and laboratories shall meet the qualification requirements of 23 CFR 637.

DB 112-7.1  Independent Construction Quality Control Firm (Quality Control Engineering Firm)

The Design-Builder shall retain the services of an independent engineering consultant organization to oversee, manage, certify and perform construction QC activities as specified in this Section 112, other Contract Documents and the Design-Builder’s Quality Plan. The independent firm, the QC Engineering Firm (and any firm acting as a subconsultant to the QC Engineering Firm), shall not be owned by or be an affiliate of the Design-Builder (see DB Section 101), any Principal Participant (see DB Section 101) or construction Subcontractor. The QC Engineering Firm shall be responsible for management and scheduling all QC Inspection and quality control sampling and testing of all items of construction Work for this Contract. Subject to the limitations stated above, the Designer may serve as the QC Engineer. State to confirm.

The Construction QC Manager, all Construction QC Inspectors and all QC sampling and testing personnel and their support staff shall be employees of the QC Engineering firm or employees of firm(s) acting as subconsultants to the QC Engineering Firm. The QC Engineering Firm shall work directly for the Design-Builder’s QC Manager and shall not report to the Design-Builder’s Project Manager.

DB 112-7.2  Construction Quality Control Manager

The Design-Builder shall assign an on-site Construction QC Manager. This individual will be considered one of the Project’s key personnel and shall meet the minimum qualifications in Part 5 – Special Provisions, Special Provision 108B.

The Construction QC Manager shall be responsible for overall management and supervision of the Design-Builder’s construction QC programs. The Construction QC Manager shall be a New York-licensed professional engineer. The Construction QC Manager will report directly to the Design-Builder’s QC Manager.

The Construction QC Manager, or his/her designees, shall be delegated the authority to make needed improvements to the quality of Work, including the suspension of the Work if required.

The Construction QC Manager shall be responsible for coordinating the schedules of construction QC Inspectors and construction QC samplers and testers with the Design-Builder’s construction activities so as not to delay Design-Builder’s operations due to Construction QC Inspection, sampling, and testing activities.

DB 112-7.3  Staffing Levels

The actual size of the field/Site staff shall reflect the complexity, needs, shifts and composition of QC activities consistent with Work in progress.

The Quality Plan (DB Section 113) shall identify administrative/clerical support for the maintenance and management of records/documents pertinent to QC activities.
The QC staffing schedule shall be updated as necessary throughout the Contract duration to reflect accurate forecasting of QC staffing requirements.

**DB 112-7.4 Laboratories**

Laboratory QC testing shall be conducted by testing laboratories, retained by the QC Engineering firm under subcontract, that comply with the requirements for Department certification for applicable tests. Laboratories shall be accredited by the AASHTO Material Reference Laboratory (AMRL), the Concrete Cement Reference Laboratory (CCRL), the National Precast Concrete Association (NPCA) for precasters, and the Prestressed Concrete Institute (PCI), as appropriate for the work being constructed. Department certification shall be obtained for all A.A.S.H.T.O. and A.S.T.M. test methods to be performed by the testing laboratory. Certification shall also be obtained for A.A.S.H.T.O. and A.S.T.M. test methods that are modified or referenced by New York test methods.

Satellites (field laboratories) of these laboratories may be used where appropriate for the tests being conducted. The Equipment in the satellite laboratories shall be certified at the start of Work and annually thereafter. Certification shall be by the Department.

The laboratory shall have written policies and procedures to assure portable and satellite laboratories performing testing activities on the Project are capable of providing testing services in compliance with applicable test methods. The policy and procedures shall address Inspection and calibration of testing Equipment as well as a correlation testing program between the accredited laboratory and portable or satellite facilities.

The Department reserves the right to check testing Equipment for compliance with specified standards and to check testing procedures and techniques.

The Department also reserves the right to access the testing facilities of the testing laboratories, with no additional cost to the Department, to witness the testing and verify compliance of the testing procedures, testing techniques, and test results.

The Department’s rights to check Equipment, procedures, and techniques and to access testing facilities will also apply to the Federal Highway Administration (F.H.W.A.) for Federal-aid projects and to other Project Stakeholders when the Design-Build is performing Work on their facilities.

**DB 112-8 DESIGN-BUILDER SCHEDULING AND NOTICE TO THE DEPARTMENT**

The Design-Build shall notify the Department in writing by Friday noon of each week of planned construction activities, including fabrication, for the following two weeks to allow the Department to schedule its resources. The Design-Build will deliver this information at the weekly coordination meeting where related discussion will occur. For activities (such as, fabrication) occurring out of the immediate Project area (beyond 100 miles of the Project), the Design-Build shall give the Department at least 21 Calendar Days of notice of planned Work.
The Design-Builder shall collect and preserve each of the following types of data in written form concurrently during Design-Builder’s performance of the Work, all of which shall be in form acceptable to the Department. The Design-Builder shall use Section 90 of the Department’s Contract Administration (see Exhibit III, Tab 3, Reference Documents) as a basis for determining the nature and extent of information to be documented for:

A) Daily Inspection Reports;
B) Record (as-built) Plans;
C) Field books and computation books;
D) Materials acceptance records;
E) Photographs; and
F) Field change sheets.

Daily manpower and Equipment reports for the Design-Builder and each Subcontractor for construction-related activities shall be prepared and maintained by the Design-Builder, using the forms in Appendix 112E or other forms with a format acceptable to the Department’s Project Manager.

A daily log for construction-related activities shall be maintained by Design-Builder’s Project Manager or his/her designee(s), using Form MURK 2b(DB-CQC) (Appendix 112E) or another form acceptable to the Department’s Project Manager, in which shall be recorded daily in a narrative form all significant occurrences on the Project, including unusual weather, asserted occurrences, events and conditions causing or threatening to cause any significant delay or disruption or interference with the progress of any of the Work, significant injuries to person or property and a listing of each activity depicted on the current monthly plan update which is being actively prosecuted. Also, traffic accidents in the Project area will be noted as well as lane closures in effect at the time of the accident.

For Utility-related Work such data shall be maintained separately for each Utility facility.

For harmful/Hazardous Material remediation Work, such data shall be maintained separately for each site.

Records shall document all QC operations, Inspections, activities, and tests performed, including the Work of Subcontractors. The Design-Builder may use the forms provided by the Department or its own forms providing equivalent information. Such records shall include any delays encountered and Work noted that does not conform to the requirements of the Contract and design together with the corrective actions taken regarding such Work.

The Design-Builder shall complete and submit appropriate documentation at the following times and frequencies:

A) Monthly:
See DB Section 108;
B) Weekly:
The Design-Builder shall maintain and submit records that include factual evidence that required activities or tests have been performed, including the following:
1) Type, number, and results of QC and control activities, including reviews, inspections, tests, audits, monitoring of work performance, and materials analysis;

2) Closely-related data such as qualifications of personnel, procedures, and equipment used;

3) The identity of the QC inspector or data recorder, the type of test or observation employed, the results, and the acceptability of the work, and action taken in connection with any deficiencies noted;

4) Nature of non-conforming work and causes for rejection;

5) Proposed corrective action;

6) Corrective actions taken; and

7) Results of corrective actions.

DB 112-10 MATERIAL CERTIFICATES OF COMPLIANCE


Documentary evidence that material and equipment conform to the procurement requirements shall be available at the job site no less than 24 hours prior to installation or use of such material and equipment. This documentary evidence shall be retained at the job site and shall be sufficient to identify the specific requirements, such as contract documents, codes, standards, or specifications, met by the purchased material and equipment. The effectiveness of the QC by the Design-Builder’s own forces and subcontractors shall be assessed by the Design-Builder and the QC engineering firm at intervals consistent with the importance, complexity, and quantity of the product or services.

The Department reserves the right to inspect and review these documents at any time.

At the completion of the project, the Design-Builder shall submit with the final invoice a certificate of compliance signed by the Design-Builder’s Project Manager and the Construction QC Manager indicating that all materials incorporated in the project conform to the contract requirements.

DB 112-11 FINAL ACCEPTANCE

The Department has the responsibility and authority for Final Acceptance of all work.

The Design-Builder shall complete all work and provide all documents, certifications, and other information in accordance with the contract documents. Final Acceptance will be based on QC testing verified by verification testing and the final inspection. Any deviations from the sampling and testing methods and frequencies indicated in Appendix 112B or the individual specifications will require Department Approval prior to the start of construction on any affected work. If there is a discrepancy between the individual specifications and Appendix 112B, the more stringent requirements shall apply unless otherwise agreed in writing by the Department.

Final Acceptance will be based on certificates of compliance and/or manufacturer’s test results where specified in the individual specification or Appendix 112B.
Deficient Materials and products shall be brought into compliance with Specifications or replaced. The method of reconciliation will be noted in the log of failed tests.
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(Project Name)
DESIGN-BUILD PROJECT

PIN __________

DB CONTRACT DOCUMENTS
PART 2

DB SECTION 112
CONSTRUCTION QC INSPECTION

APPENDIX 112A
CONSTRUCTION QUALITY CONTROL INSPECTION
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*Instructions: This template is for illustrative purposes only. Department Project staff to develop specific QC sampling and testing requirements for each project.*

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<tr>
<th>Specification Section</th>
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</table>
| All                    | ▪ Location and type of Work  
                        ▪ Personnel and Equipment  
                        ▪ Weather and Site conditions  
                        ▪ Checks for Compliance with Design Plans and Project Specifications  
                        ▪ Extent of Work  
                        ▪ Problems encountered | MURK 1d (DB CQC), MURK 2b (DB-CQC), Design-Builder’s Daily QC Project Diary |
| 201 – Clearing and Grubbing | ▪ Clearing and grubbing limits  
                            ▪ Disposal  
                            ▪ Salvage of marketable timber  
                            ▪ Protection and restoration | MURK 1d (DB CQC) |
| 202 – Removal of Structures and Obstructions | ▪ Safety  
                                ▪ Engineering survey  
                                ▪ Utilities (capping and protection)  
                                ▪ Unauthorized entry  
                                ▪ Hazardous Materials occurrence  
                                ▪ Exterminations  
                                ▪ Dust control  
                                ▪ MPT  
                                ▪ Disposal of Materials  
                                ▪ Salvage | MURK 1d (DB CQC) |
| 203 – Excavation and Embankment | Cross reference failing and passing tests | Form GE-469 (DB), Blasting Report |
| | Drilling and blasting operations | |

___________ Project  
PIN ____________  
DB Section 112, App A, Construction QC Inspection  
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<td>Compaction and compactive effort</td>
<td>MURK-1 (DB CQC), Inspector’s Daily Report Form SM-384A, Compaction Control Data Sheet Form SM-417B, Field Compaction Data Sheet – Sand Cone or Volumeter Apparatus Form SM-418B, Field Compaction Data Sheet – Nuclear Direct Transmission</td>
<td></td>
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<tr>
<td>Material source and stockpile construction features</td>
<td>MURK-1 (DB CQC), Inspector’s Daily Report</td>
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<td>Pore water pressures</td>
<td>Form GE-264, Pore Pressure Report/Vibrating Wire Piezometer</td>
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<td>Slope movements</td>
<td>Form GE-422, Slope Indicator Data Sheet</td>
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<tr>
<td>204, Controlled Low Strength Material (CLSM)</td>
<td>▪ Materials  ▪ Placement</td>
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<td>206, Trench, Culvert &amp; Structural Excavation</td>
<td>▪ Safety  ▪ Support and protective systems  ▪ Test pits  ▪ Trench and Culvert excavation  ▪ Disposal of excavated Material</td>
<td>MURK 1d (DB CQC)</td>
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<td>207, Geotextile</td>
<td>Brand name and type</td>
<td>MURK-1 (DB CQC), Inspector’s Daily Report</td>
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<td>Protection of Material</td>
<td>Material acceptance</td>
<td>MURK-1 (DB CQC), Inspector’s Daily Report MURK 14,</td>
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<tr>
<td>209, Soil Erosion and Sediment Control</td>
<td>Checks, tests, and activity relating to mulching, temporary seeding, check dams, strawbales, haybales, sediment traps, turbidity curtains, silt fences, and fence removal</td>
<td>MURK-1 (DB CQC), Inspector’s Daily Report</td>
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<tr>
<td>210, Removal and Disposal of Asbestos Containing Material</td>
<td>▪ Compliance with regulatory standards  ▪ Air quality monitoring  ▪ Disposal</td>
<td>MURK 1d (DB CQC) and forms as required by regulations</td>
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</tbody>
</table>
### Specification Section | Inspection Requirement | Documentation Form(s) |
|--------------------------|------------------------|-----------------------|
| 301, Bituminous Stabilized Course | - Results of stockpile sampling and testing  
- Bituminous materials and stabilized course  
- Pugmill calibration  
- Additional Inspection/documentation  
  - Approved Material incorporated, including source and stockpile  
  - Weather and time of year restrictions met  
  - Placement and compaction | Form GE-454, Granular Material Documentation Form  
Form GEB-352b (DB), Project Inspection Report-Bituminous Stabilized Course  
Form BEB-423b (DB), Bituminous Pugmill Calibration Form  
MURK-1d (DB CQC), Inspector’s Daily Report |
| 303, Optional Flexible Shoulder | Material and Quality Control (QC) per Sections 302, 304 and 401 | See Sections 302, 304 & 401 |
| 304, Subbase Course | - Information documented on MURK 1d  
  - Equipment used for compaction and number of passes  
  - Lift thickness prior to compaction  
  - Thickness of subbase Material placed  
  - Addition of water to subbase  
  - Construction of stockpiles  
  - Only Material from approved source or stockpile incorporated in Work  
- Results of sampling and testing  
- Project gradation tests | MURK 1d (DB CQC), Inspector’s Daily Report  
Form GE-454M, Granular Material Documentation Form  
Form SM-15B, Sieve Analysis Data  
Form SM-198C, Field Sieve Analysis Summary Sheet |
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<td>307, Hydrated Lime Stabilized Subgrade</td>
<td>- Inspect and document the following:</td>
<td>MURK 1d (DB CQC), Inspector’s Daily Report</td>
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<td></td>
<td>▪ Equipment used</td>
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<td>▪ Moisture added</td>
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<td>▪ Safety and protection</td>
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<td>308, Soil Cement Course</td>
<td>- Inspect and document the following:</td>
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<td>▪ Preparation, application of cement, mixing, spreading, placement, compaction, and finishing in accordance with Project Specifications</td>
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<td>▪ Curing and surface treatment</td>
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<td></td>
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<td>GE-454M, Granular Material Documentation Form</td>
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<td>Aggregates</td>
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<td>Aggregate source</td>
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<td>PG binder</td>
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<td>Recycled asphalt pavement</td>
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<td>Plant and Equipment, including Inspection facilities</td>
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<td>402, Hot Mix Pavements</td>
<td>Inspect and document the following:</td>
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<td>Composition of mixtures</td>
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<td>Type and grade of bituminous Material</td>
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<td>Surface and thickness tolerances</td>
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<td>403, Hot Mix Asphalt Pavement for Municipalities</td>
<td>Composition of mix</td>
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<td>Condition of existing surface</td>
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| 18403, Joint and Crack Sealing | Inspect and document:  
  - Equipment  
  - Crack/joint preparation  
  - Discharge temperatures  
  - Curing | MURK 1d (DB CQC), Inspector’s Daily Report |
| 405, Cold Mix Bituminous Pavement (Open Graded) | Inspect and document:  
  - Aggregate  
  - Composition of mixtures  
  - Compliance with weather limitations  
  - Equipment  
  - Preparation of base  
  - Mixing and spreading  
  - Compaction  
  - Surface testing  
  - Pavement sealing  
  - Bituminous material | MURK 1d (DB CQC), Inspector’s Daily Report  
Form BR-162, Bituminous Material Certified Shipment Notice |
| 407, Tack Coat | Inspect and document:  
  - Bituminous material  
  - Preparation of tack coat  
  - Time to paving (curing/breaking)  
  - Maintenance of traffic  
  - Application | Form BR-162c 9DB), Bituminous Material Certified Shipment Notice  
Form BR-170 (DB), Bitumen or Mix Sample  
MURK 1d (DB CQC), Inspector’s Daily Report |
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| 410, Bituminous Surface Treatment, Single Course | Inspect and document:  
- Bituminous material  
- Aggregate compatibility with bitumen  
- Compliance with weather and seasonal limitations  
- Surface preparation  
- Application  
  - Bitumen  
  - Cover aggregate  
- Cleanup | Form BR-162c 9DB), Bituminous Material Certified Shipment Notice  
Form BR-170 (DB), Bitumen or Mix Sample  
MURK 1d (DB CQC), Inspector’s Daily Report |
| 411, Stabilized Gravel Surface Course | Inspect and document:  
- Stockpile sampling and testing results  
- Aggregate source and stockpile construction  
- Chemical additives in compliance with specifications  
- Mixing  
- Placing  
- Compaction  
- Finishing | Form GE-454M, Granular Material Documentation Form  
MURK 1d (DB CQC), Inspector’s Daily Report |
| 490, Cold Milling | Inspect and Document:  
- Controls  
- Equipment  
- Cleaning  
- Milling | MURK 1d (DB CQC), Inspector’s Daily Report |
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| 501, Portland Cement Concrete, General | Inspect and document:  
  - Plant  
  - Materials  
  For Structural Concrete, information required on MURK 5d (DB CQC) |  
  - BR 316a, Daily Concrete Batch Plant Report (on-and off-site plants) with Materials Acceptance Records  
  - Plant Inspector’s Diary  
  - Copy of mix design or Form BR-329, Concrete Mix Design Sheet  
  - Cement shipment certifications or cement shipment authorization and cement sample logs  
  - BR 342, Materials certification (certified batches only)  
  - Delivery tickets  
  - MURK 5d (DB CQC), Design-Builder’s Structural Concrete Inspector’s Daily Report |
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| 502, Portland Cement Concrete Pavement | Inspect and document information required on specified form, including:  
- High & low ambient temperature during placement  
- Mixer type  
- Slump  
- Air content  
- Concrete specifications  
- BR 316 Report number  
- Concrete Mixing, Transporting & Discharging checks five (5) times each production day:  
  - Central Mix – Time, End of discharge  
  - Truck mix – time, begin and end of mixing, end of discharge and mixing revolutions  
  - Transit Mix – Time, begin and end of discharge and mixing revolutions  
- Thickness Tolerance  
- Compliance with weather and seasonal limitations  
- Equipment  
- Forms  
- Preparation of subbase  
- Placing and spreading concrete  
- Finishing and texturing  
- Joints  
- Curing  
- Removing Forms (fixed form paving)  
- Protection of pavement  
- Surface test  
- Sealing joints | MURK 3, Concrete Pavement Daily Field Inspection Report |
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| 503, Portland Cement Concrete Foundation for Pavement | Inspect and Document:  
- Materials – See 501  
- Surface tolerance  
- Texturing  
- Curing | MURK 3, Concrete Pavement Daily Field Inspection Report |
| 551, Pile and Pile Driving Equipment |  
- Inspect equipment and prepare Form BD 138M, Pile and Pile Driving Equipment Data  
- Pile material deliveries  
- Complete Pile Driving Record  
- Inspect and document:  
  - Storage and handling of piles  
  - Preparation of piles  
    - Shoes  
    - Splices  
  - Driving method(s)  
  - Length of piles  
  - Variation in pile alignment  
  - Cutting off piles and pile casings  
  - Painting exposed piles  
  - Dynamic testing of piles  
  - Reject defective piles and document reason and disposition | Form BD 138M, Pile and Pile Driving Equipment  
MURK 1d (DB CQC), Inspector’s Daily Report  
Form BD-25M, Pile Driving Record  
Form BD-26M, Pile Driving Record Daily Summary  
MURK 1d (DB CQC), Inspector’s Daily Report |
| 552, Support & Protective Systems |  
- Materials  
- Safety  
- Permanent Sheeting  
- Temporary sheeting  
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- Excavation protective systems | MURK 1d (DB CQC), Inspector’s Daily Report |
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| 553. Cofferdams and Water Diversion Structures | ▪ Materials  
▪ Cofferdams  
   o Structure  
   o Dewatering Equipment  
   o Sediment removal areas  
▪ Temporary water diversion structure  
▪ Removal | MURK 1d (DB CQC), Inspector’s Daily Report |
| 554, Mechanically Stabilized Earth System | ▪ Materials  
▪ Construction  
   o Placement area  
   o Facing units  
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     ▪ Methods & Equipment  
     ▪ Leveling pad  
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     ▪ Reinforcing | |
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| 556, Reinforcing Steel for Concrete Structures | Inspect and document:  
- Storing and handling  
- Placing and fastening  
- Field bending  
- Field repair  
- Splices  
- Placement in structural slabs  
- Stud shear connectors for bridges | MURK 1d (DB CQC), Inspector’s Daily Report |
| 557, Superstructure Slabs and Structural Approach Slabs | Inspect and document:  
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  - Support Systems  
  - Haunch depths  
  - Permanent corrugated metal forms  
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- Placing and fastening reinforcing steel  
- Concreting Operations (see 555)  
- Finishing Integral Wearing Surfaces | MURK 1d (DB CQC), Inspector’s Daily Report |
| 558, Transverse Sawcut Grooving of Structural Slab Surface | Inspect and document:  
- Grooving layout  
- Grooving geometry  
- Grooving operations | MURK 1d (DB CQC), Inspector’s Daily Report |
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| 570, Environmental Ground & Water Protection | ▪ Materials  
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| 571, Treatment and Disposal of Paint Removal Waste | ▪ Containers  
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| 582, Removal and Replacement of Structural Concrete | - Materials  
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| 602, Rehabilitation of Culvert and Storm Drain Pipe | - Materials  
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- Installation  
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- Workmanship  
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| 609, Curb and Curb & Gutter | ▪ Materials  
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| 611, Planting | ▪ Materials  
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<td>- Materials&lt;br&gt;- Ground Surface Preparation&lt;br&gt;- Bedding Material&lt;br&gt;- Stone Filling&lt;br&gt;- Riprap (Plain and Grouted)&lt;br&gt;- Concrete Block Paving&lt;br&gt;- Gabions</td>
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<td>623, Screened Gravel, Crushed Gravel, Crushed Stone, Crushed Slag</td>
<td>- Materials&lt;br&gt;- Placement</td>
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<td>630, Barricades</td>
<td>- Materials&lt;br&gt;- Excavation&lt;br&gt;- Erection&lt;br&gt;- Backfill</td>
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| 633, Conditioning Existing Pavement                       | - Materials  
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| 640, Reflective Pavement Marking Paints                    | - Materials  
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647, Removing, Storing and Relocating Signs | ▪ Materials  
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650, Jacking Reinforced Concrete Pipe | ▪ Materials  
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<td>654, Impact Attenuators</td>
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<td>MURK 1d (DB CQC), Inspector’s Daily Report</td>
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<td>680, Traffic Signals</td>
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DESIGN-BUILD PROJECT

PIN __________

DB CONTRACT DOCUMENTS

PART 2

DB SECTION 112

CONSTRUCTION QC-QA

APPENDIX 112B

QC TESTING

(To be revised to be consistent with Department requirements)

[Instructions: Department Project staff to develop specific QC sampling and testing requirements for each project in consultation with Materials Bureau.]
(Project Name)
DESIGN-BUILD PROJECT

PIN ____________

DB CONTRACT DOCUMENTS
PART 2

DB SECTION 112
CONSTRUCTION QA -QC

APPENDIX 112C
QUALITY ASSURANCE
## App. 112C Verification Sampling and Testing Guide (QA)

<table>
<thead>
<tr>
<th>MATERIAL</th>
<th>TESTS PERFORMED</th>
<th>RECOMMENDED FREQUENCY GUIDE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Embankment</td>
<td>Gradation, Compaction &amp; Density, Surfacing required</td>
<td>1 for each 20,000 CY or 2 per Section min.</td>
</tr>
<tr>
<td>Backfill</td>
<td>Gradation, Compaction &amp; Density, Surfacing Required</td>
<td>2 per Section minimum</td>
</tr>
<tr>
<td>Subbase (includes treated material)</td>
<td>Gradation, Liquid Limit, Plastic Index</td>
<td>1 per 10,000 tons or 2 per Section min.</td>
</tr>
<tr>
<td>Untreated Base Course</td>
<td>Gradation, Liquid Limit, Plastic Index</td>
<td>1 per 10,000 tons or Minimum 2 per Section</td>
</tr>
<tr>
<td>Base Course</td>
<td>Gradation &amp; Extraction on loose sample</td>
<td>1 per 10,000 tons or Minimum 2 per Section</td>
</tr>
<tr>
<td>Bituminous Surfacing</td>
<td>Gradation &amp; Extraction on loose sample</td>
<td>1 per 10,000 tons or Minimum 2 per Section</td>
</tr>
<tr>
<td>Open Graded Friction Course</td>
<td>Gradation or Extraction &amp; Gradation on loose sample</td>
<td>Minimum 2 per section</td>
</tr>
<tr>
<td>Concrete</td>
<td>Compressive Strength Cylinders, Slump, Air Content, &amp; Unit Weight</td>
<td>1 set per 500 cy - Minimum 2 per Section</td>
</tr>
<tr>
<td>Concrete Aggregate</td>
<td>Gradation</td>
<td>1 each of FA &amp; CA per source per Section</td>
</tr>
<tr>
<td>Subbase &amp; Base</td>
<td>Density &amp; Thickness</td>
<td>1 per 15,000 tons with Minimum of 2 per Section</td>
</tr>
<tr>
<td>(includes treated material)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bituminous Surfacing</td>
<td>Density</td>
<td>1 per 10,000 tons with Minimum of 2 per Section</td>
</tr>
<tr>
<td>In-situ Treated Base</td>
<td>Briquettes &amp; Density</td>
<td>Minimum 4 per Section</td>
</tr>
</tbody>
</table>

### Notes:
1. The sampling location for Verification Samples shall be the same as for the QC sample.
2. When relatively small quantities of non-structural concrete are accepted on the basis of reduced engineering control, sampling, and testing, the frequency for Verification Samples may be reduced as directed by the Department’s Project Manager.
(Project Name)
DESIGN-BUILD PROJECT

PIN __________

DB CONTRACT DOCUMENTS
PART 1

DB SECTION 112
CONSTRUCTION QA-QC

APPENDIX 112D
INDEPENDENT ASSURANCE
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## APPENDIX 112D – INDEPENDENT ASSURANCE

### 1.0 INDEPENDENT ASSURANCE SAMPLING AND TESTING GUIDE (IA)

<table>
<thead>
<tr>
<th>MATERIAL</th>
<th>TESTS PERFORMED</th>
<th>RECOMMENDED FREQUENCY GUIDE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Embankment</td>
<td>Gradation, Compaction &amp; Density, Surfacing required</td>
<td>1 for each 80,000 CY or 1 per project min.</td>
</tr>
<tr>
<td>Backfill</td>
<td>Gradation, Compaction &amp; Density, Surfacing required</td>
<td>1 per project minimum</td>
</tr>
<tr>
<td>Subbase (includes treated material)</td>
<td>Gradation, Liquid Limit, Plastic Index</td>
<td>1 per 40,000 tons or 1 per project min.</td>
</tr>
<tr>
<td>Untreated Base Course</td>
<td>Gradation, Liquid Limit, Plastic Index</td>
<td>1 per 40,000 tons or 1 per project min.</td>
</tr>
<tr>
<td>Treated Base Course</td>
<td>Gradation &amp; Extraction on loose sample</td>
<td>1 per 40,000 tons or Minimum 1 per project</td>
</tr>
<tr>
<td>Bituminous Surfacing</td>
<td>Gradation &amp; Extraction on loose sample</td>
<td>1 per 40,000 tons or Minimum 1 per project</td>
</tr>
<tr>
<td>Open Graded Friction Course</td>
<td>Gradation or Extraction &amp; Gradation on loose sample</td>
<td>Minimum 1 per project</td>
</tr>
<tr>
<td>Concrete</td>
<td>Compressive Strength Cylinders, Slump, Air Content, &amp; Unit Weight</td>
<td>1 set per 2,000 cy – Minimum 1 per Project Structural – 1 set per 40,000 sy or minimum 1 set per project PCCP</td>
</tr>
<tr>
<td>Concrete Aggregate</td>
<td>Gradation</td>
<td>1 each of FA &amp; CA per source per project</td>
</tr>
<tr>
<td>Subbase &amp; Base (includes treated material)</td>
<td>Density &amp; Thickness</td>
<td>1 per 60,000 tons with Minimum of 1 per project</td>
</tr>
<tr>
<td>Bituminous Surfacing</td>
<td>Density</td>
<td>1 per 40,000 tons with Minimum of 1 per project</td>
</tr>
<tr>
<td>In-situ Treated Base</td>
<td>Briquettes &amp; Density</td>
<td>Minimum 1 per project</td>
</tr>
</tbody>
</table>

### NOTES:
1. The sampling location for IA Samples is the same as for the QA sample.
2. When relatively small quantities of non-structural concrete are accepted on the basis of reduced engineering control, sampling, and testing, the frequency for IA Samples may be reduced as directed by the Department’s Project Manager.
2.0 INDEPENDENT ASSURANCE TESTING REQUIREMENTS

Tolerance Used to Compare QA Tests to Independent Assurance Tests

CHARACTERISTIC

Compaction & In-Place Density: ± 3 PCF*
Moisture: ± 2 Units
Plasticity Index (P.I.): ± 3 Units

*Only if proctors are run by both QA & Independent Assurance, otherwise ±5 PCF

GRADATION

#4 or larger: ± 5 Units
#8 through #50: ± 4 Units
#200: ± 2 Units*
Fractured Faces: ± 10 Units
Sand Equivalent: ± 4 Units

*For high volume change soil the allowable tolerance shall be ± 5 Units

CONCRETE

Slump: ± 0.5"
Air: ± 1 Units
Unit Weight: ± 3.0 PCF
Compressive Strength: ACI Rules
2 Cylinders ± 5.6%  3 Cylinders ± 8.4%
**ASPHALT**

<table>
<thead>
<tr>
<th>Property</th>
<th>Tolerance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Density (Cores)</td>
<td>± 3 PCF</td>
</tr>
<tr>
<td>Density (Nuclear)</td>
<td>± 4%</td>
</tr>
<tr>
<td>Stability</td>
<td>± 500 Lbs.</td>
</tr>
<tr>
<td>Flow</td>
<td>± 3 Units</td>
</tr>
<tr>
<td>Bulk Density</td>
<td>± 0.025 Units</td>
</tr>
<tr>
<td>Maximum Specific Gravity</td>
<td>± 0.020 Units</td>
</tr>
<tr>
<td>Extraction</td>
<td>± 0.8 Units</td>
</tr>
</tbody>
</table>
This page is intentionally left blank.
(Project Name)
DESIGN-BUILD PROJECT

PIN __________

DB CONTRACT DOCUMENTS
PART 2

DB SECTION 112
CONSTRUCTION QA-QC

APPENDIX 112E
FORMS
APPENDIX 112E

FORMS INDEX

BD 25M (DB)   Pile Driving Record
BD 25M Summary (DB)  Pile Driving Summary
BD 138M (DB)  Pile Driving Equipment Data
BR 162C (DB)  Bituminous Material
BR 170M (DB)  Bitumen Sample
BR 316a  Concrete Batch Plant Report
BR 329  Concrete Mix Design Sheet
BR 342  Materials Certification
Concrete Cylinder Results
GE 352b (DB)  Bituminous Course
GE 423b (DB)  Bituminous Pugmill Calibration
MURK 1d (DB)  QC Inspector’s Daily Report
MURK 2b (DB-CQC)  Construction QC Diary
MURK 4d (DB)  DB Asphalt Inspection
MURK 5d (DB)  Structural Concrete Inspector’s Report
NC-C  Construction Non-Conformance Report
### PILE DRIVING RECORD

**DESIGN-BUILDER**

**JOB STAMP**

Pile No. ___________ IR # ___________ Date _______

Time Begun _______________ Time Ended _________

Ultimate Load kN _______________________________

Location in Structure ____________________________

Hammer: Make, Model, and Nic __________________________________________________________

Bridge Name/BIN ____________________________________________________________

Estimated Length (m) _____________________ Total Length Placed in Leads (m) __________

Cut-off Elevation () ___________________ Ground elev. @ time of driving* ________________

*0 – ground at time of driving

<table>
<thead>
<tr>
<th>Depth of toe</th>
<th>Blows Per cm</th>
<th>BPM</th>
<th>Depth of toe</th>
<th>Blows Per cm</th>
<th>BPM</th>
<th>Depth of toe</th>
<th>Blows Per cm</th>
<th>BPM</th>
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</tbody>
</table>

**ABOVE MUST BE FILLED OUT COMPLETED – SUBMIT REPORTS DAILY**

Length Driven in Ground (m) ___________ Pile Toe Elevation ___________ blows for last 10 mm ___________

Remarks _______________________________________________________________________________________

______________________________________________________________________________________________

__________________________________________________________________

---

For refusal indicate

Construction QC Manager ________________________________________________________________________

---

BD25M (DB) 1 of 2
NOTES:

One pile in each 10 driven, and at least one in each footing, must be recorded pile, and submitted as such. One of the piles selected should be near a boring location, if possible.

At the start of pile driving, submit a pile layout sketch for the whole structure, with each pile numbered. Boring locations should be shown on the sketch.

Refusal is defined as 8 blows for 10 mm. Once refusal is achieved the pile should be struck with another 5 blows.

The energy of the hammer and its effectiveness rely upon different factors depending on the type of hammer.

-Air/Stream Hammers – The Design-Builder should provide a compressor or steam boiler capacity and other adequate equipment to maintain the rated speed of the hammer during the full time of driving a pile.

  Single Acting – The energy is a function of the stroke and this stroke should be checked and recorded at the ordinary driving speeds.

  Double or Differential Acting – The energy is a function of the speed of the hammer, and this speed should be checked and recorded.

-Diesel Hammers – The hammers should be in proper working order including rings, exhaust ports, and lubrication.

  Single Acting or Open Ended – The energy is a function of the stroke of the hammer which is related to the strokes per minute. This stroke and/or stroke rate should be checked against the driving criteria and recorded.

  Double Acting or Closed Ended – The energy is a function of the bounce chamber pressure, and the pressure should be checked against the driving criteria and recorded.
**PILE DRIVING RECORD**

**DAILY SUMMARY**

**DESIGN-BUILDER**

**Job Stamp**

<table>
<thead>
<tr>
<th>File No.</th>
<th>Length Placed In Leads</th>
<th>Energy Control Recorded</th>
<th>Length Driven in Ground</th>
<th>Pile Toe Elevation</th>
<th>Blows for the Last 50 mm</th>
<th>30 mm</th>
<th>20 mm</th>
<th>10 mm</th>
<th>Remarks*</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

Remarks________________________________________

Bearing piles shall be given at least five blows after Refusal (8 blows for 1 cm). Indicate number of blows Under “Remarks”.

Construction QC Manager

BD25M Summary (DB)
# PILE DRIVING EQUIPMENT DATA

P.I.N.: ____________ Contract No.: ____________ Pile Driving Design-Builder/Subcontractor (Piles Driven By):

Project: __________________________________________

County: __________________________________________

Manufacturer: ____________________________________ Model: _______________

<table>
<thead>
<tr>
<th>HAMMER</th>
<th>Type: ____________________________</th>
<th>Serial No.: ___________________</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Rated Energy: ______________ (kJoules) @ ____________</td>
<td>Length of Stroke (m)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>HAMMER</th>
<th>Thickness: ________________________ (mm)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CUSHION</td>
<td>Modulus of Elasticity: _________________ (MPa)</td>
</tr>
<tr>
<td>(Capblock)</td>
<td>Coefficient of Restitution: ______________</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Helmet</th>
<th>Bonnet</th>
<th>Drivehead</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Weight: ______________ (kN)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PILE</th>
<th>Material: ______________ Area: ______________ (cm²)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CUSHION</td>
<td>Thickness: ______________ (mm)</td>
</tr>
<tr>
<td>(For Concrete, Piles only)</td>
<td>Modulus of Elasticity: ______________ (MPa)</td>
</tr>
<tr>
<td></td>
<td>Coefficient of Restitution: ______________</td>
</tr>
</tbody>
</table>

1 | 2 | 3 | 4
---|---|---|---
Structure Name: |
Substructure: |
Pile Information: |
Material: |
Weight/m (kg/m): |
Length in Leads (m): |
Ultimate Load (kN): |
Splice Description: |
Toe Treatment Description: |

Copy Distribution:
Deputy Chief Engineer
Regional Director
Department’s Project Manager
Construction QC Manager

SUBMITTED BY: _____________________________ Date: __________

Phone/Fax: ____________________ / _____________________
# CUSHION INFORMATION
(Data as used by NYSDOT)

<table>
<thead>
<tr>
<th>Material</th>
<th>Modulus of Elasticity E (MPa)</th>
<th>Coefficient of Restitution e(510)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aluminum</td>
<td>68970</td>
<td>.8</td>
</tr>
<tr>
<td>Blue Nylon (MC-904)</td>
<td>1207</td>
<td>.92</td>
</tr>
<tr>
<td>Conbest</td>
<td>1931</td>
<td>.8</td>
</tr>
<tr>
<td>Duracush</td>
<td>241</td>
<td>.82</td>
</tr>
<tr>
<td>Forbon</td>
<td>2759</td>
<td>.85</td>
</tr>
<tr>
<td>Fosterlon</td>
<td>2621</td>
<td>.85</td>
</tr>
<tr>
<td>Force Ten</td>
<td>979</td>
<td>.8</td>
</tr>
<tr>
<td>Hamortex</td>
<td>862</td>
<td>.77</td>
</tr>
<tr>
<td>Micarta</td>
<td>1552</td>
<td>.8</td>
</tr>
<tr>
<td>Plywood</td>
<td>207</td>
<td>.5</td>
</tr>
<tr>
<td>Urethane</td>
<td>1207</td>
<td>.72</td>
</tr>
<tr>
<td>Nycast 6MPB Cast Nylon</td>
<td>1428</td>
<td>.91</td>
</tr>
<tr>
<td>Ryertex</td>
<td>297</td>
<td>.93</td>
</tr>
<tr>
<td>Non-Impv. Polymer S-542/S-540</td>
<td>1379</td>
<td>.90</td>
</tr>
<tr>
<td>Impv. Polymer S-539/S-530</td>
<td>1379</td>
<td>.84</td>
</tr>
<tr>
<td>Oak (Parallel)</td>
<td>5173</td>
<td>.50</td>
</tr>
<tr>
<td>Oak (Transverse)</td>
<td>414</td>
<td>.50</td>
</tr>
<tr>
<td>Klinger</td>
<td>170</td>
<td>.60</td>
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<tr>
<td>Bongossi Wood</td>
<td>2000</td>
<td>.75</td>
</tr>
<tr>
<td>Nylon/Klinger</td>
<td>1179</td>
<td>.84</td>
</tr>
<tr>
<td>MMPAC</td>
<td>2531</td>
<td>.88</td>
</tr>
</tbody>
</table>

# SUBSTRUCTURE

Give designation of corresponding abutment or pier if pile size or length varies from one substructure to another.

# PILE INFORMATION

Include: Pile type, size, thickness, taper.

Length in Leads: Give the length actually used and not the estimated lengths on the plans.
BITUMINOUS MATERIAL CERTIFIED SHIPMENT NOTICE

If one transport supplies two or more projects, a separate BR162c(DB) is required for each project.

THIS FORM SHALL BE EXECUTED FOR ALL SHIPMENTS OF BITUMEN

<table>
<thead>
<tr>
<th>PRIMARY SOURCE*</th>
<th>LOCATION (Mailing address)</th>
<th>LOT NO. **</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUPPLIER (Present owner of material being shipped)</td>
<td>LOCATION (Mailing address)</td>
<td></td>
</tr>
<tr>
<td>SHIPMENT DESTINATION</td>
<td>LOCATION (Mailing address)</td>
<td></td>
</tr>
<tr>
<td>GAL. @ 60 f</td>
<td>SPEC. GRAVITY @ 60 f</td>
<td>VEHICLE NO.</td>
</tr>
</tbody>
</table>

SHIPPED IN
- BULK TRANSPORT
- BULK R.R.
- BULK BARGE
- BARRELS
- DISTRIBUTOR

<table>
<thead>
<tr>
<th>ITEM GRADE</th>
<th>PRIMARY SOURCE</th>
<th>LOCATION</th>
<th>LOT NO.</th>
<th>GALLONS @ 60 F</th>
<th>% TOTAL</th>
<th>SPEC. GRAVITY @ 60 f</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

The above indicated material has been tested and a CERTIFIED TEST REPORT, dated __________ indicating conformance with all requirements of applicable Department Specifications is on file.

I HEREBY CERTIFY THAT THE ABOVE INFORMATION IS CORRECT TO THE BEST OF MY KNOWLEDGE

________________________________       ____________________________        _______________
Authorized Signature (For Supplier)                               Title                                             Date

* PRIMARY SOURCE – Refinery, Line-bend Plant, Emulsion Plant, or Intermediate Storage-Facility where BITUMEN is SAMPLED, TESTED, and CERTIFIED or RECERTIFIED.

** TEMPERATURE VISCOSITY CURVE (KINEMATIC)
One copy should be sent with the first shipment of each LOT of Bitumen made to any Mix Plant or Project.
(Not required for Tars, Filler, Emulsions or Emulsion Bases).

COPY DISTRIBUTION:         With Shipment
                          Supplier
                          Department’s Project Manager
                          Construction QC Manager

BR162c(DB) Form
# BITUMEN SAMPLE

**FOR LAB USE ONLY**

<table>
<thead>
<tr>
<th>Test No.</th>
<th>Date Rec’d.</th>
<th>Serial No.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Primary Source</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot No.</td>
<td>Item No.</td>
</tr>
<tr>
<td>Sampled By</td>
<td>Region No.</td>
</tr>
</tbody>
</table>

## COMPLETE THIS SECTION FOR SAMPLES TAKEN AT BITUMINOUS CONCRETE PLANT

<table>
<thead>
<tr>
<th>Name of Owner</th>
<th>Name of Supplier</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Cont. or HM No.</td>
<td>Vehicle No.</td>
</tr>
<tr>
<td>Remarks</td>
<td>Station and Lane</td>
<td></td>
</tr>
<tr>
<td>Facility No.</td>
<td>Liters Rep at 16°C</td>
<td></td>
</tr>
</tbody>
</table>

**Copy Distribution:**
- Sample Container
- Department’s Project Manager
- Construction QC Manager
### DAILY CONCRETE BATCH PLANT REPORT

<table>
<thead>
<tr>
<th>REPORT NO.</th>
<th>DATE</th>
<th>REGION</th>
<th>FACILITY NO.</th>
<th>JOB STAMP</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

#### PLANT

LOCATION

MIXER TYPE: ☐ TRANSIT ☐ TRUCK ☐ CENTRAL ☐ DRY

<table>
<thead>
<tr>
<th>MATERIAL</th>
<th>ITEM</th>
<th>CODE</th>
<th>TYPE</th>
<th>SOURCE (Brand name, Manufacture Location)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEMENT AND / OR POZZOLAN(S)</td>
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<tr>
<td>C1</td>
<td></td>
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<td>C2</td>
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<tr>
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<tr>
<th>AGGREGATE</th>
<th>ITEM</th>
<th>SOURCE NO.</th>
<th>SOURCE (Company name, Source location)</th>
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<tr>
<td>OTHER</td>
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WATER SUPPLY: ☐ MUNICIPAL ☐ WELL ☐ POND ☐ STREAM ☐ OTHER (explain)

#### AUTHORIZED SHIPMENTS

<table>
<thead>
<tr>
<th>PROJECT</th>
<th>CLASS</th>
<th>QUANTITY</th>
<th>MATERIALS USED IN CONCRETE:</th>
<th>(CIRCLE APPROPRIATE ITEMS)</th>
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<tr>
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<td>C1   C2  C3  C4  M1  M2  M3  M4  M5  A1  A2  A3  A4</td>
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REMARKS:

_______________________________________________________________________________________

_______________________________________________________________________________________

PLANT INSPECTOR SIGNATURE

PROJECT REVIEWER SIGNATURE

Form BR316a
## CONCRETE MIX DESIGN SHEET

### MATERIALS BUREAU

<table>
<thead>
<tr>
<th>PLANT NAME:</th>
<th>DATE:</th>
<th>(A)</th>
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<tbody>
<tr>
<td>LOCATION:</td>
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</tbody>
</table>

### CEMENT

\[
\text{Cement} \left( \frac{\text{H}_2\text{O} \text{ Req.'t.}}{\text{W/C Ratio}} \right) = \text{(Cement Wt.)}
\]

### % SAND

\[
\frac{\text{(Basic % Sand)} + \left( \frac{\text{Sand F. M.}}{\text{(U. Wt. PC) - 2.80} \times 10.0} \right)}{\text{Corr. % Sand}} = \frac{(\text{Corr. % Sand})}{100} - \frac{\text{(Corr. % Sand)}}{100} = \frac{\text{(C.A.)}}{100}
\]

### MIX COMPUTATIONS

<table>
<thead>
<tr>
<th>1 Cu. Yd. Batch</th>
<th>SSD (1)</th>
<th>Unit (2)</th>
<th>Absolute Vol. (3)</th>
<th>Sand % Moist</th>
<th>Sand Scale Weight</th>
<th>Added Water (G)</th>
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<tbody>
<tr>
<td>Water</td>
<td>62.4</td>
<td>0.0</td>
<td></td>
<td>0.0</td>
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<tr>
<td>Cement</td>
<td>0.5</td>
<td>1.0</td>
<td></td>
<td>1.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Air Content (0.0 \times 27.000) =</td>
<td></td>
<td></td>
<td></td>
<td>2.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aggregate Volume:</td>
<td>27.000 - (Sub Total) (Agg. Vol.)</td>
<td></td>
<td></td>
<td>2.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fine Aggregate Volumes:</td>
<td>0. \times (Corr. % Sand) (Agg. Vol.)</td>
<td></td>
<td></td>
<td>3.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coarse Aggregate Volumes</td>
<td>Total 0. \times ________ = _________</td>
<td></td>
<td></td>
<td>4.0</td>
<td></td>
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</tbody>
</table>

### Agg. Sizes

\[
\begin{align*}
    & \times \frac{\text{(C.A. Vol.)}}{\text{(C.A. Vol.)}} = 5.0 \\
    & \times \frac{\text{(C.A. Vol.)}}{\text{(C.A. Vol.)}} = 6.0 \\
    & \times \frac{\text{(C.A. Vol.)}}{\text{(C.A. Vol.)}} = 7.0 \\
\end{align*}
\]

### TOTAL

### REMARKS:

- 
- 
- 

### COMPUTED BY _________________________ CHECKED BY _________________________
## BASIC DESIGN CRITERIA
(CUBIC YARD)

<table>
<thead>
<tr>
<th>Class</th>
<th>Cement (lbs.)</th>
<th>W/C Ratio</th>
<th>Water Requirement (lbs.)</th>
<th>% Air</th>
<th>Basic % Sand</th>
<th>Slump Range (ins.)</th>
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</thead>
<tbody>
<tr>
<td>A</td>
<td>606</td>
<td>0.46</td>
<td>279</td>
<td>6.0</td>
<td>36.2</td>
<td>2 ½ - 3 ½</td>
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<tr>
<td>B</td>
<td>517</td>
<td>0.46</td>
<td>238</td>
<td>5.0</td>
<td>33.2</td>
<td>2 - 3</td>
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<tr>
<td>C</td>
<td>605</td>
<td>0.44</td>
<td>266</td>
<td>6.0</td>
<td>35.8</td>
<td>1 ½ - 2 ½</td>
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<tr>
<td>D</td>
<td>725</td>
<td>0.44</td>
<td>319</td>
<td>7.5</td>
<td>45.8</td>
<td>2 ½ - 3 ½</td>
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<td>E</td>
<td>648</td>
<td>0.44</td>
<td>285</td>
<td>6.0</td>
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<td>F</td>
<td>716</td>
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<td>6.0</td>
<td>34.6</td>
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<td>G</td>
<td>685</td>
<td>0.45</td>
<td>308</td>
<td>5.0</td>
<td>36.0</td>
<td>7 - 8</td>
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<td>H</td>
<td>675</td>
<td>0.44</td>
<td>297</td>
<td>6.0</td>
<td>40.0</td>
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</tbody>
</table>

**NOTE:** The data is based upon a fine aggregate fineness modulus of 2.80 and a median coarse aggregate gradation.
MATERIALS CERTIFICATION

☐ Portland Cement Concrete
☐ Asphalt Concrete

SHIPPED FROM:

PLANT: _______________________________ PLANT NO. __________
LOCATION: ____________________ REGION __________
__________________________________________ SHIPPING DATE: _________

SHIPPED TO:

PROJECT NO. _________________________
LOCATION ____________________________
__________________________________________

<table>
<thead>
<tr>
<th>Class/Mix Type *</th>
<th>Quantity</th>
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</tbody>
</table>

*Use Item Number when material is not designated by Class/Mix Type

I certify that the material delivered with the delivery ticket to the above noted project was proportioned in accordance with the requirements of the Contract Specifications for the specific class/mix/item noted using New York State Department of Transportation approved materials.

BY ________________________________

TITLE ______________________________ DATE: __________________
<table>
<thead>
<tr>
<th>Cylinder Set #</th>
<th>Date Taken</th>
<th>Pour Location &amp; Pour #</th>
<th>Date Sent To Region</th>
<th>Results</th>
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</tbody>
</table>
# PROJECT INSPECTION REPORT
## BITUMINOUS STABILIZED COURSE

**Date:** _____________________

**To:** Department’s Project Manager

**Attn:** ______________________________________________

**From:** _______________________________   _________________________

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project ________________________________</td>
<td>Region __________</td>
</tr>
</tbody>
</table>

**Contract No.** ________________  **P.I.N.** ________________  **Item** ________________

**Construction QC Manager** ______________________________  **Design-Builder** ______________________________

**Gravel Source** ___________________  **Stockpile No.** ________________  **Amount** ________________ m³

**Moisture Content at the Time of Mixing** ________________%

**Asphalt Item Used in Mix** __________________________________

**Recommended Application** ________________ L/m³ (Loose)

**Amount of Asphalt Applied** ________________ L/m³ (Loose)

**Temperature of Asphalt in Tanker °C** ________________

**Manufacturer of Pugmill:** _________________________  **Model or Serial No.** ________________

**Continuous** ________________ or **Batch Type** ________________  **Twin Shift:** Yes _______  No _______

**Length of Mixing Area Beyond Point of Bituminous Application:** ________________ m

**Surge Hopper Capacity** ________________ m³ or **Dimensions:** L ________ W ________ H ________

**Bituminous Material Totalizing Meter:** Yes ________________  No ________________

**Prime Distributor of Asphalt** __________________________________

**City** ____________________________________  **Lot Number** ________________

**Width of Shoulders** ________________  **Layer Thickness** ________________ mm

**Preliminary Curing Time** ________________  **Roller Used** __________________________________

**Location of Mixed Sample** __________________________________

**Observations and Comments** __________________________________

___________________________________________________________________________________
New York State Department of Transportation

BITUMINOUS PUGMILL CALIBRATION FORM

Date ____________________

To: Department’s Project Manager

Attn: ___________________________

From: __________________________

Project _________________________  Region No. ____________  County __________________

P.I.N. ___________  Contract No. __________________  Construction QC Manager __________________

Serial No. of Meter/Pugmill ____________________________  Pugmill Owner _______________________

VOLUME OF GRAVEL

Truck No. _______________________ Volume of Truck (a) ________ (b) _________ (c) __________ m³

Loading Time  (a) Min. _____ Sec. ____            (b) Min. ____ Sec.____                (c) Min. ____ Sec.____

METER CALIBRATION BY VOLUME

Water: 151L ________ mm ________     170 L ________ mm ________      189 L _______ mm _______

mm/L ___________________

Test 1   Test 2   Test 3   Test 4

Final Meter Reading
Beginning Meter Reading
Liters Delivered by Meter
mm from Top of Empty Drum
Liters of Asphalt in Drum (actual)
Percent Error*

METER CALIBRATION BY WEIGHT

Specific Gravity of Asphalt ____________

Final Meter Reading
Beginning Meter Reading
Liters Delivered by Meter
Weight of Drum and Asphalt
Liters of Asphalt (actual) (wgt sp gr)
Percent Error*

* Percent Error = Difference between delivered and actual Liters divided by actual Liters.

Remarks ____________________________________________________________________________

____________________________________________________________________________________

GE423b (DB) Form
QC INSPECTOR’S DAILY REPORT

Date of Inspection:

Day of Week: S M T W T F S

I.R. No.: 

Sheet No. of Sheets

If pertinent to the Construction Operation

<table>
<thead>
<tr>
<th>AM</th>
<th>PM</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

Weather

Temperature

DESCRIPTION OF WORK PERFORMED AND INSPECTED

Specify for each operation: PC No., Sub-Contractor (if any), Location and nature of work
I certify that the work described in this report was incorporated into this project on the date of this IR, unless otherwise noted. I also certify that I personally inspected this work.

Inspector's Signature: __________________________ Date Prepared: __________ Date Submitted: __________

Reviewed By: __________________________ Const QC Mgr.

<table>
<thead>
<tr>
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<td>OPERATORS</td>
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<td>LABORERS</td>
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MAJOR CONTRACT OPERATIONS

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<th>I.R. No.</th>
<th>DB QC Inspector’s Name</th>
<th>Work Assignment and Identification</th>
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Maintenance of Traffic & Project Signs:

Remarks:
# DESIGN-BUILDER’S
# ASPHALT CONCRETE
# DAILY FIELD INSPECTION REPORT

**Name of Paving Subcontractor (if any):** ________________________________

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<th>Station to Station</th>
<th>Lane</th>
<th>Length</th>
<th>Width</th>
<th>Course</th>
<th>Design Depth</th>
<th>Area</th>
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**The above described work was incorporated into this Project and was inspected by:**

---

**QC Inspector’s Signature**  |  **Const. QC Engineer** |  **Date**
<table>
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<th>Uncompacted Depth</th>
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MURK 4d-DB(2) Form 2 of 2
# STRUCTURAL CONCRETE
## QC INSPECTOR’S DAILY REPORT

**JOB STAMP**

**DESCRIPTION OF WORK PERFORMED AND INSPECTED**
Specify for each operation: Item No., Sub-Contractor (if any), Location, Nature of Work, Results and Details

**MANPOWER**

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<thead>
<tr>
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**EQUIPMENT**

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**ITEM**

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</table>

The above-described work was incorporated Into this project and was inspected by:

__________________________________
DB Inspector’s Signature

Reviewed by: ______________________     _________
Construction QC Manager  Date
## TRUCK AND MIXING INFORMATION

### Location of Use

### Mixer Type:
- **TRUCK MIX (1)**
- **TRANSIT MIX (2)**
- **CENTRAL MIX (3)**
- **Other (Note in Remarks)**

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<th>Start Mix (1)</th>
<th>End Mix (1)</th>
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<th>Start Disch. (2)</th>
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### CONCRETE SPECIFICATIONS*

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### MATERIAL USAGE

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<td>Quantity Used =</td>
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<tr>
<td>Last Ticket No. =</td>
<td>Qty. Wasted/Rejected =</td>
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*See Specification Tables 5501-3, 501-4, and 501-5 for values for specific type of placement

### Remarks

__________________________________________________________________________
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__________________________________________________________________________
FORM NC-C
CONSTRUCTION NON-CONFORMANCE REPORT

From: ________________________________ Date: ________________
(Name & Initials of Construction QC Manager or Dept’s PM/Designee)

To: _________________________________
(Name of Design-Builder)

Project Name/Number: _________________________ Price Center Code: _______

Copy: Department’s Project Manager

Transmittal/File No. ______ Applicable Contract Requirement: ______________________
(Part & Section No.)

The Work on the referenced Price Center is not in conformance with the noted Contract requirement for the reasons stated below (Attach additional sheets as necessary):

RESOLUTION: Date: ________________

From: ________________________________
(Names & Initials of Design-Builder’s Project Manager & Construction QC Manager)

To: Department’s Project Manager

The above noted construction non-conformance has been corrected and/or resolved as indicated below (attach additional sheets as necessary):

Acknowledgement of Receipt: ______________________ Date: ________________
(Name & Initials of DPM or Designee)

Comments by Dept’s PM, if any: ______ None _______ [See attached sheet(s)]

Send copy of completed, acknowledged form to Design-Builder and Department Project Manager files.
(Project Name)
DESIGN-BUILD PROJECT

PIN __________

DB CONTRACT DOCUMENTS
PART 2

DB SECTION 113
DESIGN-BUILDERS QUALITY PLAN

(ADAPTED FROM ASQ DESIGN + CONSTRUCTION DIVISION “INTERPRETIVE GUIDE
ON ANSI/ISO/ASQC 9001, 1994)
This page is intentionally left blank.
# DB SECTION 113
## DESIGN-BUILDER’S QUALITY PLAN
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DB 113-1 GENERAL REQUIREMENTS

The Design-Builder shall submit a Quality Plan, updated as necessary, to the Department for approval.

The Quality Plan shall address the topics contained in this DB Section 113 in the order listed therein and shall meet the specified requirements of this DB Section 113 and Special Provision 401-3.01, Quality Control, as applicable.

The Quality Plan shall set up a “quality system team” which shall be distinct and separate from the design and construction production organization. The quality system team shall report directly to the Design-Builder’s management through the Design-Builder’s Quality Control Manager. The Quality Plan shall describe the quality system to be implemented at all levels of the Design-Builder’s organization, to include Sub-Design-Builders (design and construction) at all levels, including labor only.

When developing and conducting its construction quality control procedures, the Design-Builder shall provide a level of inspection and documentation consistent with those indicated in the Department’s Contract Administration Manual, Materials Inspection Manual and Construction Inspection Manual (see Reference Documents). The Design-Builder can obtain additional information regarding Department approved procedures at http://www.dot.state.ny.us/cmb/consult/eib/files/eb03005.pdf.

DB 113-1.1 Quality Plan Submittal

The Design-Builder shall submit its Quality Plan, updated as necessary from that submitted in the Design-Builder’s Proposal, within 30 days of NTP.

DB 113-1.2 Quality Plan Reviews and Updates

The Design-Builder shall conduct management reviews of its quality system as specified in this DB Section 113.

As work progresses, the Design-Builder shall update the Quality Plan to reflect current conditions. The Design-Builder and/or the Department’s Project Manager may identify the need for revisions to the Quality Plan. The Design-Builder shall submit any revisions or updates to the Quality Plan to the Department’s Project Manager for approval within 30 days of the identification of the need for a revision.

In addition, the Design-Builder shall submit its Quality Plan for review by the Department’s Project Manager annually (within 12 months of NTP or receipt of last Approval from the Department’s Project Manager) even if no revisions have occurred during that 12-month period. The Design-Builder shall submit a conformed copy of the updated Quality Plan with revisions highlighted.

DB 113-1.3 Environmental Mitigation

In developing its Quality Plan, the Design-Builder shall establish appropriate controls in its management, design, construction /installation and documentation procedures to ensure that environmental mitigation requirements are met and documented.
DB 113-1.4  Organizational Requirements

The Design-Builder shall designate a Quality Control Manager (QC Manager) (who shall be classified as one of the Key Personnel) who shall be responsible for overseeing the overall quality program and the preparation, implementation and update of the Quality Plan for the Design-Builder, including management, design and construction. The QC Manager shall not report to the Design-Builder’s Project Manager, but shall be directly responsible to and report to a joint venture board, senior management or similar level of the Design-Builder’s organization not directly responsible for design or construction.

The QC Manager shall be present and available for consultation with the Department’s Project Manager and other Department staff on an on-call basis throughout the duration of the Project. The QC Manager shall attend the weekly progress meetings as a minimum and such other meetings as the Department’s Project Manager may request, including individual meetings between the QC Manager and Department staff.

The QC Manager shall be the primary point of contact to the Department for all issues relating to the Design-Builder’s Quality Plan (preparation, review, implementation and updates).

The Design QC Manager and Construction QC Manager and their respective staffs shall report directly to the QC Manager.

See DB Section 112 for responsibilities and qualification requirements of construction QC staff. See DB Section 111 for responsibilities and qualification requirements of Design QC staff.

DB 113-1.5  Abbreviations

C/A  Corrective Action
HSPPD  Handling/Storage/Packaging/Preservation/Delivery
P/A  Preventive Action

DB 113-2  QUALITY SYSTEM REQUIREMENTS

DB 113-2.1  Management Responsibility

DB 113-2.1.1  Quality Policy

The Design-Builder's executive management shall define and document its policy for quality, including objectives for quality and its commitment to quality (In the context of this Appendix DB Section 113, “executive management” shall mean those persons to whom the Design-Builder’s Project Manager reports and who has overall responsibility for the Design-Builder’s performance). The quality policy shall be relevant to the Design-Builder’s organizational goals and the expectations and needs of the Department. The Design-Builder shall ensure that this policy is understood, implemented and maintained at all levels of the organization.

The Design-Builder shall have a published statement of its commitment to quality and the organization's quality objectives signed by its responsible executive(s). It shall explain the commitment in terms of the services provided to the Department, and the responsibilities assumed by the Design-Builder to discharge its contracted accountabilities relative to the Department's overall responsibility to Stakeholders and the public-at-large, for assuring quality in the constructed facility. The statement shall be made known to and understood by all staff and be included in the Quality Plan.
Executive management's commitment to quality could be demonstrated by the quality policy being signed by the responsible executive(s) and management's direct involvement in verifying the implementation and understanding of the quality policy.

All employees shall be made aware of the Design-Builder's quality policy. The indoctrination on quality policy may be formal and can be accomplished by various means depending on the size of the Project, the structure of the Design-Builder's management staff and number of employees.

**DB 113-2.1.2 Organization**

A) **Responsibility and Authority**

1) Executive management shall have the responsibility to plan and determine the overall direction of the Design-Builder and its relationship to the quality efforts. Executive management shall ensure the quality policy is documented and understood by all employees and management shall further ensure the implementation of the quality policy by everyone in the organization.

2) The quality system shall be an integral part of the overall management system and as such shall be supported and implemented from the top down. On a Design-Build project most employees are involved in either managing, performing or verifying work that affects quality. It shall not be the sole domain of the design checkers, quality control (QC) inspectors or QC personnel. All workers, including design and construction production personnel (including those of subcontractors) shall be aware of the quality system requirements that govern their respective work.

3) A description of the organizational arrangements (such as a chart) shall be available and maintained up to date. All key roles and persons, and lines of communication and authority between the Design-Builder and the Department and their representative(s), and with other organizations involved shall be identified.

4) The responsibility, authority and the interrelation of personnel who manage, perform and verify work affecting quality shall be defined and documented, particularly for personnel who need the organizational freedom and authority to:

   a) Initiate action to prevent the occurrence of any nonconformities relating to the product, process and quality system;

   b) Identify and record any problems relating to the product, process and quality system;

   c) Initiate, recommend or provide solutions through designated channels. It shall be everyone's responsibility to report any and all quality and safety problems;

   d) Verify the implementation of solutions. Verifying the implementation of the solutions to quality problems shall be performed in a timely manner. The verification shall also investigate if the solution to the identified problem created another quality problem; and

   e) Control further processing, delivery or installation of nonconforming product until the deficiency or unsatisfactory condition has been corrected. Controls shall be established, including stopping work, if necessary, once a significant quality problem is identified until the cause
of the problem can be identified and the required corrective action can be implemented.

B) Resources

1) The Design-Builder shall identify resource requirements and provide adequate resources, including the assignment of trained personnel (see DB Section 113-2.18), for management, performance of work and verification activities including internal quality audits.

2) The Design-Builder shall have a system for assuring that projects are adequately staffed and that resources are provided adequate training to perform such activities as design reviews (DB Section 113-2.4), verification activities, receiving, in-process and final inspections (DB Section 113-2.10) and internal quality audits (DB Section 113-2.17).

3) The Quality Plan shall identify the source of staffing (management, professional, technical, and labor) and shall deal with the integration of resources into the specific Contract requirements.

4) Other resources shall also be addressed such as computers, craft tools, equipment and facilities.

C) Design-Builder’s Quality Control Manager

1) The Design-Builder's executive management shall appoint a Quality Control Manager who, irrespective of other responsibilities, shall have a defined authority for:

a) Ensuring that a quality system is established, implemented and maintained; and

b) Reporting on the performance of the quality system to the Design-Builder's management for review and as a basis for improvement of the quality system.

2) The QC Manager shall have direct access to executive management to report on the performance of the quality system and shall not work under the Design-Builder’s Project Manager or anyone else responsible for design or construction production.

DB 113-2.1.3 Management Review

The Design-Builder's executive management shall review the quality system at defined intervals sufficient to ensure its continuing suitability and effectiveness in satisfying the requirements of this standard and the Design-Builder's stated quality policy and objectives (see DB Section 113-2.1.1). Management reviews shall be held at least at 3-month intervals.

Records of such reviews shall be maintained (see DB Section 113-2.16). Minutes shall be taken of the review meetings and these minutes shall be maintained as quality records. Copies of minutes shall be provided to the Department’s Project Manager on request.

DB 113-2.2 Quality System

DB 113-2.2.1 General
The Design-Builder shall establish, document and maintain a quality system as a means of ensuring that product conforms to specified requirements. The Design-Builder shall prepare a Quality Plan covering the requirements of this specification. The Quality Plan shall include or make reference to the quality-system procedures and outline the structure of the documentation used in the quality system.

The Quality Plan shall cover temporary and permanent components, the Design-Builder, all Principal Participants and all Subcontractors, suppliers and vendors (design, construction and materials) at all tiers.

The Quality Plan shall either contain or reference the procedures and documentation structure outline critical to quality.

The Quality Plan shall also establish or reference the procedures that make up the quality system. Should the plan only reference the procedures, it shall also detail the levels of the documented system, its contents and the interrelationship of the document types.

There shall be a "road map" within the Quality Plan that is lined up to the applicable element that describes the quality system. This roadmap may be a cross-reference, narrative, chart, index or some similar method.

The plan shall detail the role of the Design-Builder, each Principal Participant, the Designer, the Design and Construction QC Managers, and other team members having a significant quality role.

The Quality plan shall define policies, goals and objectives of the organization and organizational interfaces

**DB 113-2.2.2 Quality-System Procedures**

A) The Design-Builder shall prepare documented procedures consistent with the requirements of this specification and the Design-Builder’s stated quality policy.

B) The Design-Builder shall document standard work methods in procedures (see DB Section 113-2.2.1) and enforce the implementation of these "Best Practices". However, it is inevitable that situations will arise which require a departure from the norm. These conditions shall be anticipated in the procedures and shall allow for control of these activities.

C) The plan shall define the liaison and interface between the quality organization and the design and construction arms of the Design-Builder.

D) The quality procedures shall, as a primary objective, be written with the intent of gaining employee understanding of the system.

E) It is the Design-Builder's responsibility to describe to the Department the rationale for the procedures selected and, if the procedures do not address every provision of this Appendix DB Section 113, to explain why the standard is not applicable in their particular situation. The following common pitfalls should be avoided:

1) Too much emphasis placed on creating multiple tiered documents when a simple Quality Plan will suffice;

2) Procedures which are too restrictive;

3) Procedures which are inconsistent;

4) Inordinate emphasis on documentation requirements; and
5) Over commitment to procedures which provide little or no information to assist employees.

F) The following list of procedures (Items 1 through 21) shall serve as the starting point for defining the Design-Builder's Quality Management System.

1) Procedure for preparation, control and distribution of Project Quality Plan defining (DB Section 113-2.4);

2) Scope;

3) Key personnel;

4) Organizational/technical interfaces;

5) Design input requirements;

6) Design output requirements (deliverables);

7) Design reviews;

8) Department participation;

9) Levels of responsibility and authority for:
   a) On-site staff;
   b) Other local office staff;
   c) Executive management; and
   d) QC Manager;

10) Procedure to control, verify and validate the design;

11) Procedure for document issue, approval and revision;

12) Procedure for verification, storage and maintenance the Department Supplied Materials or Equipment;

13) Procedure for the identification of (and where required by Contract, the traceability of) deliverable items, such as Design Plans, Project Specifications, Working Plans, and As-Built Plans;

14) Procedure for verification and control of computer programs used in design;

15) Procedures for inspecting, testing, and calibrating equipment;

16) Procedures for handling nonconformance’s;

17) Procedures for corrective/preventive actions;

18) Procedures for handling storing, packaging and delivering Contract deliverables;

19) Training processes;

20) Procedures for Internal Quality Audits; and

21) Procedure for Management Review.

a) The Design-Builder shall identify its standard procedures applicable to the Project. Design-Builder shall develop Project-specific procedures for all elements of the Project that are important to Quality for the Project, but are not addressed adequately by its standard procedures. Both types of procedures shall be included in the Project Quality Plan.
b) The Design-Builder shall effectively implement the quality system and its documented procedures. Implementation shall be demonstrated by internal quality audit reports, trending of nonconformances, records of root cause analysis, records of corrective and preventive actions, and/or records of the Department complaint handling.

c) For the purposes of this specification, the range and detail of the procedures that form part of the quality system depend on the complexity of the Work, the methods used, and the skills and training needed by personnel involved in carrying out the activity. The procedures shall accurately reflect the work that is to be accomplished and shall benefit the organization/Project.

d) Documented procedures may make reference to specifications that define how an activity is performed. Procedures shall describe the process steps of "what" needs to be done and work instructions shall prescribe "how" it is to be done.

**DB 113-2.2.3 Quality Planning**

A specific Project Quality Plan is required. There shall be evidence of quality planning that ensures specific Contract/Project requirements have been identified and incorporated into the documented quality system. The Department’s requirements represent the minimum requirements. The Design-Builder shall develop a fully comprehensive plan.

The Design-Builder shall define and document how the requirements for quality will be met. Quality planning shall be consistent with all other requirements of a Design-Builder's quality system and shall be documented in a format to suit the Design-Builder's methods of operation. The Design-Builder shall give consideration to the following activities, as appropriate, in meeting the specified requirements for the Project:

A) Preparing the Quality Plan;

B) If the Design-Builder already has a quality management system, blending the unique Project requirements into the quality system:
   1) State the Project objectives to be obtained;
   2) Identify responsibilities, authorities, interfaces (both internal and external);
   3) Identify specific procedures, methods, and instructions to be used (standard and Project specific);
   4) Identify inspections, tests, audits, surveillances to be used;
   5) Control modifications and change; and
   6) Incorporate into the standard documents.

C) Identifying and acquiring of any controls, processes, equipment (including inspection and test equipment), fixtures, resources and skills that may be needed to achieve the required quality;

D) Ensuring the compatibility of the design, the production process, installation, servicing, inspection and test procedures and the applicable documentation. The Design-Builder shall have significant interface obligations and shall describe in its Quality Plan how these obligations shall be met;
E) Updating, as necessary, of quality control, inspection and testing techniques, including the development of new instrumentation;

F) Identifying suitable verification at appropriate stages;

G) Clarifying standards of acceptability for all features and requirements, including those which contain a subjective element; and

H) Identifying and preparing quality records. Quality records comprise such documents as audit inspection reports, approved designs, specifications, plans, calculations, purchase orders, design review records, vendor evaluation reports, cumulative progress reports and audit reports.

**DB 113-2.3 Order-on-Contract and Amendment Review**

**DB 113-2.3.1 General**

The Design-Builder shall establish and maintain documented procedures for Order-on-Contract and Amendment review and for the coordination of these activities.

The methodology of the review shall be adequately defined and documented in procedure(s). The objective is to ensure that all Contract commitments are reviewed and agreed prior to issue or "execution".

This Section DB Section 113-2.3 applies to the Contract between the Design-Builder and the Department. The requirements applicable to subcontractors, subconsultants and specialists are addressed in Purchasing which should be included in purchasing documents.

**DB 113-2.3.2 Review**

The Contract review is a process which should begin with the request for change and continues during the Order-on-Contract or Amendment preparation. The review process could be "graded", i.e., different for Order-on-Contract versus Contract Amendments and could also be different based on the dollar value, the Department type and legal framework, i.e., specific to the perceived risk of not doing so.

Change review shall take place for each request for Order-on-Contract or Contract Amendment.

Before submission of a proposal, or the acceptance of an Order-on-Contract or Contract Amendment the proposal shall be reviewed by the Design-Builder to ensure that:

The requirements are adequately defined and documented. Where no written statement of requirement is available for an order received by verbal means, the Design-Builder shall ensure that the order requirements are agreed before their acceptance. The identification and documentation of the Department requirements is required.

The standard also acknowledges that a written statement of requirements may not always be received from the Department. Where verbal orders are received from an authorized representative of the Department, the Design-Builder shall ensure requirements are defined, reviewed and confirmed in writing. In any case, the Design-Builder shall be responsible to ensure the change requirements are understood and have been agreed to by both parties before acceptance.

Any differences between the Contract or accepted order requirements and those in the proposal are resolved. Differences between a proposal and the requested change shall be reconciled and reviewed for impact and action, clearly and mutually agreed.
The Design-Builder has the capability to meet the Contract or accepted order requirements. The Design-Builder shall have the capability to fulfill the Project Contract requirements before acceptance of the Order-on-Contract or Amendment. This capability can reside in-house, with Subcontractors or with subconsultants.

**DB 113-2.3.3 Amendment to a Contract**

The Design-Builder shall identify how an amendment to a Contract is made and correctly transferred to the functions concerned within the Design-Builder's organization.

The Contract review procedure shall include processing all amendments to the Contract. Amendments and Order-on-Contract requests should be subject to an appropriate level of review as the initial Contract. The review shall include impact on work already performed, schedule and costs.

**DB 113-2.3.4 Records**

Order-on-Contract and Amendment reviews correspondence; meeting minutes; signed documents; and records of negotiation shall be maintained as Project records.

Channels for communication and interfaces with the Department's organization in these Contract matters shall be established and maintained.

**DB 113-2.4 Design Control**

**DB 113-2.4.1 General**

The Design-Builder shall establish and maintain documented procedures to control and verify the design of the product in order to ensure that the specified requirements are met.

Design control shall be applied to computer programs, design tables and other products that provide analytical results which are used to develop or check designs.

The plan shall detail the roles of the:

A) Designer;
B) Design Manager;
C) Design QC Manager; and
D) Responsible Engineer(s).

**DB 113-2.4.2 Design and Development Planning**

The Design-Builder shall prepare plans for each design and development activity. The plans shall describe or reference these activities, and define responsibility for their implementation. The design and development activities shall be assigned to qualified personnel equipped with adequate resources. The plans shall be updated, as the design evolves.

The Project design control procedures shall define the technical interfaces among the different groups which provide input to the design process or receive output. The necessary information shall be
documented, transmitted and regularly reviewed. If not defined in these procedures, a separate description shall be required.

**DB 113-2.4.3 Design Input**

Design-input requirements relating to the product, including applicable statutory and regulatory requirements shall be identified, documented and their selection reviewed by the Design-Builder for adequacy. Incomplete, ambiguous or conflicting requirements shall be resolved with those responsible for imposing these requirements.

The essence of this sub-element is that the Design-Builder determines what information is needed and the available sources for information, reviews all pertinent available data, assures itself that there is sufficient information to carry out its assignment, and resolves with the Department and other appropriate authorities any actual or apparent conflicts or inconsistencies in the information so gathered. The information, sources, and decisions taken shall be documented and treated as a Quality record (DB Section 113-2.16).

**DB 113-2.4.4 Design Output**

The Design-Builder shall document design output and express output in terms that can be verified and against design-input requirements and validated (see DB Section 113-2.4.8).

Design outputs are usually captured in documents such as plans, reports and specifications. The control of these outputs is an integral part of the Design-Builder's document control process.

Output documentation shall be reviewed for compliance with design requirements.

Design output shall:

A) Meet the design-input requirements;

B) Contain or make reference to acceptance criteria; and

C) Identify those characteristics of the design that are crucial to the safe and proper functioning of the product (e.g. requirements for operating, storing, handling, maintaining and disposing).

Design-output documents shall be reviewed before release.

**DB 113-2.4.5 Design Review**

At appropriate stages of design, (see DB Section 111-8) documented reviews of the design results shall be planned and conducted. Participants at each design review shall include representatives of all functions concerned with the design stage being reviewed, as well as other specialist personnel, as required. Records of such reviews shall be maintained (see DB Section 113-2.16).

This element reinforces the principle of qualified staff to perform verification functions. The purpose here is to ensure an unbiased look at the work output being produced, to verify with a "fresh set of eyes" that the Department's contractual requirements and needs are being met fully. Reviews shall include consideration of the Project's usability, reliability, maintainability, availability, operability, along with safety, cost, and aesthetics. In reviews it is prudent to address environmental impacts, community impacts, and similar concerns. Note that design reviews shall be recorded and retained as quality records. Any computer software used to perform alternative calculations or verify clearances through use of scale...
models or CADD techniques shall be validated before use for the application made, and the validation documented in accordance with DB Section 113-2.16 (quality records).

In addition to conducting design reviews, design verification may include activities such as:

A) Performing alternative calculations,
B) Comparing the new design with a similar proven design, if available,
C) Undertaking tests and demonstrations, and
D) Reviewing the design-stage documents before release.

**DB 113-2.4.6 Design Verification**

Design verification is the process of ensuring specified requirements have been met.

At each stage of design development (DB Section 11-8) the Design-Builder shall verify that the design stage output meets the design stage input requirements. The design verification measures shall be recorded (see DB Section 113-2.16).

The Design-Builder shall establish and the Quality Plan shall include procedures for verifying and documenting that the design output meets the design input requirements. Verification shall include independent checks, tests and/or reviews.

Verification shall be performed under the direction of the Design QC Manager.

Designs provided by subconsultants shall be independently verified and documented under the direction of the Design QC Manager prior to its acceptance and incorporation into the work of others.

**DB 113-2.4.7 Design Validation**

The Design-Builder shall perform design validation to ensure that Project conforms to defined user needs and/or requirements.

Design validation is the process of ensuring "requirements for a specific intended use are fulfilled". In other words, design validation is conformity with the user’s needs rather than only specified requirements. In most cases, the Design-Builder cannot determine if the Department's "needs" have been fulfilled until the Project is complete and operational.

Design validation seeks to ensure that the final product conforms to the Department's needs. Design validation follows successful design verification. Validation may only be applicable for electronic, electrical and/or mechanical components of a Project. Validation is normally performed under defined operating conditions. Validation is normally performed on the final product, but may be necessary in earlier stages prior to Project completion.

Multiple validations may be performed if there are different intended uses.

**DB 113-2.4.8 Design Changes**

After a design is complete and the Work is ready to be executed, or is being executed, or is complete, all subsequent design changes and modifications shall be identified, documented, reviewed and approved by authorized personnel before their implementation.
The Design-Builder shall establish and include in the Quality Plan procedures on how design changes are initiated, reviewed, approved, implemented and recorded in order to maintain configuration control. Changes may originate from the Department's request, internal and external design organization, site or field personnel.

The persons authorized to approve design changes shall be identified in the procedures. The mechanism for changes in the design can be detailed as part of the procedure for the original work or addressed in a specific design change procedure(s). It is important that any proposed changes be reviewed and approved by the Responsible Engineer that produced the original work. The degree and nature of control on design changes shall be at least equivalent to that under which the original work was accomplished. Changes shall be responsive to the design input, shall be verified and approved. An administrative system shall be in place to ensure that approved changes are documented and provided to holders of the original material in a timely manner. Also, there shall be a documented process that ensures that superseded information is removed from use when the updated document or record is received.

A master list of currently effective documents shall be maintained to reflect design changes approved. A listing of the design changes shall be communicated to the construction site on a timely basis consistent with the progress of construction activities. Under no circumstances shall work be performed without current knowledge of the approved design changes to be incorporated into the work product.

**DB 113-2.5 Document and Data Control**

**DB 113-2.5.1 General**

The Design-Builder shall establish and maintain documented procedures to control all documents and data that relate to the requirements of this Section DB Section 113-2.5 including, to the extent applicable, documents of external origin such as standards and the Department plans.

The Design-Builder shall be responsible for the establishment and implementation of documented procedures for ensuring all documents essential to the quality of the delivered product or service are properly controlled. This shall include, but is not limited to, contracts, plans, specifications, master drawing lists or equivalent documents, critical procedures and work instructions, Quality System manuals, Project Quality plans and data (e.g., computer data bases, computer files).

Procedures should recognize that there is a finite life to electronic storage media. Consideration should be made for those "documents" which only exist in the electronic media.

**DB 113-2.5.2 Document and Data Approval and Issue**

The Design-Builder shall be responsible to see that the documents and data are reviewed and approved for adequacy by authorized personnel prior to issue. A master list or equivalent document-control procedure identifying the current revision status of documents shall be established and be readily available to preclude the use of invalid and/or obsolete documents.

The Design-Builder shall be responsible for establishing, documenting, maintaining, and, implementing a procedure which clearly defines the process for document review, resolution of comments and approval authority.

Quality Management System documentation shall also be controlled to ensure its proper authorization and distribution.
No construction work activities shall be accomplished using unreleased, unauthorized or outdated design documents.

This control shall ensure that:

A) The pertinent issues of appropriate documents are available at all locations where operations essential to the effective functioning of the quality system are performed; and

B) Invalid and/or obsolete documents are promptly removed from all points of issue or use, or otherwise assured against unintended use:

1) Superseded, revised and voided documents shall be removed from all work areas and the employees whose work is governed by those documents shall be informed of the changes to ensure compliance to the new or revised requirements;

2) A master document list, or equivalent, shall be maintained to identify the status and current revision of all controlled documents. The Master List, or equivalent, shall be controlled and be available to all holders of controlled documents; and

3) Any obsolete documents retained for legal and/or knowledge-preservation purposes are suitably identified. Superseded, revised and voided documents can be maintained for legal and/or historic information. However, the documented procedure must describe the method of identifying and storing these documents in a manner that ensures they are not inadvertently used by an unknowing individual. There shall also be a record retention plan for the Design-Builder.

DB 113-2.5.3 Document and Data Changes

The Design-Builder shall identify and include in the Quality Plan, the process for the initiation, review and approval of all document changes prior to issuance of those changes.

Changes to documents and data shall be reviewed and approved by the same functions/organizations that performed the original review and approval, unless specifically designated otherwise. If this is not possible then the designated approval authority shall have adequate background and experience upon which to base the decision. The designated functions/organizations shall have access to pertinent background information upon which to base their review and approval.

Where practical, the nature of the change shall be identified in the document or the appropriate attachments.

DB 113-2.6 Procurement and Purchasing

DB 113-2.6.1 General

The Design-Builder shall establish and maintain documented procedures to ensure that purchased services and products conform to specified requirements.

The Design-Builder shall be responsible for establishing, documenting and maintaining procedures for the evaluation and selection of suppliers, vendors and subcontractors. The procedures shall detail the requirements for all important activities, such as preparation of purchase orders, contracts for services, bid lists and vendor quality requirements, including pre-award audits, in-process inspections and product acceptance.
DB 113-2.6.2   Evaluation of Subcontractors, Suppliers and Vendors

The Design-Builder shall:

A) Evaluate and select subcontractors on the basis of their ability to meet subcontract requirements including the quality system and any specific quality-control requirements;

B) Control the evaluation and selection of suppliers, vendors and subcontractors. Procedures, rather than just a statement of policy in the Quality Plan, shall be used;

C) Describe the evaluation and selection process for suppliers, vendors and subcontractors of all tiers and describe the priority of quality in the evaluation and selection criteria in the Quality Plan; and

D) Define the type and extent of control exercised by the Design-Builder over subcontractors. This shall be dependent upon the type of services or products, the impact of subcontracted Work on the quality of final product and, where applicable, on the quality audit reports and/or quality records of the previously demonstrated capability and performance of subcontractors.

E) Establish and maintain quality records of acceptable subcontractors (see DB Section 113-2.16). Records shall be maintained to document the selection, control exercised over, performance, delivery, quality, etc. of all contractors (subconsultants, vendors) and subcontractors.

The methods the Design-Builder elects to use to control the delivery of the contracted service or product may include, but are not limited to:

1) Design reviews;

2) Shop inspection;

3) Receiving inspection;

4) Witnessed inspection hold points;

5) Issuance of a certificate of compliance or analysis;

6) Testing and approval of a prototype or sample;

7) Provision and approval of a Quality Plan prior to contract award; and

8) Quality system audits.

The procedures shall detail how subcontractors (including consultants) will be presented to the Department for approval (DB Section 108-8).

DB 113-2.6.3   Procurement and Purchasing Data

A) Procurement and purchasing documents shall contain data clearly describing the service or product ordered, including where applicable:

B) The type, class, grade or other precise identification;

C) The title or other positive identification, and applicable issues of specifications, plans, process requirements, inspection instructions and other relevant technical data, including requirements for approval or qualification of product, procedures, process equipment and personnel; and

D) The title, number and issue of the quality-system standard to be applied.
The Design-Builder shall review and approve procurement/purchasing documents for adequacy of the specified requirements prior to release.

The documented procedure shall identify how and by whom procurement and purchasing documents are reviewed, how comments are resolved and who in the organization has the authorization for final approval of the document.

**DB 113-2.6.4 Verification of Purchased Service or Product**

A) Design-Builder Verification at Subcontractor's Premises

1) Where the Design-Builder proposes to verify purchased product or service at the subcontractor’s premises, the Design-Builder shall specify verification arrangements and the method of product release in the procurement/purchasing documents.

2) The procurement/purchasing document shall include any requirement for the organization performing verification at its subcontractor’s facilities. The method of verification and release of the product or service shall be specified in advance. This may also mean the purchase order or specifications carry specific instructions on how the process verification will be performed to assure the final product will meet all of the procurement/purchasing requirements.

B) The Department Verification of Subcontracted Product or Service

1) Where specified in the Contract, the Design-Builder or the Department's representative shall be afforded the right to verify at the subcontractor's premises and the Design-Builder’s premises that subcontracted product or service conforms to specified requirements. Such verification shall not be used by the Design-Builder as evidence of effective control of quality by the subcontractor.

2) When specified in the Contract Documents, the Department shall have the right of access to the Design-Builder and/or subcontractor facility to inspect, audit or otherwise verify the specified procurement/purchasing requirements are being fulfilled. The right of access may be extended to authorized personnel and contracted third parties. The Design-Builder is obligated to perform verification actions, regardless of what the Department does. The Department’s verification may not be substituted for the Design-Builder's actions.

3) Verification by the Department shall not absolve the Design-Builder of the responsibility to provide acceptable product or service, nor shall it preclude subsequent rejection by the Department.

4) The subcontractors shall be responsible for fulfilling all of the specified procurement requirements regardless if the Department, Design-Builder or agent performed any tests or inspections. The Design-Builder shall provide the Department an acceptable product or service, regardless of the extent of the Department's verification. Even if the Department has performed verification actions at the Design-Builder’s facilities, the product may still be rejected if it is not acceptable.
DB 113-2.7  Control of Department Supplied Items

The Design-Builder shall establish and maintain documented procedures for the control of verification, storage and maintenance of the Department-supplied items provided for incorporation into the supplies or for related activities. Any such item that is lost, damaged or is otherwise unsuitable for use shall be recorded and reported to the Department (see DB Section 113-2.16).

One of the most significant products provided to the Design-Builder by the Department is design information in the form of plans and specifications, as well as proprietary information, and these items shall be protected with the same vigilance as any hardware items supplied. Any apparent deficiency or ambiguity shall be identified to the Department for its necessary action.

The technical characterizations of the site, such as the boring log or soil report data supplied by the Department for consideration in designing the structural system for the product are examples of the Department supplied products for the structural consultant.

When such items are encountered, documented procedures shall exist which detail the receipt/acceptance, storage and maintenance (preservation) of these items.

When items are considered inadequate for the task required, documented procedures shall detail the process used to report such deficiencies to the Department.

DB 113-2.8  Product Identification and Traceability

Where appropriate, the Design-Builder shall establish and maintain documented procedures for identifying the product by suitable means from receipt and during all stages of production, delivery and installation.

This means that the Design-Builder shall establish and maintain documented procedures whereby items of work for which records are to be kept shall be identifiable. Examples of this on a construction site include the numbering of concrete pours in a structure or the establishment of a grid matrix for identifying columns.

The Design-Builder shall include document title, unique number, the Department's name, the Design-Builder's name, the preparer's name, the date and revision number on all Project deliverables.

The filing and retrieval of operating manuals, certificates of compliance and/or analysis, heat numbers, inspection status and nonconforming product shall be traceable to the items. Records shall be kept that identify the installed location of the equipment.

Where and to the extent that traceability is a specified requirement, the Design-Builder shall establish and maintain documented procedures for unique identification of individual product or batches. This identification shall be recorded (see DB Section 113-2.1).

The intent of this Section DB Section 113-2.8 is to ensure the Design-Builder can effectively identify the root cause of a problem and to implement effective corrective and preventive actions to resolve and prevent future occurrences of the problem.
DB 113-2.9  Process Control

The Design-Builder shall plan and control the work and when necessary, shall prepare a documented process plan defining how work is to be carried out. Documentation may be in the form of a narrative, flow chart or control points.

The Design-Builder shall identify and plan the production, installation and servicing processes which directly affect quality and shall ensure that these processes are carried out under controlled conditions. Controlled conditions shall include the following:

A) Documented procedures defining the manner of production, installation and servicing, where the absence of such procedures could adversely affect quality. This requirement deals with the planning and control of all work processes, other than design control processes, that are critical to the adequacy of the delivered Project;

B) Establishment and documentation of the method(s) for scheduling, monitoring, and reporting on the status of each significant aspect of the design or other Project tasks. The methods shall be consistent with the size and complexity of the effort. Such schedules shall identify required inputs from others and submittals to the Department and to relevant government authorities; and

C) An assessment by the Design-Builder of this requirement is essential to ensure compliance. The key phrase of this requirement is "where the absence of such procedures could adversely affect quality";

D) Use of suitable production, installation and servicing equipment, and a suitable working environment;

E) Compliance with reference standards/ codes, quality plans and/or documented procedures. Referenced standards shall be available to the people of the location where the work is to be performed to ensure compliance to the specified requirements;

F) Monitoring and control of suitable process parameters and product characteristics;

G) The approval of processes and equipment, as appropriate. Procedures shall identify who has the responsibility, authority and expertise for the approval of various processes to ensure their adequacy;

H) Criteria for workmanship, which shall be stipulated in the clearest practical manner (e.g., written standards, representatives samples or illustrations); and

I) Suitable maintenance of equipment to ensure continuing process capability.

DB 113-2.10  Inspection and Testing

DB 113-2.10.1  General

The Design-Builder shall establish and maintain documented procedures for inspection and testing activities in order to verify that the specified requirements for the Project are met. The required inspection and testing, and the records to be established, shall be detailed in the Quality Plan or documented procedures.

This section shall address inspection/testing methodology, methods of control, documentation, acceptance and distribution of results.
Written procedures are required. In general, QC inspections shall be performed to written criteria with specified levels of acceptability based on clearly defined accept/reject criteria. Reports shall be signed and dated by QC inspection personnel and results clearly indicated.

The Design-Builder shall establish, document and maintain procedures for inspection and testing activities.

QC Inspection and testing shall be performed in accordance with written procedures developed by the Design-Builder, or the proper issue of test procedures issued by industry, government and/or code bodies available to test personnel.

Verification of compliance with specifications and/or requirements by means of inspection and testing is required:

A) On receipt of materials;
B) At intermediate stages; and
C) When work is completed.

The criteria for compliance are defined in the contract specification, as are appropriate sampling and testing requirements.

Checkpoints and hold points (Work that must be inspected and approved by the assigned QC Inspector before Work can proceed), shall be clearly established and identified on the Project execution schedule or other suitable means. QC Inspection procedures, logistics and reporting of results shall be clearly defined, developed and implemented.

DB 113-2.10.2 Incoming Product Inspection and Testing

The Design-Builder shall ensure that incoming product is not used or processed (except in the circumstances described in DB Section 113-2.10.2.3) until it has been inspected or otherwise verified as conforming to specified requirements. Verification of the specified requirements shall be in accordance with the Quality Plan and/or documented procedures.

The Plan shall include incoming product inspection that shall include but not be limited to:

A) Documentation review;
B) Physical inspection of materials and/or equipment;
C) Identify items per the purchase order and shipping list, tag number or marking;
D) Verification of quantity and size;
E) Dimensional checks, when applicable;
F) Verification of protective coatings if applicable; and
G) Examination of item(s) for condition and shipping damage.

The Design-Builder shall maintain an adequate checking and approving procedure to ensure that all its work, including the monitoring, testing and approving of such work at the head office and on-site meets the Department's requirements and the Contract specifications.
In determining the amount and nature of receiving inspection, the Design-Builder shall consider the amount of control exercised at the subcontractor's premises and the recorded evidence of conformance provided.

**DB 113-2.10.3  In-Process Inspection and Testing**

The Design-Builder shall:

A) Inspect and test the product as required by the Quality Plan and/or documented procedures; and

B) Hold product until the required inspection and tests have been completed or necessary reports have been received and verified.

**DB 113-2.10.4  Final Inspection and Testing**

The Design-Builder shall jointly conduct all final inspection and testing with the Department in accordance with the Contract requirements and the Quality Plan and/or documented procedures to complete the evidence of conformance of the finished Project to the specified requirements.

The Design-Builder shall have documented procedures to ensure that the final observation and testing where applicable have been completed.

Records of final inspection and test are required to verify compliance to specified requirements has been achieved (see DB Section 113-2.16).

The Quality Plan and/or documented procedures for final inspection and testing shall require that all specified inspection and tests, including those specified either on receipt of product or in-process, have been carried out and that the results meet specified requirements.

**DB 113-2.10.5  Inspection and Test Records**

The Design-Builder shall establish and maintain records which provide evidence that the product has been inspected and/or tested. These records shall show clearly whether the product has passed or failed the inspections and/or tests according to defined acceptance criteria. Where the product fails to pass any inspection and/or test, the procedures for control of nonconforming product shall apply (see DB Section 113-2.13).

Inspection and test records for inspections and tests performed by Design-Builder, the Department and/or third party shall show whether the product has passed or failed according to defined acceptance criteria. Product that fails inspection becomes nonconforming product. Also, the records shall identify the inspection authority responsible.

**DB 113-2.11  Control of Inspection, Measuring and Test Equipment**

**DB 113-2.11.1  General**

The Design-Builder shall establish and maintain documented procedures to control, calibrate and maintain inspection, measuring and test equipment (including test software) used by the Design-Builder to demonstrate the conformance of product to the specified requirements. Inspection, measuring and test equipment shall be used in a manner which ensures that the measurement uncertainty is known and is consistent with the required measurement capability.
Where test software or comparative references such as test hardware are used as suitable forms of inspection, they shall be checked to prove that they are capable of verifying the acceptability of product, prior to release for use during production, installation or servicing, and shall be rechecked at prescribed intervals. The Design-Builder shall establish the extent and frequency of such checks and shall maintain records as evidence of control (see DB Section 113-2.16).

Where the availability of technical data pertaining to the measuring equipment is a specified requirement, such data shall be made available, when required by the Department for verification that the measuring equipment is functionally adequate.

Effective test procedures shall contain comprehensive listings of required equipment, tools, and apparatus to successfully and conclusively perform the test. Matters of "repeatability" and "reproduceability" shall also be addressed together with precision of measured results and calibration thresholds of measuring devices.

Comprehensive operations, maintenance, setup, and dimensional arrangements for the measuring, testing devices and equipment shall also be included in order to allow for their practical layout and installation at the measuring location. The Design-Builder’s QC Engineering Firm shall establish, document, and maintain procedures for the control of inspection, measuring, and test equipment. It shall be the Design-Builder's responsibility through the QC Manager, to assess the subcontractor (see DB Section 113-2.6.2) to ensure the required procedures exist and are implemented.

The Design-Builder and the QC Engineering Firm shall be responsible for ensuring applicable requirements of this section are addressed.

This Section DB Section 113-2.11 applies to inspection or testing and surveying equipment. The Quality Plan shall address:

A) Definition of the responsibility and authority for the inspection, measuring and test equipment;
B) Procedures for selecting measurements, determining accuracy and precision required, and obtaining equipment which meets those requirements;
C) Disposition of nonconforming equipment;
D) Procedures for identification, maintenance, and storage of measuring equipment;
E) Record keeping;
F) Calibration frequency;
G) Calibration status including indicators;
H) Disposition of items checked with equipment found to be out of calibration; and
I) Traceability of primary and secondary calibration standards.

**DB 113-2.11.2 Control Procedure**

The Design-Builder, through the QC Engineering Firm, shall:

A) Determine the measurements to be made and the accuracy required, and select the appropriate inspection, measuring and test equipment that is capable of the necessary accuracy and precision;
B) Identify all inspection, measuring and test equipment that can affect product quality, and calibrate and adjust them at prescribed intervals, or prior to use, against certified equipment having a known valid relationship to internationally or nationally recognized standards. Where no such standards exist, document the basis used for calibration;

C) Develop a master calibration listing indicating the inspection and test equipment that is used. The log shall include as a minimum, the identification number, item description, and the required frequency of calibration and accuracy requirements. It is not intended that calibration is required for nonprecision tools and instruments such as measuring tapes, concrete slump cones, rulers, weld radius gauges, etc.;

D) Define the process employed for the calibration of inspection, measuring and test equipment, including details of equipment type, unique identification, location, frequency of checks, check method, acceptance criteria and the action to be taken when results are unsatisfactory;

E) Identify inspection, measuring and test equipment with a suitable indicator or approved identification record to show the calibration status;

F) Maintain calibration records for inspection, measuring and test equipment (see DB Section 113-2.16);

G) Assess and document the validity of previous inspection and test results when inspection, measuring or test equipment is found to be out of calibration;

H) Ensure that the environmental conditions are suitable for the calibrations, inspections, measurements and tests being carried out;

I) Ensure that the handling, preservation and storage of inspection, measuring and test equipment is such that the accuracy and fitness for use are maintained; and

J) Safeguard inspection, measuring and test facilities, including both test hardware and test software, from adjustments which would invalidate the calibration setting.

DB 113-2.12 Inspection and Test Status

The inspection and test status of product shall be identified by suitable means, which indicate the conformance or nonconformance of product with regard to inspection and test performed. The identification of inspection and test status shall be maintained, as defined in the Quality Plan and/or documented procedures, throughout production, installation, and servicing of the product to ensure that only product that has passed the required inspections and tests is dispatched, used or installed.

The Design-Builder shall establish, document, implement and maintain an effective system for identifying and implementing the inspection and test status of Project products and services. The system shall utilize a method to identify conforming, nonconforming, indeterminate, downgraded, scrap, and rejected material.

Lack of nonconformance identification shall not be an indication of acceptance.

DB 113-2.13 Control of Nonconforming Product

DB 113-2.13.1 General

The Design-Builder shall establish and maintain documented procedures to ensure that product that does not conform to specified requirements is prevented from unintended use or installation. This control shall
provide for identification, documentation, evaluation, segregation (when practical), disposition of nonconforming product, and for notification to the functions concerned.

There shall be documented procedures to assess nonconformance in the Design-Builder's work and in the work provided by other contractors, including the Department. The procedures shall safeguard against use of inaccurate or otherwise inappropriate information or data.

The procedures shall identify the individual(s) responsible for verifying the nonconformance, documenting it, processing the documentation in accordance with the procedures, and determining the effective corrective action/preventive action (see DB Section 113-2.14) to resolve the nonconformance.

Procedures shall also cover nonconformances which arise during construction. They shall address the situation where it is discovered that work does not conform to the requirements after the work item has previously been subjected to the established checking and approval process. The procedures shall also address work that is discovered or suspected to contain errors or omissions after delivery to the Department.

Work shall be immediately brought under control to limit the impact it could have on associated work, where it may have been used as input. Procedures shall include methods to inform those to whom the nonconforming material had been provided as valid information and to retrieve and isolate from use known copies of the material until a determination can be made about how to proceed. Nonconformances might be manifested as incorrect plans, errors in calculation (numerical or procedural), survey data that might be based on an incorrect benchmark or route, or even a correct design based on superseded specifications.

**DB 113-2.13.2 Review and Disposition of Nonconforming Product**

The Design-Builder shall define the responsibility for review and authority for the disposition of nonconforming product.

A nonconformance shall be defined as any condition in equipment, materials, or processes which does not comply with required plans, specifications, codes, standards, documentation, records, procedures, or contract requirements which cause the acceptability of equipment, materials, or processes to be unacceptable or indeterminate.

Nonconforming product shall be reviewed in accordance with documented procedures. It may be:

A) Reworked to meet the specified requirements;
B) Accepted with or without repair by consent of the Department;
C) Regarded for alternative applications; or
D) Rejected or scrapped.

The procedures shall also address the disposition of nonconforming items and the steps necessary to verify that the nonconformances have been adequately addressed and that the item then be characterized as conforming.

Where required by the Contract, the proposed use or repair of product which does not conform to specified requirements shall be reported for consent by the Department. The description of the nonconformity that has been accepted, and repairs shall be recorded to denote the actual condition (see DB Section 113-2.16).
The Design-Builder shall keep and maintain records of nonconforming findings (see DB Section 113-2.16). Also, each nonconformance record shall contain all deliberations, retesting, and resolution activities, findings, and decisions.

Repaired and/or reworked product shall be re-inspected in accordance with the Quality Plan and/or documented procedures.

Repair shall require the involvement of the Department, the Designer, and/or an authorized third party to review the condition and determine that although it does not meet the specified requirements, the overall impact is such that the resulting condition is acceptable.

**DB 113-2.14 Corrective and Preventive Action**

**DB 113-2.14.1 General**

The Design-Builder shall establish and maintain documented procedures for implementing corrective and preventive action.

This Section DB Section 113-2.14 encompasses two aspects of dealing with nonconformities. The first is implementation and effectiveness of previously implemented corrective actions.

The second is preventive action (P/A) which plays a major role in this requirement. Most procedures addressing corrective action (C/A) need to include preventive action. The investigation of nonconformances needs to look into three possible causes. They are the product, the process, and the quality system.

These nonconformances may be identified by either internal or external audits or during regular inspections or design reviews. The appropriate authority to implement, verify, and review the effectiveness of both preventive and corrective actions shall be identified. Written procedures shall be prepared and implemented to determine the root causes of nonconformances and to revise existing procedures and work instructions or to establish new ones to prevent the identified situations that cause or allow nonconformances to develop.

Any corrective or preventive action taken to eliminate the causes of actual or potential nonconformities shall be to a degree appropriate to the magnitude of problems and commensurate with the risks encountered.

The Design-Builder shall implement and record any changes to the documented procedures resulting from corrective and preventive action.

**DB 113-2.14.2 Corrective Action**

The Design-Builder shall maintain and document a procedure for dealing with complaints, ensuring the recording, investigating and determining the appropriate corrective action, if any, that shall be taken.

The procedures for corrective action shall include:

A) The effective handling of complaints and reports of product nonconformities;

B) Investigation of the cause of nonconformities relating to product, process and quality system, and recording the results of the investigation (see DB Section 113-2.16);
Determination and implementation of an effective corrective action requires knowing the root cause of the problem and planning the most effective method of resolving the problem.

Follow-up action shall investigate to see if the corrective action resolved the identified problem, and also to ensure the corrective action did not have an undesirable effect on another element of the quality system.

**DB 113-2.14.3 Preventive Action**

The Design-Builder shall establish, document, and maintain procedures for implementing preventive actions.

The procedures for preventive action shall include:

A) The use of appropriate sources of information such as processes and work operations which affect product quality, concessions, audit results, quality records, service reports and the complaints to detect, analyze, and eliminate potential causes of nonconformities;

B) Determination of the steps needed to deal with any problems requiring preventive action;

C) Initiation of preventive action and application of controls to ensure that it is effective; and

D) Confirmation that relevant information on actions taken is submitted for management review (see DB Section 113-2.1.3).

**DB 113-2.15 Handling, Storage, Packaging, Preservation, and Delivery**

**DB 113-2.15.1 General**

The Design-Builder shall establish and maintain documented procedures for handling, storage, packaging, preservation and delivery (HSPPD) of product.

The procedures which shall be developed apply to all parties involved on a Project, beginning with the Design-Builder writing the specifications all the way through to the personnel responsible for the start-up and turn over of the facility to the Department. The specific application of the requirements is determined by the function performed: Design-Builder, manufacturer, distributor, vendor, warehousing, equipment operators, and installer.

The engineer writing the specifications shall be responsible for identifying any special HSPPD requirements and assuring the requirements are identified in the appropriate Project documents. Procurement shall be responsible for assuring the vendor, distributor and/or subcontractors are aware of the requirements and are also aware of their responsibilities to identify all requirements to their subcontractors.

Procedures shall be developed and implemented for designating which items require special handling, storage or maintenance. Development of the HSPPD procedures and work instructions are affected by the
other elements of this Appendix DB Section 113 and therefore should be reviewed for applicability and requirement inclusion.

**DB 113-2.15.2 Handling**

The Design-Builder shall provide methods of handling products that prevent damage or deterioration.

Handling is any physical or electronic movement. Project materials are usually handled numerous times from producer to installation and start-up. Procedures appropriate to the circumstances shall be developed and implemented to assure handling is done in a manner that prevents damage or deterioration of the material/equipment. There shall be assurances that handling requirements are documented and understood.

The procedures shall cover special handling by people and/or machines. Requirements for maintenance of identification and traceability shall be identified.

Special handling clothing and precautions shall be identified for all hazardous materials with assurances that only qualified and trained personnel handle the material. The handling procedures shall include instructions to follow for decontamination and notification of authorities and responsible parties in the event of an accident.

**DB 113-2.15.3 Storage**

The Design-Builder shall use designated storage areas or stock rooms to prevent damage or deterioration of product, pending use or delivery. Appropriate methods for authorizing receipt to and dispatch from such areas shall be stipulated.

In order to detect deterioration, the condition of product in stock shall be assessed at appropriate intervals.

Items requiring protection shall be identified and protected as necessary to prevent loss, damage deterioration or loss of identification.

Special storage requirements shall be clearly defined for materials and equipment which is received on the Project, this includes plans, records and operating manuals. A master list shall be maintained indicating applicable purchase orders, including quantity, product identification, documentation and records required, receiving inspection requirements and items requiring special storage or maintenance.

Materials shall be segregated to prevent cross contamination or environmental contamination.

Material with limited shelf life shall be identified and procedures developed and implemented to identify means of assuring usage of material prior to expiration date. The procedures shall also identify the disposal of materials that may be toxic, hazardous or might otherwise have an adverse effect on the environment or on unsuspecting humans.

**DB 113-2.15.4 Packaging**

The Design-Builder shall control packing, packaging, and marking processes (including materials used) to the extent necessary to ensure conformance to specified requirements.

Engineering or procurement documents shall specify applicable packaging requirements to ensure no damage, contamination or deterioration occurs in the course of packaging and transporting the material.
and equipment. Procedures/work instructions shall clearly define all special packing and packaging and marking process requirements (i.e. export crating, moisture barrier, regulatory requirements, climate control, identification, and all contract requirements).

Labeling of hazardous materials, special handling instructions and notification of authorities and Design-Builder shall be clearly and plainly identified on the packaging.

**DB 113-2.15.5 Preservation**

The Design-Builder shall apply appropriate methods for preservation and segregation of product when the product is under the Design-Builder's control.

Procedures shall include special unpacking instructions, controlled conditions necessary to prevent or deter deterioration of material or equipment, prevention of corrosion and/or contamination, and required servicing.

**DB 113-2.15.6 Delivery**

The Design-Builder shall arrange for the protection of the quality of product after final inspection and test. Where contractually specified, this protection shall be extended to include delivery to destination.

When delivery of equipment and/or materials to the job site is the responsibility of the Design-Builder, they shall develop procedures or reference appropriate standards to protect the items during delivery.

**DB 113-2.16 Control of Quality Records**

The Design-Builder shall establish and maintain documented procedures for identification, collection, indexing, access, filing, storage, maintenance, and disposition of quality records.

Quality records shall be maintained to demonstrate conformance to specified requirements and the effective operation of the quality system. Pertinent quality records from the subcontractor shall be an element of these data.

Records shall be kept of documents which serve as evidence that quality is achieved in work on a Project. Records shall be adequately identified, filed, and stored. Retention periods and the storage medium of such records shall be established in accordance with Contract requirements.

All quality records shall be legible and shall be stored and retained in such a way that they are readily retrievable in facilities that provide a suitable environment to prevent damage or deterioration and to prevent loss. Quality records shall be made available for evaluation by the Department per Contract requirements.

The Design-Builder shall develop and implement procedures to store, retrieve, and dispose of the documents required by the quality management system, including but not limited to correspondence, certifications, design calculations, plans, reports of design reviews, and audit reports. In storage, whether active Project files or long term archives, documents that are designated as records shall be originals or reproducible copies and shall be legible, accurate, identified, and indexed so they can be associated with specific Projects. They shall be retrievable in a timely manner. Storage criteria shall be set to specify allowable storage media and ensure physical protection from damage or loss, which could involve duplicate storage facilities for some types of records.
Management shall identify records necessary to provide objective evidence of contract review, procedure compliance, design review (when applicable), training, and completion and acceptance of inspection and testing, or to provide traceability of equipment or items to documentation.

A list of Project-required records shall be developed, retained and/or turned over to the Department prior to completing the Work.

**DB 113-2.17 Internal Quality Audits**

The Design-Builder shall establish and maintain documented procedures for planning and implementing internal quality audits to verify whether quality activities and related results comply with planned arrangements and to determine the effectiveness of the quality system.

Internal quality audits shall be conducted in accordance with sound auditing principles. The frequency of the audits shall be appropriate to the importance and complexity of a Project or corporate operation, but shall at least be on a quarterly basis. Audits shall be initiated early enough in the life of a Project to assure effective quality control during all phases. The audits shall include Project management as well as technical work activities.

Internal quality audits shall be carried out by personnel independent of those having direct responsibility for the activity being audited.

The internal quality audit program shall provide verification that the quality system is operating and being implemented as planned. Audits should be conducted on a planned and scheduled basis, consistent with the importance of the activities being performed.

The results of the audits shall be recorded (see DB Section 113-2.16) and brought to the attention of the personnel having responsibility in the area audited. The management personnel responsible for the area shall take timely corrective action on deficiencies found during the audit.

Follow-up audit activities shall verify and record the implementation and effectiveness of the corrective action taken (see DB Section 113-2.16).

The results of internal quality audits shall be reviewed in management review meetings. In accomplishing management review the results of internal audits and their attendant C/A status shall be reviewed for adequacy and effectiveness.

Auditor qualifications shall be established and documented by the Design-Builder. Staff assigned auditing tasks shall be qualified accordingly, with qualification records maintained as quality records. Auditing need not be a full time assignment, but staff assigned auditing tasks shall have no direct responsibilities for the function or work they audit.

Audits shall be carefully planned and executed to avoid or minimize disruption of the audited activity. Results shall be provided promptly to personnel responsible for the audited activity and their management. Corrective action shall be developed to identify the root causes and to institute measures to prevent the types of deficiencies identified in the audit. Corrective actions shall be monitored through review of documents, surveillance, or follow-up audits. These actions should be conducted in a timely manner to determine the effectiveness of corrective action that is implemented. Records of corrective actions should be kept together with the respective audit records.

Records of internal audits shall be maintained by the Design-Builder.
DB 113-2.18  Training

The Design-Builder shall establish and maintain documented procedures for identifying training needs and provide for the training of all personnel performing activities affecting quality. Personnel performing specific assigned tasks shall be qualified on the basis of appropriate education, training and/or experience, as required. Appropriate records of training shall be maintained (see DB Section 113-2.16).

The Design-Builder shall establish documented procedures and records to ensure that the skills and professional judgement of their personnel are developed appropriately for their intended roles, through training and/or the recorded accumulation of experience; with systematic reviews of their competence at determined levels, and before any deployment of new roles.

Training shall focus on improving competency and skill for those performing activities that materially impact quality.

Procedures established shall include:

A) Position descriptions defining the requirements of the various positions required in conducting activities affecting quality;
B) Personnel records documenting each person’s experience and current education and training accomplished, both formal and informal, relative to current or projected position assignments;
C) Documented evaluation of that experience and training, including a determination of what training is required to become fully qualified for the activities to which the person is intended to be assigned;
D) A documented plan to accomplish the training deficiency;
E) Records documenting accomplishment of that training; and
F) Education, experience and licensure used as a basis for qualifications of individuals should be verified.

All qualification and training records are quality records and shall be maintained accordingly (DB Section 113-2.16).

Project personnel shall be trained in all the special Project procedures applicable to their work.

Craft journeymen with special skills need not be trained but their competency shall be verified and a record maintained of the verification.

DB 113-2.19  Servicing

Where servicing is a specified requirement, the Design-Builder shall establish and maintain documented procedures for performing, verifying, and reporting that the servicing meets the specified requirements.

The requirement of this Section DB Section 113-2.19 is applicable only where it is specified in a Contract.

Should such a requirement exist, the Design-Builder shall document procedures which detail the methodologies to be used while performing the service, how compliance to these operations and the
Department's requirements are verified, and the agreed upon method of reporting compliance of service operations to contract requirements.

With respect to the design perspective, this requirement deals with the service rendered to the Department during the defects liability period, if any.

**DB 113-2.20  Statistical Techniques**

**DB 113-2.20.1  Identification of Need**

The Design-Builder shall identify the need for statistical techniques required for establishing, controlling, and verifying process capability and product characteristics.

The Design-Builder shall review its operations for activities which may benefit from the use of statistical techniques as a means of establishing a level of control, the maintenance of an existing level of performance, and the verification of performance. The needs assessment could include determining an activity impact on cost, time management/utilization, and quality of deliverables. It could also identify areas where the application of statistics would provide an indication of variation, activities efficiencies, and deviation control.

**DB 113-2.20.2  Procedures**

The Design-Builder shall establish and maintain documented procedures to implement and control the application of the statistical techniques identified in DB Section 113-2.20.1.

Should the need for statistical programs be established, the Design-Builder shall document procedures detailing the methods to be applied.
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(Project Name)
DESIGN-BUILD PROJECT

PIN ____________

DB CONTRACT DOCUMENTS
PART 3

DESIGN REQUIREMENTS
The text of this Part 3 is provided for illustrative purposes only and should only be considered an example. Part 3 should be developed to reflect the specific requirements of each project.

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New York State Department of Transportation

[The text of this Part 3 is provided for illustrative purposes only and should only be considered an example. Part 3 should be developed to reflect the specific requirements of each project.]

1.0 GENERAL

1.1 PURPOSE

This Part 3 establishes basic Design Requirements to be used in the design of the Project. In addition, standard and directive plans have been prepared during preliminary engineering to standardize and guide the design activities through final design and the preparation of procurement and construction documents.

Design is to be directed toward minimum feasible costs for design, construction, and maintenance expense, and minimum disruption of local access and communities.

All design shall be in Metric units.

1.2 SCOPE

The Design Requirements, which shall include the most recent edition of the New York State Department of Transportation, Standard Specifications, Construction and Materials, with addenda, issued by the Office of Engineering, will take precedence over all other Standards referred to herein except those fixed by legislation.

The design requirements in this Part 3 relate to the following Project elements:

A) Civil (geometrics, drainage;  
B) Geotechnical;  
C) Traffic;  
D) Structures;  
E) Materials;  
F) Pavement;  
G) Utilities;  
H) Intelligent Transportation Systems; and 
I) Landscaping.

[Add to or delete from list as appropriate for the specific Project.]

1.3 PROCEDURES

The Design-Builder shall prepare Design Plans and Project Specifications for the Project to New York State Department of Transportation standards for general content and format; and in accordance with the Contract and the following Department documents:

A) Department CADD Drafting Standards;  
B) [Add to list as appropriate for the needs of the Project.]

Deviations may be made within the framework of these Design Requirements to meet the requirements of a particular problem. However, any deviation, discrepancy, or unusual solution requires Approval by the Department’s Project Manager before it can be included in the design. It is the responsibility of the Design-Builder to identify, explain, and justify any deviation from the established criteria and to secure
1.4 SUPPORTING ENGINEERING INFORMATION

1.4.1 Mapping
Existing mapping information is contained in Contract Documents Part 8, Engineering Data.

1.4.2 Surveying
Existing survey information is contained in Contract Documents Part 8, Engineering Data.

1.4.3 Geotechnical
Existing geotechnical data is contained in Contract Documents Part 8, Engineering Data. The Design-Builder shall conduct additional geotechnical investigations, analyses, design and construct in accordance with [List applicable standards or other Contract Documents, such as a Geotechnical Performance Specification in Contract Documents, Part 4.].

1.4.4 CADD
CADD formatting for Design and As-Built Plans shall conform to the Department’s CADD Drafting Standards and CADD Design Standards.

1.4.5 Traffic Data
See Contract Documents, Part 8, Engineering Data.

1.5 DESIGN CODES AND MANUALS
In addition to these requirements, the Designer must comply with all other applicable engineering codes and standards, including those of the various federal, State, and local jurisdictions.

If codes, standards and/or manuals are specified herein for the design of an element of the Project, then the edition(s) in effect at the date of issuance of the RFP (or date of subsequent addendum revising the code or manual) shall be applicable to the Project. Responsibility for design remains with the Design-Builder in accordance with the terms and conditions of the Contract. If a code, manual or standard is subsequently modified, the Design-Builder shall notify the Department of such modification(s) and request the Department’s decision regarding application of the modification(s). If the Department directs the Design-Builder to comply with the modifications and any change in the cost or time of performance results, such change shall be covered by an Order-on-Contract.

Specific codes and Standards include, but are not limited to, the following: [Tailor to project needs.]

A) AASHTO A Policy on Geometric Design of Highways and Streets (Green Book), 2002;
B) AASHTO Roadside Design Guide, 2002;
C) NYSDOT Highway Design Manual;
D) NYSDOT Bridge Manual;
E) NYSDOT Environmental Procedures Manual;
F) NYSDOT MUTCD;
1.6 HISTORIC PRESERVATION

Historic preservation shall comply with the Environmental Documents and the applicable Performance Specifications (Contract Documents Part 4), if any.

2.0 DESIGN PARAMETERS

[The following items should be addressed. Others may be added as required by a specific project.]

2.1 FUNCTIONAL CLASSIFICATION

The functional classification of ________ in this area is ________.

2.2 BRIDGE LOADING

Bridges shall be designed to _____ loading with a ____ year design life.

2.3 PROPOSED DESIGN SPEED

The proposed design speed for ________ in this area is # kph.

2.4 PROJECTED TRAFFIC VOLUMES

Traffic forecasts for the design year ________ were obtained from ________.

2.5 WIDTHS


2.6 STOPPING SIGHT DISTANCE


2.7 HORIZONTAL CURVATURE


2.8 SUPERELEVATION


2.9 VERTICAL CURVES


2.10 GRADES
2.11 ROADSIDE CLEAR ZONE WIDTH
Chapter 10 of the Highway Design Manual shall be used to determine the clear zone widths for the design volumes provided.

3.0 SAFETY CONSIDERATIONS

3.1 ACCIDENT HISTORY
Existing accident history information is contained in Contract Documents Part 8, Engineering Data.

3.2 GEOMETRICS
There are ________ existing horizontal curves within the Project. The curves all meet the existing # kph design speed. The super elevation criteria for these curves was an e max of #%.

Within the Project limits, the preliminary design vertical grades meet the as-built # kph design speed. From the BOP to Sta. # the vertical alignment averages # percent. Beyond this station to the EOP the vertical grades vary between # to # percent.

3.3 ROADSIDE CONDITIONS

3.3.1 Inventory of Major Structures
[Provide list here or cross-reference to Contract Documents, Part 8, Engineering Data, if list is extensive.]

3.3.2 Inventory of Minor Structures
[Provide list here or cross-reference to Contract Documents, Part 8, Engineering Data, if list is extensive.]

3.3.3 Right-of-Way (ROW)
The existing right-of-way throughout the Project area is nominally # feet and the centerline of the roadway is approximately centered within this right-of-way. A property ownership map is included in Contract Documents Part 7, RFP Plans. See also Schedule 107A, Instructions to Proposers, Appendix C, and DB Section 107-22.

3.3.4 Fencing
[If there is fencing on the project, specify the requirements.]

There is not a right-of-way fence in this Project.

4.0 PROPOSED IMPROVEMENTS

4.1 TYPICAL SECTION
[Describe briefly or cross-reference to Contract Documents Part 7, RFP Plans.]

4.2 HORIZONTAL AND VERTICAL ALIGNMENT
The existing horizontal and vertical alignments will not change from existing conditions and will meet the proposed design speed.

4.3 INTERSECTIONS

All intersections shall be improved to provide improved operations and safety.

4.4 TURNOUTS

[Provide requirements for location, length and frequency of turnouts.]

4.5 DRAINAGE

[Provide specific requirements relating to drainage design.]

4.6 DESIGN EXCEPTIONS OR NON-STANDARD FEATURES

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(Project Name)
DESIGN-BUILD PROJECT

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DB CONTRACT DOCUMENTS

PART 4

PERFORMANCE SPECIFICATIONS
[INTRODUCTION]

The example Performance Specifications shown in this Part 4 are for illustration of the format and concept of Performance Specifications. The examples are provided to demonstrate how Performance Specifications have been written on other Design-Build projects in other states. The Performance Specifications provided herein are for information and orientation only.

The example Performance Specifications must not be adopted as is and used on Department projects. The technical requirements and cited references and standards may not be applicable to Department work. Each Performance Specification must be prepared to satisfy the needs of the Department and the specific project. They should be prepared “from scratch”.

For further information regarding preparation of Performance Specifications, see Section 7.4 of the DBPM.

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SAMPLE
AESTHETICS AND REVEGETATION PERFORMANCE SPECIFICATION

1.0 INTRODUCTION

This Performance Specification specifies the requirements for:

A) Development of a Project-specific Aesthetics Plan in cooperation with the Department and with input from the public;
B) Design and construction of aesthetic treatments/improvements;
C) Aesthetic slope treatments;
D) Replacement of trees;
E) Design and implementation of revegetation plans;
F) Noxious Weed Management Plan;
G) Pre-Design/Construction Conference and Field Review; and
H) Planting Maintenance Period.

The Design-Builder shall describe, quantify and price the components of its aesthetics and revegetation treatments per ITP, Appendices A and B.

The information contained in the Design-Builder’s Proposal shall be considered the baseline for future development of the final aesthetics and revegetation treatments.

The Design-Builder shall participate as an active member on the Aesthetics Team. The Design-Builder is required to attend meetings of this team and to actively participate in the development of its recommendations.

During the course of the Contract as the Design-Builder addresses and considers the input from the _______ communities, it will likely be necessary to adjust the work contained in the Proposal to satisfy the needs and desires of the communities. In making such adjustments the total cost of the aesthetics and revegetation treatments shall not exceed the Proposal Price for the Work except as may be agreed between the Department and Design-Builder by Order-on-Contract.

Adjustments made will be based on the descriptions, scope and price information included in the Design-Builder’s Proposal.

The final aesthetics and revegetation work shall be agreed between the Design-Builder and the Department and be documented by Order-on-Contract. No additional time or cost will be allowed for developing and implementing the final aesthetics and revegetation program.

2.0 STANDARDS AND REFERENCES

The planning, design, construction and incorporation of aesthetic treatments and landscaping and replacement of trees shall be in accordance with this PS and the relevant requirements of the following...
New York State Department of Transportation

(Information provided for format and general approach. Technical requirements may not be applicable to Department work. Cross-references do not match other contract document templates.)

standards, unless otherwise stipulated in this specification. Standards and references specifically cited in the body of the specification establish requirements that shall have precedence over all others. Should the requirements in any standard conflict with those in another, the standard highest on the list shall govern. Listed under references are guidelines that the Design-Builder may use in addressing the requirements as the Design-Builder sees fit. It is the Design-Builder’s responsibility to obtain clarification of any unresolved ambiguity prior to proceeding with design or construction.

2.1 STANDARDS

None.

2.2 REFERENCES

A) FHWA Impact Assessment for Highway Projects SB A2.1 FHWA 81.1;
B) FHWA Visual Prioritization Process FHWA-FLP-93-007;
C) Visual Evaluation Guidelines; and
D) Environmental Impact Statement and Record of Decision.

3.0 REQUIREMENTS

3.1 PHILOSOPHY

Scenic resources are an important aspect the area through which the Project passes. Project construction has the potential to substantially alter the scenic character of the Project corridor. The most intrusive construction activities will include constructed slopes, construction disturbance that results in the removal of vegetative ground cover, and the removal of mature deciduous trees. A goal of the Department is to preserve and enhance the scenic character and aesthetic qualities of the corridor. The Design and Build Team shall develop aesthetic and revegetation treatments to achieve this goal. The goals of the Aesthetics Plan shall be achieved by means of structure enhancements, slope treatments, and tree plantings and revegetation. These elements shall be designed to achieve an integrated, unified, and cohesive visual experience throughout the Project. The Plan shall also contain provisions for access to and maintenance of aesthetic treatments, and safety of maintenance personnel.

3.2 AESTHETICS PLAN

The Design-Builder shall design and incorporate aesthetic treatments on structures (e.g., bridges, walls, wall barriers, guard rails) and slopes, replace mature trees, and provide for the revegetation of disturbed areas in accordance with an Aesthetics Plan. The Aesthetics Plan shall be developed with input from the stakeholder communities and in collaboration with the Department. The Design-Builder is encouraged to pursue creative and innovative design solutions such that the final product mitigates potential visual impacts, while minimizing maintenance and providing durable service.

Development and implementation of the Aesthetics Plan shall be accomplished under the direction of a Landscape Architect with experience in mountainous and rural highway projects.
Attributes of aesthetic treatments shall include:

A) Natural appearing facades;
B) Gradual transitions from natural to simulated features;
C) Non discernable patterns;
D) Naturally appearing color schemes;
E) Visible feature relief;
F) Visible texture/color blending to match as much as possible the natural features; and
G) Native vegetation types and patterns suitable for the localized climate.

Because aesthetic considerations will directly influence several Project components, it is important for the Design-Builder and the Department to reach agreement on the Aesthetics Plan and to provide for its incorporation into the design of structures, walls and related infrastructure from the outset of the Project. The Aesthetics Plan shall be completed not later than six (6) months after NTP, but prior to start of construction of Project elements with the potential for aesthetic treatments and/or tree removals and replacements and landscaping.

Development of the Aesthetics Plan will include input from area residents and official groups. The Aesthetics Plan shall be subject to the Department Environmental Manager and Department’s Project Manager’s written acceptance.

3.3 BASELINE AESTHETICS

3.3.1 General

Bridges, retaining structures, vegetation, trees, and slope treatments significantly determine the overall visual quality of the Corridor. In designing these elements particular attention shall be given to:

A) Aesthetic treatments of structures;
B) Proportion, relief, and form of walls and structures;
C) Continuity of visual treatment along the Corridor;
D) Consistency of graphics, signage, and aesthetic treatments;
E) Primary and highlight colors;
F) View of facility from R.O.W., adjacent frontage roads and the surrounding area;
G) Cost effectiveness;
H) Durability;
I) Ease of maintenance and repair; and
J) Vandalism and graffiti deterrence.

The Design-Builder shall consider the visual context of the Project corridor in developing these parameters. Elements viewed only from yards or fields will warrant a different level of aesthetic treatment than structures located in more populated view areas.
The Design-Builder shall consider and incorporate structure surface enhancements, such as texture, color and finish, where appropriate. Desired effects may be achieved through the use of form liners, reveals, surface texture, geometric form work and other methods.

Color may add significantly to the overall visual quality of the Corridor. The Design-Builder, shall provide a color scheme appropriate from both regional and cultural standpoints consistent with the accepted Aesthetics Plan. The color scheme may be achieved by utilizing concrete additives and/or chemical staining coupled with natural concrete coloration. The Design-Builder shall develop quality control procedures that provide even color throughout the element/ Project without streaks or blotches.

3.3.2 Baseline Structure Aesthetics

3.3.2.1 Bridges, Guardrail, and Wall Barriers

The Design-Builder shall address the aesthetic quality of bridges, guardrails, and wall barriers. Particular attention shall be given to the design, materials, and color treatments of all bridge surfaces, bridge railings, concrete wall barriers, and guardrails so as to blend with the scenic character of the corridor. The design and treatment of bridges, guardrail, and wall barriers shall be developed with input from the stakeholder communities and groups and shall be identified in the Aesthetics Plan.

3.3.2.2 Retaining Walls and Slope Retention Systems

Retaining wall structures and other slope stabilization techniques will be a major visual element of the corridor; their design and treatment will be an important element of the Aesthetic Plan. The decision to use retaining structures shall consider cost, effectiveness, slope stability, stream impacts, right-of-way limits, irrigation facility impacts and aesthetics. Some of the decision criteria on where to use retaining walls will include:

A) Using retaining structures where a constructed cut or fill slope would result in excessive vegetation disturbance and visual impact outside of the existing highway right-of-way. For the purposes of the RFP, "excessive" is defined as ground disturbance extending more than about 50 ft. beyond the existing right-of-way fence. In this instance, the height of retaining walls will generally be limited to a maximum height of 6 m;

B) Using short retaining walls (1.8m in height or less) in locations where a wall would eliminate the need for a cut or fill slope or reduce the extent of ground disturbance and visual impact by more than 50 percent; and

C) Using retaining wall structures or other slope stabilization techniques to prevent fill embankments from encroaching into the river and to prevent rock fall or other slope failures from affecting these streams and associated irrigation ditches.

Other criteria may be considered that would reduce cost and/or reduce environmental impacts. Alternate criteria require the acceptance of the Department’s Project Manager and the Department Environmental Manager.

New cut and fill slopes will be revegetated where the soil conditions and slope grade make revegetation feasible. Commercially available methods (e.g., cellular confinement systems) and other special
techniques will be used to facilitate root development on slopes with a grade steeper than 2:1. Where soil conditions or grade make slope revegetation unfeasible, alternative slope protection measures shall be implemented to prevent erosion and minimize visual impact. The type of slope protection measures to be used shall be developed in collaboration with the affected communities and shall be consistent with the accepted Aesthetics Plan and this PS.

The design and treatment of retaining wall surfaces and other slope stabilization measures visible along the Project corridor shall be developed with input from the stakeholder communities and groups and shall be identified in the Aesthetics Plan.

3.3.3 Baseline Tree Replacement and Revegetation Requirements

The removal of existing vegetation (including trees) will be limited to the area within the construction slope limits and the adjacent area needed for the operation of construction vehicles (a maximum of 10 feet outside of the constructed slope). A monitoring program shall be implemented during construction to ensure that unnecessary vegetation removal does not occur. This program shall include staking of areas to be cleared and a pre-clearing field review to ensure that the staked area is consistent with the slope-ties identified in Design Drawings. The Design-Builder shall implement field monitoring during clearing and grubbing, and through other construction phases to ensure compliance with this requirement.

In addition to the monitoring program described above, a Pre-Construction Conference and Field Review involving Department staff, the Design-Builder, and community representatives will be held prior to the applicable Definitive Design Review and prior to the start of project construction to determine which mature trees and other vegetation are to be removed and which can be avoided. Trees and other vegetation to be avoided shall be clearly marked in the field for easy identification by construction personnel. Frequent and continuous monitoring of construction activities will be conducted by the Design-Builder to ensure that all special requirements for vegetation removal are followed.

Subsequent to the Pre-Construction Conference and Field Review, a report shall be prepared by the Design-Builder that identifies areas to be avoided during Project construction and identifies any other special provisions to be followed by the Design-Builder. This report shall be updated quarterly or more often as needed. The initial report and all updates shall have the written acceptance by the Department Environmental Manager and the Department’s Project Manager. All staff involved with construction management and oversight, including Design-Builder and Department staff, will be required to certify that they have read and understand the requirements of the Pre-Construction Conference and Field Review report and updates.

The Design-Builder shall develop and implement a tree replacement plan. This plan shall identify the locations where replacement trees are to be planted, and the replacement ratio, tree size and type, and planting technique that will be used to replace trees removed during Project construction. The approximate number and type of trees that may be removed are identified in the final biological report for the Project and includes approximately 1,900 trees. The number of trees potentially affected by the Project includes all trees within the highway right-of-way. The actual number of impacted trees is likely to be much less and will depend on final design.

The tree replacement plan for trees within the highway right-of-way will be developed with input from the Stakeholder community groups and state and federal land and resource management agencies having jurisdictional authority within the Project area. Trees on private property that are to be replaced will be
developed with input from the affected property owner. The replacement of trees associated with irrigation ditches will be provided based on input from the affected property owner.

For cost-estimating purposes, the Design-Builder shall assume the following:

A) Replacement trees shall be selected with due consideration for aspect, slope, soil conditions, and water requirements. Species native to or adaptable to the area shall be provided. Irrigation to establish plant materials, shall be provided as appropriate. Plants and trees requiring long-term irrigation will not be acceptable. All plantings shall be protected from wildlife depredation using wire mesh fencing, wire mesh cages or other suitable techniques.

B) The species of trees to be considered include, but are not limited to, ____________________________________________, and other similar tree species native or adaptable to the area.

C) Mature trees (greater than 300mm in diameter at chest height) shall be replaced using the following ratio:
   - Trees shall be replaced in-kind with pole plantings and a replacement ratio of 10 replacement trees for every removed tree;
   - Stands of willow shall be replaced by replanting similar patches (approximate 2-foot centers) along the river.
   - ____________________________________________, and other similar trees shall be replaced in-kind or with similar species from the above list. Replacement trees shall be approximate 2-inch caliper using a ratio of 4 replacement trees for every removed tree;
   - ______ trees shall be replaced using ________________________________, or other similar species. The replacement ratio and size will be the same as described in items a and c above.

D) Immature trees (5mm to 300mm diameter at chest height) of all species shall be replaced using a ratio of one replacement tree for every removed tree.

Temporary impacts to vegetation shall be minimized by limiting construction activities to the minimum area needed to complete the necessary improvements to the highway. The Pre-Construction Conference and Field Review shall establish and review the locations and boundaries of vegetation disturbance.

The Design-Builder shall develop a Revegetation Plan as part of its design Work and prior to construction prior to Project construction that specifies the areas to be revegetated, species of plants to be used for revegetation, the techniques to be used to revegetate disturbed areas, surface preparation, and the time of planting. The revegetation plan shall also identify the special techniques to be used to establish vegetation on slopes with a grade steeper than 2:1. The Revegetation Plan shall be developed in consultation with wildlife and land management agencies and will specify the use of plant species that are native to the Project area. The Revegetation Plan shall have the written acceptance of the Department Environmental Manager and the Department’s Project Manager.
The Revegetation Plan will include measures to prevent the introduction and spread of noxious weeds. Prior to construction, the Design-Builder shall resurvey the Project limits to determine the extent of noxious weed populations and develop a Noxious Weed Management Plan for areas found to be infested with Class A or B noxious weeds. The Noxious Weed Management Plan will require the written acceptance by the Department Environmental Manager and Department’s Project Manager.

3.4 PLANTING MAINTENANCE PERIOD

The purpose of the Planting maintenance period is to ensure that the Department receives plant material of prime quality that are planted and maintained in a thorough and careful manner. Plants may have latent defects or diseases, or are shocked or mishandled in the process of installation. Therefore, the Design-Builder shall:

A) Maintain trees, shrubs, and other landscaping for a period of 12 months from date of Final Acceptance of the planting and revegetation Work;

B) Replace trees, shrubs, and other landscaping during the 12-month maintenance period when they are found to be in an unsatisfactory condition as determined by the Department. Replacement planting shall be done in the spring planting season only, except as approved otherwise. Dead plants will be removed within seven days of notification;

C) This landscape maintenance requirement shall not be enforced should the plant die due to improper maintenance procedures carried out by the Department, fire, flood, or hail, or other conditions beyond the control of the Design-Builder;

D) All replacement vegetation shall be of the same kind and size as originally specified and shall be installed as described in the accepted Design Drawings and Project Specifications. Replacements shall be made at no additional cost to the Department; and

E) Maintenance requirements specified herein shall apply to originally specified and installed vegetation and any replacements made during the 12-month maintenance period.
PUBLIC INVOLVEMENT AND COMMUNITY RELATIONS PERFORMANCE SPECIFICATION

1.0 INTRODUCTION

This Performance Specification specifies the requirements for the Public Involvement and Community Relations Program and defines the roles and responsibilities for this Work.

The Public Involvement and Community Relations Program includes Department and Design-Builder activities including:

A) Public information;
B) Community involvement and meetings;
C) Communications with the public;
D) Public notices;
E) Media relations; and
F) Other activities included in the Design-Builder’s Proposal.

Support and involvement of highway users, residents and communities within the corridor are critical to the successful completion of the Project. The Preliminary Design has evolved to its current level in part due to the proactive and continuous involvement of local residents, community groups, local officials, and other groups. It is essential that the Design-Builder commit to a significant level of community participation and interaction during the development of the design, as well as throughout the construction of the roadway.

2.0 STANDARDS AND REFERENCES

The Work shall be in accordance with this PS and the relevant requirements of the following Standards, unless otherwise stipulated in this specification. Standards and References specifically cited in the body of the specification establish requirements that shall have precedence over all others. Should the requirements in any standard conflict with those in another, the standard highest on the list shall govern. Listed under References are guidelines that the Design-Builder may use in addressing the requirements as the Design-Builder sees fit. It is the Design-Builder’s responsibility to obtain clarification of any unresolved ambiguity prior to proceeding with design or construction.

2.1 STANDARDS

None.

2.2 REFERENCES

The discussion of public involvement and commitments to continue community participation through Project design and construction as described in the ________ shall serve as a guideline for the Design-Builder in working closely with the public.
3.0 REQUIREMENTS

The Public Involvement and Community Relations Program will include two principal components. The first is a community involvement and participation program. The second component is a public relations program.

A) The community involvement and participation element is intended to continue the close working relationships with residents, landowners, community groups, local officials, and other like groups that was initiated during the preliminary design phase. This effort shall include activities such as, but not limited to, meetings with individual land owners, local officials, and community groups, and public meetings to keep the public involved in design and construction activities. The community involvement and participation element will also involve the development of a citizen task force(s) and similar groups that can work closely with the Design-B builds on issues such as visual treatments, community enhancements, and ditch treatments; and

B) The public relations element is intended to keep the public informed of major activities and decisions through design and construction. This element will involve the preparation and distribution of Project information to the local media, area residents, local officials, and highway users.

The Design-Build er shall make a good faith effort to address any concerns the public may have, and take under consideration any suggestions or wishes they express if those suggestions are reasonable in regard to cost, time and construction effort. All design or construction modifications are subject to written acceptance by the Department in consultation with the Design-Build er.

3.1 PUBLIC INFORMATION AND COMMUNITY RELATIONS RESPONSIBILITIES

The Department and the Design-Build er both have responsibility for the Public Involvement and Community Relations Program.

The Design-Build er will be the focal point and the foundation of the effort. The Design-Build er shall have primary responsibility for performing the activities specified herein and elsewhere in the Contract Documents, particularly Contract Documents Part 4, Performance Specification, Maintenance and Protection of Traffic. The Design-Build er shall be responsible for day-to-day public involvement and community relations activities as defined in the Contract Documents, including the Design-Build er’s Proposal Documents.

The Department responsibilities include:

A) Monitoring the Design-Build er’s performance for compliance with the Contract’s public information requirements; and

B) Conducting the Department-sponsored public information and community relation’s activities.

3.2 DESIGN-BUILDER RESPONSIBILITIES AND REQUIREMENTS

3.2.1 Public Involvement and Community Relations Program
Within 30 days of NTP, the Design-Builder shall complete and submit to the Department’s Project Manager for written acceptance, its Public Involvement and Community Relations Plan (PICR) based on the Preliminary PICR submitted with the Design-Builder’s Proposal as per ITP, Appendix A. The initial update shall address any comments from the Department regarding the Preliminary Plan. The Department’s comments will focus on whether the Preliminary Plan satisfies all required elements of the PICR Plan specified in this PS. The Design-Builder shall update the plan at least quarterly. In developing the quarterly updates, the Design-Builder shall solicit input from the Department, communities, businesses and residents along the corridor. A copy of each update shall be submitted to the Department for written acceptance.

The PICR Plan shall address the philosophy, methods, techniques, and activities to be used for both the community involvement/participation program and the public relations program. The Plan shall also identify the Design-Builder’s PICR staffing plan and key personnel, PICR office location and hours of operation.

3.2.2 Staff Requirements

The Design-Builder shall employ personnel with experience in public involvement, community and landowner coordination, and community relations as part of major highway construction projects. The public involvement and community relations team must include individuals capable and qualified to perform the following types of functions and activities:

A) Developing and implementing an effective public coordination, involvement, and relations plan for a major highway construction project;

B) Meeting with property owners to collaborate on site-specific effects of the Project and abatement of Project impacts especially as they relate to driveways, irrigation ditches, and property disturbance;

C) Meeting with community groups to collaborate on mitigation of visual impacts, revegetation and tree replacement plans, community enhancements, and other similar issues; and

D) Developing and disseminating Project information used by affected communities and other stakeholder communities, county and municipal officials, local and regional news media, highway users including the trucking industry, tourists, and tourism industry, and other groups having a potential interest in the Project.

The PICR Program shall be led by a Public Involvement Specialist and a Community Relations Specialist. The persons filling these roles shall meet the qualification requirements specified in ____________.

The Public Involvement Specialist and the Community Relations Specialist shall be among the Design-Builder’s Key Personnel and shall be directly responsible to the Design-Builder’s Project Manager. These individuals must also work closely with the Environmental Coordinator.

The Public Involvement Specialist and the Community Relations Specialist shall have “real-time” access to all Project details that may be relevant to the public, public agencies, emergency service providers, businesses, etc. They shall be responsible for and able to provide information to the Department on an “as requested” basis.
The Design-Builder’s PICR Team shall be the primary interface between the public and the Design-Builder’s organization.

3.2.3 PICR Office

The Design-Builder shall provide an office within the Project Corridor that is accessible to the public where information about the Project may be obtained and where the public can communicate with a representative of the Design-Builder. A member of the staff assigned to the office shall be bilingual (English and Spanish). The office shall be staffed Monday through Friday during normal business hours and four (4) hours on Saturdays. The office may be co-located with other Design-Builder offices.

3.2.4 Design-Builder’s Response to Inquiries and Comments

The Design-Builder shall maintain day-to-day contact with the community by performing, at a minimum, the activities specified in this PS.

If a resident, business, or other member of the public has a question or comment on the Project, the first and preferred point of contact should be the Design-Builder’s Public Involvement/Design-Builder Specialist. Design-Builder shall take necessary steps to foster these contacts, including continuous interaction with the public and community.

If Design-Builder is unable to resolve a complaint regarding Design-Builder’s response to a complaint or concern within two (2) days, the Design-Builder shall notify the Department’s Project Manager. The Design-Builder shall provide necessary information, staff support and representation to assist in resolving the issue.

3.2.5 Public Notifications

The Design-Builder shall notify the public and community in general and specifically affected businesses and residents along the Project through personal contact, of construction progress and upcoming events.

The Design-Builder shall provide the specific notifications listed in Table 3.2.

Utility shut-off/diversion announcements shall be made in the form of a personal contact by the Design-Builder’s Public Relations Specialist, or designated member of the Design-Builder’s PICR staff, that shall include a written notice to the affected parties.

All notices shall be in English and ________.
New York State Department of Transportation

(Information provided for format and general approach. Technical requirements may not be applicable to Department work. Cross-references do not match other contract document templates.)

Table 3.2
Notifications

<table>
<thead>
<tr>
<th>Notice</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Closure</td>
<td>Written notices posted at least 24 hours in advance of planned closures at start and end of Project and at intermediate intersections/junction with US, State or county highways and roads.</td>
</tr>
<tr>
<td>Critical Utility Shut-off/Diversion</td>
<td>Written notice at least 72 hours in advance of, but not more than 96 hours before, shut-off and/or diversions.</td>
</tr>
<tr>
<td>72-hour Business/Commercial Utility Shutdown</td>
<td>Written notification of Utility shutdown or diversion for businesses and commercial property.</td>
</tr>
<tr>
<td>48-hour Residential Utility Shutdown</td>
<td>Written notification of Utility shutdown or diversion for residential property.</td>
</tr>
<tr>
<td>Weekly Construction Updates</td>
<td>A construction update will be provided to local newspapers and posted at post offices and other heavily frequented locations in the Project vicinity, such as grocery stores, gas stations, etc.</td>
</tr>
<tr>
<td>Road and Driveway Closures</td>
<td>Written notice and personal contact at least 72-hours in advance of, but no sooner than 7 days prior to, closure.</td>
</tr>
<tr>
<td>Construction Schedule</td>
<td>Publish in local newspapers and post in post offices and other heavily frequented locations in Project vicinity one (1) month prior to start of construction with monthly updates thereafter.</td>
</tr>
</tbody>
</table>

3.2.6 24-Hour Hotline

The Design-Builder shall provide for a toll-free, bilingual (English and _______) hotline for the Project. The hotline staff shall be provided with the necessary guidance needed to address any number of issues called into the hotline. This guidance shall include a handbook outlining who to call and when, basic Project information, emergency phone procedures, and any other information that may be applicable. The handbook will be updated so that information contained therein is current.

The Hotline shall be staffed such that messages will be received by a member of the Design-Builder’s staff at least during the hours of 8:00 am to 5:00 pm daily and 8:00 am to 12:00 pm on Saturday and whenever construction activity is ongoing. At other times the hotline may be either capable of taking date and time stamped recorded messages or manned by an answering service. A system designed to address calls in the order received is acceptable in the event multiple calls are received simultaneously.
All calls to the hotline shall be included in the database (Section 3.2.8). The procedures for this hotline shall be developed and included in the PICR Plan.

### 3.2.7 Database

All contacts made by the Design-Builder shall be logged into a database that is capable of tracking all contacts made with the public. The Design-Builder shall create the database using Microsoft Access. The database, at a minimum, shall list contact name, business name, address, phone number, home phone for business owners, who made the contact, when the contact was made, how the contact was made (in person, phone, e-mail, fax), a brief description of the nature of the contact, a brief description of handouts, and a document control number that identifies a hardcopy of the contact information. In the case of multiple or mass mailings or distribution, a referencing system shall be developed to minimize the amount of hard copy information filed. Contacts include those made by all Project staff including field staff.

A standardized form shall be developed to log contact information. This form will become the hard copy of all contacts. Handouts shall be attached to this form. The contact information shall include the information provided for the database as well as a description of what was discussed. The database shall document all contact with the public and to be able to recreate what transpired during the Project.

The Design-Builder shall provide the Department with contact forms for the Department’s use in documenting contacts consistent with the database and shall enter all the Department contacts into the database. The Department shall have read-access to the database. All contact information shall be in the database within 3 days of contact.

### 3.2.8 Complaint/Comment Forms

The Design-Builder shall provide complaint/comment forms to businesses and residents along the Project as a method for the public to express Project concerns. These forms shall provide all information needed for entry into the database. The forms shall indicate the address and fax number where the forms can be sent and show the 24-hour hotline number.

### 3.2.9 Responses to the Hotline Calls and Complaint/Comment Forms

Complaints received shall be responded to within 5 days of receipt for non-emergency issues and within 24 hours for emergency issues. In the response, the Design-Builder shall indicate the date by which the complaint will be resolved.

Emergency calls relating to hazardous conditions, diminished security or loss of access or business shall be evaluated on a case by case basis. Verification calls shall be provided on all calls to inform the callers that their calls have been addressed.

### 3.2.10 Emergency, Unforeseen Utility Disruptions, Hazardous Conditions, Traffic Emergencies, Security and Loss of Access Notifications

The Design-Builder shall provide immediate response to emergencies by trained personnel from an incident response team within 30 minutes of receiving notification from the Department, law enforcement
or fire suppression agencies, Federal land management agencies, Utility Owner and/or affected business(es) and/or resident(s).

All emergency and/or unforeseen disruptions shall be explained to affected residents or businesses immediately. The person making the contact shall provide to the affected party(ies) information such as:

A) Cause of disruption (i.e., whether it is construction oriented or not);
B) Actions being taken to alleviate the problem; and
C) Anticipated duration of the disruption.

3.2.11 Construction Schedule/Maintenance of Traffic and Access

The Design-Builder shall notify businesses and residents along the Project and shall publicize commencement of construction one (1) month prior to the beginning of construction in any area of the Project. This notification shall publicize the projected dates for the construction by individual notices to Stakeholders, community groups, businesses, and residents along the Project.

Construction in any area will be constrained by the requirements of Contract Documents Part 4, Performance Specification, Maintenance and Protection of Traffic and Access During Construction. Each area where active construction is being conducted shall be treated as a distinct entity for all notification activities.

Information regarding Project design and construction shall be readily available in a form that can be quickly disseminated to the public. Information provided to the public shall be consistent with information contained in the Baseline Progress Schedule, schedule updates, and the applicable Traffic Control Plan.

3.2.12 Changes to Access

The Design-Builder shall inform businesses and residents in writing and by personal contact, of any changes to access that may impact them, at least two weeks prior to start of construction. Changes in access shall be submitted to the Department’s Project Manager, along with an access map at least three weeks prior to start of construction for the Department’s Project Manager’s written acceptance.

3.2.13 Signage

Public information and warning signage shall be maintained throughout the Project at each construction site.

3.2.13.1 Project Identification Boards

The Design-Builder shall install signs throughout the Project to be placed at the start and end of the Project, at intersections/junctions with US and State highways, at Design-Builder’s main office (if along the Project alignment) and at all field offices. The signs shall identify the Department by its official logo (to be provided by the Department), show the name of the Project, the Design-Builder’s name, the Project 24-hour hotline number and estimated date of completion. A sample of the Project Identification Board shall be submitted to the Department’s Project Manager and shall be subject to Department’s Project Manager’s written acceptance. Signs and lettering shall be sized appropriate for the speed limit in the
area using MUTCD size guidelines.

3.2.13.2  “Business as Usual” Signage

In locations that are undergoing construction, the Design-Builder shall maintain signage at each intersection on both sides of the highway that clearly denotes the name of the business and indicates the business is “Open for Business.” The Design-Builder shall provide directional arrows indicating access to the affected business(es). Sign lettering size shall be consistent with the speed limit in the area.

3.2.14  Publications

The Design-Builder shall publish a monthly newsletter for distribution in postal zones along the Project. The Design-Builder shall develop a methodology to distribute Project information regionally monthly.

The newsletter should:

A) Provide hotline number, web site information and public contact information;
B) Provide long range construction schedule information;
C) Announce upcoming meeting or events; and
D) Provide Project progress information.

The newsletter shall be subject to written acceptance by the Department prior to issuance and shall include the Department’s and Design-Builder’s logos.

3.2.15  Telephone Trees

The Design-Builder shall establish and manage an emergency response telephone tree. All appropriate emergency response agencies, including Federal land management agencies, shall be included on this telephone tree for immediate response in the event of an emergency. The telephone tree shall be divided into areas of expertise so the proper people are called for specific emergency situations.

3.2.16  Public Forums

Besides the daily contacts made, the Design-Builder and/or the Department shall organize public forums to give the public the opportunity to discuss the Project. An open house should be hosted one month prior to construction and periodically thereafter to be responsive to public needs and concerns. The information displayed or discussed shall include schedule, staging, maintenance of traffic and access, and any other Project information. The open houses shall be advertised no less than 10 days before the event.

3.3  OPTIONAL DESIGN-BUILDER ACTIVITIES

The Design-Builder is encouraged to provide additional, cost-effective services to enhance the overall PICR Program. Any such enhancements may be included in the Design-Builder’s Preliminary PICR Plan submitted with the Design-Builder’s Proposal and the subsequent Plan prepared per Section 3.2.1 or may be implemented at other times during the Project, subject to the Department’s written acceptance.

Any PICR activities included in the Design-Builder’s Proposal will not be considered optional, but shall
be mandatory after award of the Contract since the Preliminary PICR Plan will be used as a basis of the best value selection.

3.4 MEDIA RELATIONS

An ongoing media relations campaign will occur and be managed by the Department. The Design-Builder shall assist in giving timely information to the Department regarding construction activities for use in media events.

Neither the Design-Builder nor any Subcontractor nor their employees shall conduct or participate in media events, radio or television broadcasts, without the written consent of the Department, except in emergencies. In emergency situations, the Design-Builder shall immediately notify the Department’s Project Manager of any situations that may involve the media.
DRAINAGE PERFORMANCE SPECIFICATION

1.0 SCOPE

The Design-Builder shall provide a well-drained corridor and a safe environment for those that use and maintain the Project. The design and construction of all drainage structures and appurtenances shall adequately address functionality, durability, ease of maintenance, maintenance access, safety, aesthetics, and protection against vandalism. Unless explicitly specified in a commitment as referenced in _____, the Design-Builder shall abide by the specifications and standards herein. In fulfilling the requirements for drainage, the Design-Builder shall abide by and fulfill the requirements related to the drainage features or systems of ____________________________________________________.

2.0 APPLICABLE STANDARDS AND REFERENCES

The design and construction of storm drainage items and appurtenances shall be in accordance with this Performance Specification and the relevant requirements of the following standards, unless otherwise stipulated in this specification. Standards and references specifically cited in the body of the specification establish requirements that shall have precedence over all others. Should the requirements in any standard conflict with those in another, the standard highest on the list shall govern. Listed under references are guidelines that the Design-Builder may use in addressing the requirements as the Design-Builder sees fit. It is the Design-Builder’s responsibility to obtain clarification of any unresolved ambiguity prior to proceeding with design or construction.

2.1 Standards

A) Drainage Commitments (______________);
B) Standard Specifications;
C) Standard Drawings; and
D) Design Requirements.

2.2 References

A) Section Design Consultants’ Off-Site Drainage Reports;
B) Preliminary Design;
C) Off-Site Drainage Study;
D) Pipe Selection Guidelines;
E) Hydrology Manual;
F) Standard Specification for Highway Bridges (AASHTO) NCHRP Project 1-29 “Improved Surface Drainage of Pavements”;
G) AASHTO Roadside Design Guide;
New York State Department of Transportation

(Information provided for format and general approach. Technical requirements may not be applicable to Department work. Cross-references do not match other contract document templates.)

H) AASHTO Model Drainage Manual;
I) HDS No. 5 “Hydraulic Design of Highway Culverts”;
J) HEC-11;
K) HEC-13, “Hydraulic Design of Improved Inlets for Culverts”;
L) HEC-12;
M) HEC-15;
N) HEC-18;
O) OSHA;
P) NIOSH;
R) FHWA Publication, “Manual for Highway Storm Water Pumping Stations” vols. 1 and 2; and 
S) AASHTO Standard Specifications for Transportation Materials.

2.3 Software

The following software shall be used in performing drainage design calculations:

A) HEC-1;
B) HEC-1 Pre-processor “SLPRE”;
C) HYDRAIN; and
D) WSPRO.

3.0 REQUIREMENTS

3.1 Hydrology

All storm drain items and appurtenances shall have a minimum 10 year storm design unless otherwise stated herein. Use of HEC-1 with the Area Pre-Processor, where feasible, is required for all systems that must be routed. A plot is required of the hydrographs for all nodes in the hydrologic model where applicable and for the inlet and outlet hydrograph of the detention basins. Input elements for HEC-1 computer modeling shall be generated as outlined in the Hydrology Manual prepared for the City Department of Public Utilities. The Rational method may be used to determine storm flows where routing is not required. The rainfall intensity shall be based on values given in Table One of the City Hydrology Manual. Intensity Duration Frequency (IDF) Curves are included in the Design Requirements. Crossings located in FEMA flood plains shall be designed for the 100 year flood. All other cross drains shall be designed for the 50 year storm event. For backwater and water surface computation, use of the WSPRO program is preferred.

3.2 Pavement Drainage
Pavement and inlet design shall be in accordance with HEC-12. Optimize roadway geometric component configurations, as outlined in NCHRP Project 1-29 “Improved Surface Drainage of Pavements”, to minimize hydroplaning. Shoulders shall generally drain away from traffic lanes. Minimum cross slope (excluding transitions) shall be 2%. The minimum longitudinal grade shall be 0.5%, except where unattainable, as shown in the Preliminary Design. Design the low point of sag vertical curve inlets for a 50 year storm. Combination curb and grate inlets are required for all sags in cross streets that are receiving new storm drains. Locate flanking inlets on sag vertical curves with barrier section per HEC-12. Following are design criteria for frequency and spread:

<table>
<thead>
<tr>
<th>Road Classification</th>
<th>Design Frequency</th>
<th>Design Spread</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Volume</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&lt;70 kph</td>
<td>10 year</td>
<td>shoulder</td>
</tr>
<tr>
<td>&gt;70 kph</td>
<td>10 year</td>
<td>shoulder</td>
</tr>
<tr>
<td>sag point</td>
<td>50 year</td>
<td>shoulder</td>
</tr>
<tr>
<td>Collector</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&lt;70 kph</td>
<td>10 year</td>
<td>½ driving lane</td>
</tr>
<tr>
<td>&gt;70 kph</td>
<td>10 year</td>
<td>shoulder</td>
</tr>
<tr>
<td>sag point</td>
<td>10 year</td>
<td>½ driving lane</td>
</tr>
<tr>
<td>Local Streets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>low ADT</td>
<td>5 year</td>
<td>½ driving lane</td>
</tr>
<tr>
<td>high ADT</td>
<td>10 year</td>
<td>½ driving lane</td>
</tr>
<tr>
<td>sag point</td>
<td>10 year</td>
<td>½ driving lane</td>
</tr>
</tbody>
</table>

### 3.3 Bridge Deck Drainage

Provide a deck drainage system when spread limits due to the design storm are exceeded. All deck drain inlets shall be grated, in accordance with __________. The drainage system shall be compatible with the structural reinforcement, components, and aesthetics of the bridge. Position outfalls to avoid corrosion of structural members, erosion of embankments, and splash on moving traffic and sidewalk areas below the bridge. Down spouts shall be galvanized steel pipe 200 mm minimum diameter with a 3.2 mm minimum wall thickness. Provide cleanouts for downspout systems.

### 3.4 Bridge Approach Drains

Intercept gutter flow at both ends of bridges. Storm water flowing toward the bridge shall be intercepted prior to the approach slab. Storm water leaving a bridge shall be intercepted prior to leaving the approach slab. Direct this water to an appropriate outfall. The inlets and catch basins shall conform to __________.

### 3.5 Storm Drain Systems

Runoff falling within the limits of the Project, storm water presently draining onto the project site, and additional drainage identified by the RFP drainage documents for inclusion with the project shall be collected and conveyed to a storm drain system for the 10-year, 3-hour storm. Waivers may be granted by the Department for minor, inconsequential flows if collection and conveyance are impractical. Except for specifically identified detention basins, ponding will not be permitted within the corridor. Storm sewer design shall be performed using Manning’s Equation. Do not use pressure flow analysis methods to size the system. The hydraulic grade line shall be plotted with the storm drain profile, and be 0.3 m or more below the top of pavement, unless unattainable. Design velocity should not be less than 0.75 m/sec.
nor more than 5 m/sec. The desirable minimum pipe slope shall be 0.3%. Decreasing storm drain sizes in the downstream direction is not allowed.

3.5.1 Inlets

Use HEC-12 procedures to determine inlet efficiency. For HEC-12 procedures, use P-1 7/8-4 for bicycle safe grates and P-1 7/8 for standard grates. Include bypass flows into the storm drain calculations. Inlets intercepting cross-street flows shall be sized to accommodate runoff flowing curb full where cross-street has been designed for less than a ten-year flow. Grates and frames shall be structural carbon steel conforming to AASHTO M-270 Grade 250, and shall be hot dip galvanized after fabrication in accordance with AASHTO M-111. Design inlets for HS-20 or interstate alternate live loading. Inlets on mainline and ramps serving these roads need not be bicycle safe. Bicycle safe grates are required elsewhere. Provide a method of embedding steel frame into concrete catch basin, gutter or bridge deck. Slotted drains are prohibited.

3.5.2 Catch Basins

Catch basins shall be designed for HS-20 or interstate alternate live loadings. Catch basins shall be reinforced concrete. Reinforcing shall be epoxy coated or galvanized according to AASHTO M-111. Provide manhole steps when inside depth of box exceeds 1220 mm. Precast catch basins may be used unless any inside dimension exceeds 1220 mm. For head losses at junctions due to changes in flow direction and the collision and turbulence of flows in manholes, refer to Section 5.10 of FHWA’s publication “Design of Urban Highway Drainage, The State of the Art,” 1979. For manhole design, these losses shall be considered as required by the manhole structure characteristics. Maximum catch basin spacing shall be governed by the lesser of that required by drainage flow spread design or that specified in the following table.

<table>
<thead>
<tr>
<th>STORM DRAIN SIZE</th>
<th>SPACING BETWEEN CATCH BASINS/CLEANOUT BOXES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>MAXIMUM</td>
</tr>
<tr>
<td>450 mm to 900 mm</td>
<td>90 m</td>
</tr>
<tr>
<td>900 mm to 1200 mm</td>
<td>135 m</td>
</tr>
<tr>
<td>Greater than 1200 mm</td>
<td>155 m</td>
</tr>
</tbody>
</table>

3.5.3 Detention Basins

Use the storage indicator method, as defined in AASHTO Model Drainage Manual Chapter 12, or HEC-1 to determine the required detention basin volume. As a minimum, size detention basins for the specified design event identified in the following table.

<table>
<thead>
<tr>
<th>Detention Basin(s)</th>
<th>Design Storm</th>
<th>Detention Basin(s)</th>
<th>Design Storm</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>100-year, 72-hour</td>
<td>H</td>
<td>10-year, 72-hour</td>
</tr>
<tr>
<td>B</td>
<td>100-year, 72-hour</td>
<td>I</td>
<td>10-year, 72-hour</td>
</tr>
</tbody>
</table>

Drainage Performance Spec
Provide for retention of water (0.15 m minimum depth) in the detention basins. This residual volume shall not be included as part of the design event volume. The purpose of the retention is to encourage plant growth for oil removal, and provide storage for hazardous spill containment.

Provide 0.3 m of freeboard for detention basins with design storms less than the 100-year, 72-hour duration excluding spillway flow. The maximum allowable water depth will be 3 meters. Detention basins designated with a design storm of 100-year, 72-hour duration shall not overtop under those conditions. Provide an emergency overflow outlet to accommodate flows for the 100 year storm event, assuming the basin is full. Detention basins shall be drained to the minimum depth within 72 hours after a 10 year event. The desirable maximum bottom slope is 0.5%. Embankment side slopes steeper than 3:1 require reinforcing. Retaining walls are acceptable. Perform geotechnical slope stability analysis for fill heights greater than 3 meters.

Outlet structures shall be designed and constructed so as to not allow the discharging of any floating material into the outlet. Outlet structures may be drop inlets, pipes, and/or risers. Slotted riser pipe shall not be used. Design shall adequately address clogging of outlet structure. Locate inlet and outlet as far apart as practical. Provide 1.8 m high safety fencing around detention basins located outside the No Access limits; include provisions for maintenance access.

The detention basin proposed at approximately 900 West 2100 South shall be lined to prevent pollution of the storm water by contaminated soils.

### 3.5.4 Oil and Sediment Separators

Develop a method to efficiently remove oil and sediment from stormwater. Size oil and sediment separators to accommodate the 10-year, 3-hour storm flow. Design and construct oil and sediment separators to meet the structural requirements of __________. Provide maintenance access. At a minimum, oil and sediment separators shall be provided, per the Preliminary Design in __________, at:

- A) Outfalls into __________,
- B) Outfalls into __________, and
- C) Outfall into __________.

### 3.5.5 Pump Stations

The use of pumping stations shall only be permitted where storm water removal by other means is not feasible. Design pump stations for the 50 year event. The Design-Builder shall use FHWA’s publication “Manual for Highway Storm Water Pumping Stations” Vols. 1 and 2 for pump station design. Determine
the extent of and provide safeguards against flooding for the 100 year storm. The Design-Builder shall determine the design flows. Incorporate a storage reservoir with the pump station design. The maximum water level in storage shall be more than 0.6 m below the lowest pavement elevation. Provide for screening out of debris. Provide a minimum of three pumps. Use pump materials that are corrosion resistant and appropriate for the application. Pump equipment and controls shall be explosion proof. Provide a backup system for power, control and pumping. Provide access for ordinary maintenance, provisions for replacing pumps, and a minimum of two parking spaces. Provide locked doors, fence and gate for security. Provide an adequate ventilation system. Design should eliminate the need for confined space entry as defined by OSHA and NIOSH where possible. The site layout shall address mitigation of aesthetics and noise. The installed equipment shall be certified and tested prior to acceptance. Provide ten operation and maintenance manuals for the facility.

The pump facility at __________ shall be relocated. The Design-Builder shall maintain the existing pump during construction.

3.5.6 Connections to Existing Systems

The Design-Builder shall develop plans and specifications for connections with existing storm systems. These details shall be reviewed prior to making connections.

3.6 Pipe/Culverts

The design life of new pipe and culvert shall be 50 years. Existing pipe under the proposed mainline, collector/distributors, and ramps shall be replaced or relined to provide a 50 year design life. If existing pipe is to be relined, the resulting facility shall maintain at least the same hydraulic capacity as the existing structure. The Design-Builder shall not reuse or allow any existing pipe or culvert to remain that does not meet this criteria. The Design-Builder shall determine the class of new pipe in accordance with the Pipe Selection Guidelines __________. Pipe choice shall be shown on the plans. Provide material thickness, bedding details, end sections, and details in accordance with Standard Drawings __________. Minimum allowable pipe sizes are listed in the following table.

<table>
<thead>
<tr>
<th>ROAD TYPE</th>
<th>MINIMUM PIPE SIZE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interstate Highways</td>
<td>600 mm</td>
</tr>
<tr>
<td>Primary Highways</td>
<td>600 mm</td>
</tr>
<tr>
<td>Secondary Highways</td>
<td>450 mm</td>
</tr>
</tbody>
</table>

3.7 Drainage Channels

Roadside channels, if used, shall be designed to capture and convey the 50 year design storm. Geometric layout shall be in accordance with the AASHTO Roadside Design Guide and consider safety, maintenance, landscaping and aesthetics. Determine channel capacity using Manning’s Equation. Design channel linings in accordance with HEC-15 when required by analysis. Provide 0.3 m freeboard above design storm.

3.8 Bridges and Cross Drains
All crossings located in FEMA regulated flood plains shall be coordinated with the Department. Provide end sections or head walls for cross drains. Hydraulic calculations for cross drains shall be in accordance with FHWA publication HDS No. 5 “Hydraulic Design of Highway Culverts”. Tailwater and headwater elevations shall be shown on the computation sheets. Provide chamfer for all cross drains operating under inlet control for the design flow per HEC-13 “Hydraulic Design of Improved Inlets for Culverts”. Allowable headwater will be limited by the minimum of the following:

A) Non-damaging to upstream property;
B) 450 mm below edge of shoulder;
C) HW/D equal to 1.5;
D) Low point in the road grade; and
E) Elevation where flow diverts around the culvert.

If necessary, the Design-Builder shall prepare the necessary documents required to alter or modify stream alteration permit(s) so that the permit is consistent with the final bridge design and final stream crossing configuration.

3.8.1 Abutment and Outlet Protection

Analyze bridge supports for scour according to HEC-18. Protect abutments with riprap according to HEC-18. Place top of pier footings below scour depth, do not protect with riprap. Analyze cross drains for outlet protection in accordance with HEC-11.

3.9 Outfalls

Avoid riparian habitat disturbances as much as possible during the design and construction of all new outfalls. Situate the new outfalls so that the outlet elevation is as close to the receiving water body invert as possible. Avoid high outlet elevations that will necessitate the use of excessive amounts of rip-rap. Use energy dissipaters as appropriate.
1.0 SCOPE

The Design-Builder shall conduct geotechnical investigations, analyses, design and construct in accordance with this RFP.

2.0 APPLICABLE STANDARDS AND REFERENCES

Geotechnical investigations, analyses, design and construction shall be in accordance with this Performance Specification and the relevant requirements of the following standards, unless otherwise stipulated in this specification. Standards and references specifically cited in the body of the specification establish requirements that shall have precedence over all others. Should the requirements in any standard conflict with those in another, the standard highest on the list shall govern. It is the Design-Builder’s responsibility to obtain clarification of any unresolved ambiguity prior to proceeding with design or construction.

2.1 Standards

A) Geotechnical Design Guidance Manual;
B) Standard Specifications;
C) Section Design Consultants Geotechnical Reports;
D) Seismic Hazard Analysis;
E) Subsurface Exploration and Laboratory Testing Guidelines;
F) Soil Classification Field Manual;
G) Geotechnical Report Guidelines for Design Build Design-Builder’s Geotechnical Consultant;
H) Geosynthetic Design and Construction Guidelines, FHWA, May 1995; and

2.2 References

A) Report on Historical Geotechnical Data;
B) Bridge Embankment Settlement Estimates;
C) CPT Correlation of Pile Load Tests;
D) Wick Drain Spacing Report; and
E) Evaluation of Soil Strength Gain Due To Embankment Loading.
3.0 GENERAL INFORMATION AND REQUIREMENTS

3.1 Subsurface Investigation

A systematic subsurface investigation of the project site has been performed by the Department. Information generated from these investigations along with historical data and findings of various studies conducted by the Department, have been provided to the Design-Builder for evaluation of the subsurface conditions along the corridor and for the design of various structures. Soil samples obtained during the recent investigations will be retained until June 1, 1997 for verification by the Design-Builder but will be discarded after this date. The Design-Builder may conduct additional investigation as it deems necessary. These additional investigations and testing shall be conducted in accordance with Standards 5 and 6.

3.2 Settlements

Historical information and supplemental studies conducted for the Project indicate that the soft soils (lake deposits) encountered beneath the corridor under the proposed embankment loads are anticipated to undergo total consolidation settlements of up to 1.5 meters with potential average secondary settlements in the range of 100 mm. The Design-Builder shall review the data and undertake analyses to:

A) Verify these estimates for final site conditions and develop measures to mitigate these settlements. A wide range of measures are open to the Design-Builder including but not limited to surcharging, stone columns, light weight fills, chemical treatments, deep compaction, at grade structures and others; and

B) Demonstrate that all settlements will be within specified tolerances before proceeding with construction of permanent work affected by settlements.

The Design-Builder shall be responsible for all distress that may be caused to structures/properties adjacent to the corridor. Therefore, the Design-Builder shall establish a baseline to monitor distress (i.e. settlements) of structures/properties adjacent to the corridor.

Based on the tolerance limits of pavement, railroad lines and structures, the following will be the maximum permissible settlements during the Maintenance Term:

- Embankments - Transverse direction - maximum 6 mm per lane width (lane width = 3.6 m)
  - Longitudinal direction - maximum tolerable per ______.
- Substructures - maximum total settlement of 25 mm
  - maximum differential settlement of 12 mm

3.3 Geotechnical Analysis and Design

3.3.1 Foundation Types

Foundation systems shall be designed to safely transfer surface (structures/embankments) loads, including live and seismic loads, to deeper soils without causing distress to the structures /embankments. The
Design-Builder shall not use auger cast piles or timber piles to transfer structural loads. Also, spread footings will be permitted only for single span bridges, where differential settlements are anticipated to be less than 12 mm.

If the Design-Builder proposes to use existing foundations, locations where their use is proposed and their individual load carrying capacities shall be verified and included as part of the design review process in accordance with __________. However, if existing foundations are not to be used, the Design-Builder shall provide as part of the Design Documents an abandonment plan for review in accordance with __________.

3.3.2 Load Testing

The Design-Builder shall develop a pile load testing program (if piles are being proposed) and conduct pile load tests. The Design-Builder shall conduct Dynamic Testing in accordance with __________. If the Design-Builder proposes to use information from static load tests, the static load testing program shall include at least ten tests. The Department would prefer the tests to be spread over the length of the project to represent varying soil conditions. The tests shall be conducted by an independent testing Design-Builder not affiliated with the Design-Builder. The identification of the testing Design-Builder and the load testing plan shall be part of the CQMP.

The Design-Builder may use the load frame available with the Department to perform these load tests. The Design-Builder shall be responsible for the accuracy of the test results.

The testing Design-Builder shall verify that the load carrying capacities of the piles meet or exceed the design values by minimum factors of safety established in the design.

Verification through the use of statnamic test and use of Osterberg cell for driven piles will not be permitted.

3.3.3 Embankments

The Design-Builder shall analyze and design in accordance with the Geotechnical Design Guidance Manual. The Design-Builder shall provide detailed settlement and stability (including seismic stability) analysis of embankment walls/embankment slopes for oversight review by the Department at the start of construction in accordance with __________. Embankment slopes shall be protected from erosion in accordance with NPDES Guidelines for Compliance with the General Permit for Construction Activities.

3.3.4 Retaining Walls

Analyze and design walls as outlined in the Retaining Wall Performance Specification.

3.3.5 Temporary Structures

Temporary structures supporting excavations/embankments such as sheeting or bracing shall be designed by a Registered Professional Engineer licensed in the State of New York to meet all State and OSHA requirements. Locations of temporary structures shall be provided to the Department at start of construction and design shall be available for oversight review by the Department as necessary.
3.3.6 Instrumentation

The Design-Builder shall develop a conceptual instrumentation plan for Department oversight review prior to start of any earthwork. The Design-Builder shall install instruments in accordance with the reviewed plan to monitor vibration (within and outside Project limits), settlements of embankments and structures, and stability of walls and slopes. Information obtained from the instrumentation to substantiate design assumptions shall be well documented and available to the Department prior to start of any paving operations.

3.4 QC/QA

See __________________________________________.

3.5 Materials

The Design-Builder shall provide materials and construct in accordance with __________________. The Design-Builder shall provide information such as source, quality and availability of any material to the Department for oversight review at the time the materials are to be used. The Design-Builder shall not use shredded tires, wood fibers, flyash or bottom ash in embankments.

3.6 Utilities

The Design-Builder shall identify all new and existing utilities crossing embankments and evaluate settlement impacts on these lines and impact of abandoned lines on embankment settlements. New and relocated utilities and drains shall be designed to accommodate anticipated settlements in embankments and operate effectively. For utility lines to be abandoned, the Design-Builder shall abandon the lines such that they do not contribute to any future settlements.
1.0 INTRODUCTION
The Design-Builder shall prepare all detailed geotechnical designs, analyses, construction drawings and specifications. The designs shall be in accordance with all applicable criteria and Standards cited herein and in accordance with this PS4. This PS4 specifies the requirements for:

A) The Preliminary Geotechnical Planning Reports (PGPR) and Final Geotechnical Planning Reports (FGPR);
B) Subsurface investigation, laboratory testing and data analysis;
C) Geotechnical and foundation analysis;
D) The geotechnical instrumentation monitoring program;
E) Geotechnical Report preparation;
F) Foundation design;
G) Retaining wall design;
H) Reinforced steepened soil slope (RSS) design;
I) Fill/embankment design;
J) Fill/embankment construction considerations;
K) Rock cut slopes;
L) Soil cut slopes;
M) Erosion control and drainage; and
N) Miscellaneous construction considerations.

2.0 APPLICABLE STANDARDS AND REFERENCES
The geotechnical investigation and design shall be in accordance with this PS4 and the requirements of the following Standards unless otherwise stated in this specification. Standards and References specifically cited in the body of this Specification establish requirements that shall have precedence over all others. Should the requirements in any standard conflict with those in another; the standard highest on the list presented below shall govern. References listed as Standards or References in this Specification shall be the most recent version available.

2.1 STANDARDS
A) AASHTO Standard Specifications for Highway Bridges, including all current interim specifications;
B) Materials Geotechnical Manual;
New York State Department of Transportation

(Information provided for format and general approach. Technical requirements may not be applicable to Department work. Cross-references do not match other contract document templates.)

C) Standard Specifications for Highway and Bridge Construction;
E) Mechanically Stabilized Earth Walls and Reinforced Soil Slopes Design and Construction Guidelines, FHWA-NHI-00-043, March 2001; and
F) Recommendations for Prestressed Rock and Soil Anchors, Post-Tensioning Institute, 1996.

2.2 REFERENCES

A) Subsurface Investigations, FHWA-HI-97-021, 1997;
B) Earth Retaining Structures, FHWA-NHI-99-025, 1999;
D) XSTABL, Version 5, Interactive Software Designs, Inc. 1994;
E) DIPS, Version 5, Rocscience, Inc. 2001;
F) SWEDGE, Version 4, Rocscience, Inc. 2001;
G) CRSP (_____ Rockfall Simulation Program) Version 4.0, _____ Department of Transportation; and

3.0 REQUIREMENTS

3.1 GEOTECHNICAL PLANNING REPORTS

The Design-Builder shall prepare a Final Geotechnical Planning Report (FGPR), for each Project Section, and submit it to the Department for review and written acceptance. The Department shall make a determination of acceptance within 10 working days upon receipt of each submittal of a Final Geotechnical Planning Report. A separate and complete FGPR shall be prepared and submitted for each of the Project Sections. The limits of the Project Sections are defined in ________________________. Preliminary Geotechnical Planning Reports (PGPR) for each Project Section shall be provided in the Proposal as per __________. The Final Geotechnical Planning Reports (FGPR) shall be prepared by the Design-Builder selected for the Project and shall be consistent with the PGPR. The FGPR shall incorporate any comments provided by the Department. The Design-Builder shall prepare the FGPRs and submit them to the Department within 45 calendar days after NTP for review and written acceptance by the Department.

Each PGPR and FGPR shall include a detailed method statement describing the general philosophy and methods of design and construction and the rationale for selection of the proposed construction methods for all geotechnical and foundation aspects of the Project. The method statement shall indicate how material and design details are chosen to match selected construction methods and construction details and the soil, rock and groundwater environment for the site.
The method statement shall also indicate the Design-Builder’s design and construction approach for dealing with the following critical issues, as a minimum, related to rock and soil excavation and filling:

A) Rock excavation and blasting methods and overbreak control in variable strength materials;

B) Long term maintainability and erosion control of the cut and fill slopes; and

C) Construction of embankments and retaining structures adjacent to the rivers and environmentally sensitive areas along the Project alignment.

The Design-Builder shall provide details of rock and soil excavation equipment and methods proposed for slope excavation and demonstrate how they are consistent with the design approach and assumptions. The details presented shall demonstrate compliance with these specification requirements and shall demonstrate an understanding of the ground conditions and Project constraints as defined within this RFP document.

The Design-Builder shall submit the following technical information with each PGPR and FGPR:

- Description of geology and various ground types and groundwater levels to be encountered along the alignment;
- A description of the geotechnical information that was collected and analyzed in developing the interpretation used to develop the Design-Builder’s Proposal and pricing for the Project in addition to that provided in Contract Documents Part 6;
- Assessment of the engineering properties of all soil and rock types, including the expected average and range of rock strengths and soil strengths and deformation properties;
- Recommended design parameters (preliminary) for all soil and rock types;
- Anticipated ground behavior and categorization of ground during excavation, filling and foundation and retaining structure construction;
- Blasting and excavation methods as related to the design of cut slopes, including a discussion of blast design parameters, such as type, weight, and distribution of explosives, nature of rock, burden and spacing, blast hole inclination, sequence of detonation and powder factor as related to the geotechnical conditions;
- Support of excavation and groundwater control considerations;
- A narrative describing how any interpretation was derived from the geotechnical data;
- Consideration for, discussion of and rationale for protection of existing structures, water bodies and environmentally or historically sensitive areas;
- Any pertinent geotechnical data used as a basis for selection of the excavation procedures and equipment; and
- Discussion on induced vibrations from the selected construction equipment and procedures and the effects on adjacent structures and landowners.

Each PGPR and FGPR shall define the engineering and design approach that will be followed in order to develop the most cost-effective and technically and environmentally acceptable and durable foundations, cut and fill slopes, retaining structures, and geotechnical designs for the Project. The PGPRs and FGPRs shall discuss all aspects of the required geotechnical effort and design and analysis, including the following:
Subsurface investigations;

Determination of geotechnical and foundation design parameters;

Rock slope analysis and design;

Erosion control measures and design and analysis;

Embankment and fill settlement and slope stability analysis;

Retaining wall design and analysis;

Planned field testing programs, including pile and drilled shaft integrity and load testing, soil and rock anchor testing, ground improvement testing;

Ground improvement or treatment of in-situ soils and rock;

Selection, design and analysis of foundation systems;

Lateral and vertical earth pressures;

Instrumentation and monitoring programs;

Content and format of geotechnical reports; and

Expected serviceability and durability of proposed solutions.

Each Geotechnical Planning Report shall be prepared and signed by a Professional Engineer registered in New Mexico meeting the qualification requirements in Special Provision 108, Appendix 108A. The experience shall include design of major rock and soil cuts, embankments, retaining structures and foundations. All calculations shall be checked and initialed by a Professional Engineer registered in New Mexico.

The Design-Builder and the Department shall meet within 21 days of submittal of each FGPR to the Department to discuss its contents and present the Department review comments.

3.2 SUBSURFACE INVESTIGATION AND DATA ANALYSIS

3.2.1 General

Appendices _______ and ___ of the Geotechnical Data Report, which contains the geotechnical data obtained by the Department for this Work, shall be considered to be Contract Documents in Contract Documents Part 8. The remainder of the Geotechnical Data Report shall be considered to be Reference Documents and not Contract Documents.

The Design-Builder shall form its own interpretation of the existing geotechnical data and satisfy itself as to the nature of the ground and sub-soil, the form and nature of the site and nature of the Work that may affect its detailed design, construction method, and tools. The Design-Builder shall undertake its own assessment of the suitability and accuracy of the geotechnical data provided with this RFP and shall allow for the results of its assessment in its Proposal price. The Design-Builder shall submit with its Proposal comments on the suitability of the information provided by the Department and shall illustrate how the comments have been incorporated in its Proposal design and price.

The geotechnical data in Contract Documents Part 8 shall not serve as the sole basis for the Design-Builder’s preliminary or final design. The investigations were performed by the Department at a limited number of locations along the site and additional information is required for detailed design and construction. The Design-Builder shall prepare and implement a subsurface exploration and testing program with all field and laboratory testing necessary to establish the geotechnical and groundwater
New York State Department of Transportation

(Information provided for format and general approach. Technical requirements may not be applicable to Department work. Cross-references do not match other contract document templates.)

conditions and to perform all geotechnical and foundation design and analyses. The program, herein designated as the Design-Builder’s investigation program, shall be developed and implemented to supplement the data provided by the Department and to obtain the data as required to meet the requirements of the AASHTO and Department Standards and the Design-Builder’s design approach and construction methods. The locations, number, depths and types of boreholes, laboratory and field testing and sampling, and groundwater monitoring and installation of groundwater observation wells shall conform with the requirements of the AASHTO and Department Standards. The minimum number and types of laboratory tests required are presented in Section _____ of the _______. At a minimum, split spoon soil samples with standard penetration testing shall be taken at five-foot intervals in all borings. Undisturbed soil samples shall be taken in all cohesive soil deposits. Rock coring shall be performed in accordance with the requirements of the __________. The Department shall review and provide written acceptance of the Design-Builder’s investigation plan prior to its implementation. The Design-Builder shall perform its investigation program to establish all geotechnical parameters and subsurface and groundwater conditions required for design and construction. The Design-Builder shall provide the results of investigations to the Department as follows:

A) The logs of borings and the field records of any field investigations as each boring or other investigation is completed; and
B) Laboratory test results on a weekly basis.

Except as specified herein, Department and AASHTO Standards shall be followed with respect to planning, performing and reporting subsurface exploration programs. Among the requirements for the borings and laboratory investigations to be performed for the Project are the following:

- Supervision - All boring and in-situ testing inspection and all laboratory classification and testing shall be performed by qualified geologists or geotechnical engineers under the direct supervision of a New Mexico-registered professional engineer with a minimum of five years experience in the performance and supervision of geotechnical investigations. All inspectors shall have a minimum of two years of field experience in the inspection and reporting of field investigation of similar size and content. Qualifications of the inspection staff shall be submitted to the Department for review and acceptance;
- Location and Ground Surface Elevation - The Design-Builder shall determine the coordinate location and ground surface elevation for each boring and field investigation and shall show the coordinates and station and offset and the elevation on the individual boring logs or investigation record. Coordinates and station and offset shall be based on the Project control surveys. Elevations shall be based on the Project datum; and horizontal control system;
- Soil and rock classification shall be performed in accordance with the _________ Materials Geotechnical Manual; and
- Final boring and rock core logs shall be prepared and presented using gINT software as supplied by Geotechnical Computer Applications Inc. or an approved equal.

The Design-Builder shall collect and review other available geologic, subsurface, groundwater and foundation information. The field investigation programs shall include all necessary borings, soil sampling, rock coring, groundwater monitoring, rock face mapping, geophysical testing, or other in-situ testing as needed to perform the geotechnical and foundation design to the satisfaction of the Department. Similarly, the laboratory testing program shall include all laboratory testing necessary to establish
geotechnical design parameters to the satisfaction of the Department. All subsurface investigation and laboratory testing shall be performed in accordance with the appropriate ASTM and AASHTO Standards.

The details of the Design-Builder’s field investigation and laboratory testing programs for design shall be submitted to the Department as part of the PGPR and FGPR for review and written acceptance. The rationale for development of the investigation and testing programs, data interpretation, and input parameter selection, together with descriptions of the methods of analyses, shall be clearly presented. Due consideration shall be given to factors including:

- Variation in the subsurface and groundwater conditions across the site;
- Method of construction;
- Critical combinations of loading; and
- Other relevant factors.

If the actual level of geotechnical investigation required during the course of the Contract differs from that represented or assumed by the Offeror/Design-Builder in the PGPR and/or FGPR, no change in time or compensation will be allowed under _____ of the Contract.

3.2.2 Rock Slope Mapping and Condition Survey Requirements

The following rock slope mapping minimum requirements shall be followed to provide a means for consistent mapping of rock slopes and to characterize and document the condition of the rock mass along the rock cuts on this Project, and for surveying the condition of existing rock slopes. The results of the mapping and condition surveys shall be used by the Design-Builder to develop design and construction recommendations for treatment of exposed rock slopes and design of new cut slopes adjacent to the proposed reconstruction of the Project. These requirements shall be used for all slope mapping and slope condition surveys. Amendments in the field will be made and authorized only by the Department.

Qualified personnel trained in geology or engineering geology shall supervise and perform the rock slope mapping activities and data collection. Personnel with appropriate experience in rock slope design shall conduct slope condition surveys. Prior to mapping, all field personnel should be familiar with the local and regional geology. The mapping teams should be knowledgeable of the rock units and structural and historical geologic aspects of the areas to be mapped.

Rock slope mapping and slope condition surveys will take place in potentially hazardous locations, such as, adjacent to roadways, as well as on or near rock slopes. Safety is the responsibility of the Design-Builder, and attention to safety is paramount.

3.2.2.1 Rock Slope Mapping Procedures

Procedures for mapping shall follow those given in Rock Slopes Reference Manual. At a minimum, at all cut locations, detailed window mapping shall be made at 80m. intervals with 25m. window lengths (8m. each side of the interval), with a minimum of two window mapping locations per mapping area. However, if a significant feature is observed between windows, this feature or features shall be mapped and noted.

At each mapping window, prepare a detailed section of the exposed cut. Each section should have the following information:
A) Plot on the section the position of each geologic unit (soil and rock) within the cut.
B) Approximate each geologic unit’s thickness.
C) Estimate the height and the slope for the cut for each geologic unit and plot on the section.
D) Describe each geologic unit in terms of the rock type (lithology, grain size and color), weathering, strength and structure (bedding thickness).
E) Other notable features, such as erosion, presence of water, solution features, etc.

Each section shall be drawn to a scale of 1 cm = 0.3m.

Field observation data shall be recorded on approved forms similar to the one shown in ______ and in field notebooks. All parameters described in ______________ shall be recorded. The following methods/assessments shall be used in the rock slope mapping:

- For orientation measurements, estimate the mean plane and record the orientation;
- For discontinuity surface properties, assess using the Shape and Roughness factors given in ___________;
- For rock type descriptions use the standard sequence of systematic description in ___________;
- For weathering and strength assessment, use the systems presented in ___________; and
- For lithologic descriptions, use LS = Limestone; SS = Sandstone; S$ = Siltstone; SH = Shale; IG = Igneous Intrusives. When possible add descriptors to the lithologic unit, such as, arkosic Sandstone.

Use Project stationing to describe the location of all rock mapping or rock slope condition observations. Every attempt shall be made to record observation locations to within plus or minus 0.3m. of actual Project stations. Also, designate observation locations with a sequential numbering system. All orientation data shall be referenced to Project north (as shown on the plans).

Color digital photographs shall be taken of each mapping area and window. A scale shall be included in the window mapping photograph. Photographs should be mounted on an 215mm x 280mm sheet and labeled with the following information:

- Date of photograph;
- Mapper;
- Observation location number;
- Stationing;
- Rock type and slope description; and
- Supplementary geologic information.

Feature specific photographs shall be taken, with a minimum of one photograph per window, and labeled according to the above instructions.

After the geologic mapping for a window has been completed, evaluate the rock slope at each mapping window using the Rock Slope Hazard Rating System presented in ____________.
3.2.2.2 Rock Mapping Records

The results of the rock mapping shall be provided to the Department with all results obtained after the completion of the fieldwork. All data shall be prepared as a draft and submitted to the Department for review. The Design-Builder shall incorporate comments and suggestions by the Department in the final submission. The data shall state all units in metric units.

The deliverables for the rock slope mapping and condition surveys shall include at a minimum the following information:

A) The name of the companies and personnel involved in the fieldwork;
B) A description of the equipment used for mapping;
C) A summary of mapping procedures and limitations;
D) Geologic setting, regional and local, and mapping records and field data entry sheets;
E) Presentation of photographs (in the format specified herein) taken during the mapping;
F) Presentation of detailed sections for each window as described herein; and
G) Presentation of field rock slope hazard data sheets.

Submit hard copies of the data, photographs and information and electronic copies of the data and photographs in a format approved by the Department.

3.3 GEOTECHNICAL DESIGN REPORT PREPARATION

A summary of all geotechnical data and findings, including the results of the review of existing information, results of the field subsurface investigations and mapping, and results from the laboratory tests and geotechnical and foundation analyses and design, shall be prepared in the form of a series of Geotechnical Design Reports. The reports shall include:

A) Project descriptions;
B) Locations and results of borings, rock coring, rock face mapping, geophysical testing and other in-situ testing;
C) Observations of groundwater monitoring wells;
D) A detailed description of geological and subsurface conditions (including a description of site stratigraphy);
E) A description of groundwater conditions;
F) Results of laboratory tests;
G) Material properties;
H) Field testing;
I) All pertinent data and complete discussions of all geotechnical analyses;
J) Designs and studies;
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K) Conclusions and recommendations for foundation types for structures (with appropriate design parameters), embankments, cut slopes, retaining walls, ground improvement, requirements for backfill materials;

L) Potential groundwater problems;

M) Dewatering requirements;

N) Excavation support designs;

O) Instrumentation and monitoring requirements;

P) Potential settlement problems; and

Q) Potential stability problems, and analysis results.

The format and content of this report shall conform to the requirements of ________________ and shall be submitted to the Department for review and written acceptance.

3.4 FOUNDATION DESIGN

The criteria set forth herein shall pertain to the geotechnical and foundation design. Foundation and geotechnical design for these facilities shall conform to AASHTO Standard Specifications for Highway Bridges, or as otherwise specified herein.

3.4.1 Shallow Foundations

Shallow foundations shall include spread footings for isolated columns, combined footings for supporting the load from more than one structural unit, strip footings, and mats or raft foundations beneath an entire structure area.

Shallow foundations shall be used where there is a suitable bearing stratum near the surface and where there are no highly compressible layers or soils susceptible to collapse or expansion below. Foundation design shall consider potentially detrimental substances in soil or groundwater, such as chlorides and sulfates, and shall provide appropriate protection for reinforcement, concrete and metal piping. Shallow foundations shall not be used where scour could undermine or adversely impact the performance of the foundation. Design scour depths for bridge structures are presented in the Drainage Report. Scour analyses shall be performed by the Design-Builder to determine the design scour depths for all foundations located adjacent to the river and existing ravines for all locations not presented in the Drainage Report.

Shallow foundations shall be designed to meet the requirements of AASHTO Standards.

3.4.1.1 Bearing Capacity

Shallow foundations shall be analyzed for bearing capacity to confirm that the underlying soil can resist the footing loads without bearing capacity failure. A factor of safety of at least 3.0 shall be provided against bearing capacity failure for AASHTO Group I loading. Punching or local shear failures shall be evaluated for shallow foundations.

3.4.1.2 Settlement


Geotechnical Performance Spec # 2

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Analyses shall be conducted to estimate the total and differential soil settlement induced by the foundation loads. Immediate settlements for granular soils and both immediate and primary and secondary consolidation settlements for cohesive soils shall be considered. Shallow foundations shall be designed to keep estimated settlements within the allowable values specified in ___________________. Effects of adjacent foundations, variable groundwater conditions and surcharge loads shall be considered when evaluating foundation settlements and bearing capacity.

3.4.1.3  External Stability

Shallow foundations shall be analyzed for external stability. These shall include sliding and overturning analyses and global failure analyses. A minimum factor of safety of 1.5 shall be provided against sliding and global failures. A minimum factor of safety of 2.0 shall be provided against overturning failure. Passive earth pressure in front of the foundation shall not be considered in the evaluation of sliding and overturning failures.

Shallow foundations shall be designed such that the resultant load falls within the middle third of the foundation.

3.4.2  Deep Foundations

Deep foundations shall be considered for use on this Project. Deep foundations shall include both driven piles and drilled shafts. Alternative pile types consistent with those used successfully in the Project area shall be considered. Drilled shafts shall also be considered as appropriate from technical, cost and constructibility aspects. When designing deep foundations, consideration shall be given to the impact of noise and vibration on the environment. Specific noise and vibration limits shall be established to conform to local codes and FEIS requirements. Ground consolidation, existing structure settlements, and disturbance to local residents due to the installation of deep foundations shall be maintained within limits acceptable to the Department.

Piles and drilled shafts shall be designed in accordance with the requirements of AASHTO Standards.

3.4.2.1  Vertical Capacity

Deep foundations shall be analyzed for axial compression and uplift resistance, using static analysis methods in accordance with AASHTO specifications. A factor of safety consistent with the level of construction control shall be applied to the ultimate capacity in accordance with AASHTO Standard Specifications for Highway Bridges. The capacity shall be verified by field tests including static load tests and the allowable capacity shall be based on the field tests. In no case shall a factor of safety less than 2.0 as determined by field load test be used to determine the allowable capacity of a deep foundation under static load conditions.

3.4.2.2  Group Spacing and Performance

The design of deep foundations shall consider soil properties, type of foundation and group effects due to spacing of foundation elements.

3.4.2.3  Settlement

Geotechnical Performance Spec # 2  10
The design of deep foundations shall consider the limits on total and differential settlement caused by the structure loads. Settlement induced by the deep foundation group in the subsoil shall be evaluated. In addition, settlement of the individual deep foundation elements shall also be evaluated. The foundation shall be designed to keep the settlement within the allowable values established in ______________.

3.4.2.4 Downdrag (Negative Skin Friction)

The design of deep foundations shall consider the effect of negative skin friction from existing ongoing ground settlement, construction dewatering, variable groundwater conditions, placement of fill or embankments, or pile installation. Downdrag loads shall be determined by considering the load transfer distribution along the deep foundation element as well as the group layout. The magnitude of the downdrag load shall be applied as additional dead load on the deep foundation.

3.4.2.5 Lateral Load Capacity

Deep foundations shall be designed to adequately resist the lateral loads transferred to them from the structure without exceeding the allowable deformation of the structure or overstressing the foundation elements. The lateral load resistance of the individual and group of deep foundation elements shall be analyzed. The analysis shall consider nonlinear soil pressure-displacement relationships, soil/structure interaction, group action, groundwater, and cyclic and static and dynamic load conditions. The deep foundation performance evaluation shall include the determination of vertical and horizontal movements, rotation, axial load, shear, and bending moment for the foundation elements and the bending stresses in the batter piles due to the weight of settling soils. Equivalent points of fixity shall be determined using the equivalent stiffness method considering the soil-structure p-y stiffness and the equivalent fixed end method.

Where the lateral resistance of the soil surrounding the piles is inadequate to resist the applied loads, batter piles shall be provided. Batter piles shall not be flatter than one horizontal to four vertical. Where battered piles are proposed, the design shall consider the potential for such battered piles encroaching on property outside the right-of-way and interfering with underground and aboveground structures, facilities, and utilities. The use of battered drilled shafts shall not be considered.

3.4.2.6 Wave Equation Analyses

The constructibility of a pile design and the development of pile driving criteria shall be performed using a wave equation computer program in accordance with Section 4.5.9 of AASHTO Division 1 - Design Specifications. Durability analysis shall be performed using the Wave Equation Analysis computer program. The drivability analysis shall indicate that the driving system can install the piles to the required ultimate capacities and penetrations without overstressing the pile in compression or tension and that the hammer is capable of achieving the required ultimate capacity driving resistance of less than 120 blows per foot. The use of dynamic pile driving formulae shall not be an acceptable method for developing driving criteria or performing drivability studies to determine hammer energy requirements as well as to evaluate driving stresses developed during pile installation.

3.4.2.7 Deep Foundation Testing and Monitoring

Field testing shall be performed for deep foundations to evaluate foundation capacity and integrity, to verify design assumptions, to determine foundation installation characteristics, to evaluate the pile driving system performance, and to establish foundation depths. The foundation testing and monitoring shall
include all necessary test piles or shafts, dynamic testing, static load testing, non-destructive integrity testing, and quality control testing. A pile driving analyzer shall be used to determine if each hammer is delivering the energy required by the design. Dynamic pile testing and static load testing shall be performed in accordance with ______________. Each hammer used to drive test piles and production piles shall deliver a minimum of 45 percent of the rated hammer energy. Foundation testing and monitoring shall be performed on both test and production deep foundations, and shall be located so that they will address all conditions of foundation type, capacity and soil conditions encountered. The Design-Builder shall prepare and submit a detailed description of the proposed foundation testing and monitoring programs. The description shall include detailed specifications and plans presenting the type, purpose, number, location, and procedures for each test, and the recording and reporting procedures. The number, location, type, procedures, and extent of testing of the deep foundations shall be subject to review by the Department. Testing and monitoring of deep foundations shall be in accordance with the applicable ASTM and AASHTO specifications.

3.4.2.8 Pile and Drilled Shaft Integrity Testing

Integrity testing consisting of Crosshole Sonic Logging (CSL) shall be performed on all drilled shafts and augered pressure-grouted piles. The testing shall be performed in accordance with ______________.

3.4.3 Selection of Foundation Types

A deep foundation shall be used where a shallow foundation cannot be designed to carry the applied loads or displacements safely. Deep foundations shall also be used where scour, erosion, or unacceptable settlement might occur and where the soil conditions permit its use, even though the bearing capacity of the soil may be sufficient to make the use of shallow foundations practicable.

Selection of a foundation type or types shall be based upon conditions prevailing at the site, cost, availability, construction requirements, local experience, environmental and social impact, and the desire to stimulate competition among the suppliers of alternative materials.

3.5 RETAINING WALL DESIGN

Retaining walls shall be evaluated for use along the highway alignment. Retaining walls shall include gravity, cantilever, steel sheet-piling, tangent or secant pile systems and soldier pile and lagging and mechanically stabilized (MSE) walls. MSE used for the Project include only those wall systems included on the Department’s list of qualified walls. The walls shall be designed for a minimum service life of 75 years for general case and for a minimum service life of 100 years when the walls support structure loads.
QUALIFIED PRODUCTS LIST FOR MSE WALLS
(ALL SYSTEMS ARE PANEL SYSTEMS)

1. Foster Geotechnical Corporation, Grande Prairie, Texas
2. Reinforced Earth Company, Arlington, Virginia
3. Hilfiker Retaining Walls, Eureka, California
4. SSL MSE Plus Wall System, Scotts Valley, California*
5. Isogrid Retaining Wall System, Boulder, Colorado*

* Systems not approved for supporting structure superimposed vertical or lateral loads.

Retaining walls shall be evaluated on a site-specific basis. The lateral pressures on retaining walls shall be evaluated on the basis of anticipated structure movements and site-specific subsurface conditions and construction methods. The design of all earth retaining structures shall conform to current engineering practice as defined in the Standards and References indicated in Sections 2.1 and 2.2. These walls shall be designed to resist all anticipated dead and live, vertical and lateral loads. These loads shall include those induced by soil, groundwater, live load, surcharge, and construction equipment.

3.5.1 Design Loads

3.5.1.1 Vertical Loads

The loads used in the design of permanent Work shall be in accordance with the requirements of the relevant design codes and Standards, except where herein modified or augmented.

Estimation of loads due to pedestrian, or highway traffic shall be in accordance with the requirements of AASHTO Standard Specification for Highway Bridges.

Loads due to soils or backfill shall be derived using the maximum values of the saturated densities. Only where it can be clearly demonstrated that the fill is well drained, and will remain well drained in the future, shall any reduction in the degree of saturation be allowed. The submerged densities shall be used for soil unless the location is above the standing water table.

3.5.1.2 Lateral Pressure

Lateral earth pressures shall be estimated on the basis of the anticipated movement of the structure. For yielding retaining structures, Rankine’s active pressure theory shall be used. However, for unyielding structures, where the movement of the structures is not sufficient to mobilize active pressures, and/or where compacted backfill is placed behind the structure, the lateral pressure on the structures shall be evaluated on the basis of anticipated movements, site-specific subsurface conditions and construction methods. The pressure on unyielding structures may be higher than at-rest pressure but in no case shall the pressure be less than at-rest pressure. The design of the retaining structures shall be based on the maximum lateral pressures that will develop behind the structures. The earth pressures used in the design of non-conventional walls shall follow established Standards for these specialized types of structures as defined in the Standards and References indicated in Sections 2.1 and 2.2 and as follows:

1. The design horizontal pressures on the panel faces for MSE walls shall be determined using the horizontal pressure coefficients which are dependent on the soil
reinforcement system as shown in Diagram A. The horizontal pressures shall be computed based on the applicable pressure coefficient $K_Z$ multiplied by the sum of the weight of the overburden at a given mesh depth $Z$ plus all applicable structure and live load surcharge and other required design surcharge (footing pressure). Meyerhof vertical pressures are not required for internal stability computations.

0                      1.2               1.7            2.7             (KZ/Ka)

Metal
Strips                                    Welded Wire Grids
20ft                                                              & Bar Mats

$K_Z = \text{Horiz. Press. Coef. @ Depth } Z$
$K_a = \text{Active Press. Coef.}$

Diagram A - Horizontal Earth Pressure Coefficients

2. For grid steel reinforcement systems with transverse bar spacing of, or greater than 6 inches, the pullout factors for use in the passive resistance computation of the crossbars shall be as shown in the diagram presented below:

0           10   15   20        30                     40        (Np)

20ft

$N_p = \text{Passive Resistance Factor @ Depth } Z$

Mesh Reinforcement Pullout Factors

3. Additional horizontal pressure shall be included in the internal stability calculations to account for the service lateral longitudinal footing forces on the front wall only.

4. Where obstructions such as deep foundations, inlets, etc. are placed in the reinforced soil backfill, a structural frame ("yoke") shall be designed to place reinforcements. Cutting of reinforcements is not permitted. The reinforcements shall not be connected to the obstruction. The cost of structural frames is considered incidental to the Work and no adjustment in payment will be made.
Hydrostatic pressure induced by the groundwater table shall be included in the lateral pressures. Additional hydrostatic pressures and variations in groundwater conditions due to flooding and rapid drawdown conditions shall be considered in the design of the retaining structures.

Lateral pressure induced by surcharge loads applied at the ground surface behind the wall shall be included as appropriate. These surcharge loads shall be evaluated on a site-specific basis, and may include uniform surcharges, strip loads, line loads, point loads, area loads, and construction equipment loads. The lateral pressure induced by these surcharges shall be no less than two times the pressure estimated using elastic theory.

### 3.5.2 Deep Foundations

Deep foundations for retaining walls shall be designed in accordance with Section 3.4.2.

### 3.5.3 Shallow Foundations

Shallow foundations for retaining walls shall be designed in accordance with Section 3.4.1. Base pressure shall not exceed the allowable soil bearing capacity in accordance with Section 3.4.1.1. In order to minimize differential settlement, walls shall be proportioned so that the resultant of all forces acting falls within the middle third of the base when on soil. Where the combination of foundation soil compressibility and base pressure is such to produce differential settlement of such a magnitude that outward tilting of walls is excessive, walls shall be proportioned to have the resultant of all forces acting fall closer to the center of the base to provide a more uniform settlement.

Where the base pressure exceeds the allowable soil bearing capacity, or where the base pressure is such to produce total or differential settlement exceeding the requirements of __________, walls shall be founded on piles, provided that a more economical solution cannot be obtained by changing the wall proportions or the incorporation of ground improvement techniques as presented in Section 3.8.

### 3.5.4 External and Internal Stability

External stability analyses shall be conducted in accordance with Section 5 of AASHTO Specifications Division 1 Design for all retaining structures. The external analyses shall include sliding, overturning, global slope stability, bearing capacity, and local shear failure. Mechanically stabilized earth walls shall also be analyzed for internal stability, which shall include tension in the reinforcement and pull-out resistance along the soil-reinforcement interface.

### 3.6 FILL/EMBANKMENT DESIGN

#### 3.6.1 Slope Stability

Particular attention shall be given to the design of all soil and rock embankment side slopes, whether temporary or permanent. The analyses shall consider the effects of deterioration and loss of soil resistance due to local climatic and construction conditions. All slopes shall be designed to minimize erosion by rainfall and runoff. Adequate drainage and erosion control provisions should be incorporated in the design and construction of the embankments in accordance with Section 3.11.
Slope stability analyses shall be performed to confirm that the embankment slopes have adequate factors of safety against global slope stability failures under static loads as specified herein. Slope stability analyses shall be conducted using the XSTABL computer program or an equivalent verified program. Circular and wedge type failures shall be analyzed for potential occurrence for each embankment configuration and slope. The evaluation of global slope stability shall consider potential seepage forces, design flood levels, rapid drawdown and any weak deposits and seams that are adversely impacted by water flow. A minimum safety factor of 1.5 shall be provided under static loads for permanent embankment slopes. For non-permanent embankment and earthwork slopes, the minimum safety factor shall be 1.3 under static load conditions.

3.6.2 General Bearing Capacity

Embankments shall be designed such that the bearing capacity of the underlying soil has a minimum safety factor of 3.0 against a general bearing capacity failure for loads from the embankment and against any traffic and surcharge loading.

3.6.3 Settlement

Analyses shall be conducted to estimate the soil settlement induced by the embankment loads. Immediate settlement in granular soils and both immediate and consolidation settlements in cohesive soils shall be considered. Embankments shall be designed to keep estimated total long term settlements limited to 50mm during a period of 50 years after completion of the pavement construction. Differential settlement both within fill sections and across fill/structure interfaces shall be limited to 1/300.

3.7 REINFORCED SOIL SLOPE (RSS) DESIGN

The design procedures and considerations for reinforced soil slopes shall conform to the requirements of Mechanically Stabilized Earth Walls and Reinforced Soil Slopes Design and Construction Guidelines, FHWA-NHF-00-043.

Adequate drainage provisions, slope protection and erosion control provisions shall be incorporated into the RSS designs in accordance with requirements of Mechanically Stabilized Earth Walls and Reinforced Soil Slopes Design and Construction Guidelines and as required in Section 3.11.

3.8 FILL/EMBANKMENT AND REINFORCED SOIL SLOPE CONSTRUCTION

CONSIDERATIONS

Alternative methods of embankment construction shall be compared for safety and cost-effectiveness. The main considerations shall be to provide adequate safety factors against external and internal stability, global stability and bearing capacity failures and to reduce the settlement to within the allowable range as specified herein. In addition the design must incorporate provisions to provide adequate drainage, slope protection and erosion control for the slopes and that shall prevent the development of long-term maintenance problems for the Department.

3.8.1 Drainage

Provision shall be made in the design for an adequate system of internal drainage and surface protection that incorporates sufficient capacity for the design rainfall run-off and to prevent erosion of the slopes that could result in erosion rills and gullies that could lead to surface sloughing and deep seated slope failures.
Notwithstanding the requirements of the relevant Standards, consideration shall be given to the long-term performance of the drainage and erosion control system for each embankment or fill under local conditions.

3.8.2 Soil Improvement

Consideration of methods of soil improvement to increase soil strength and reduce compressibility in order to increase the safety factors for external and internal stability and reduce settlements to the allowable range specified herein will be allowed in the design. It shall be necessary to demonstrate their suitability for local conditions and installation methods. Alternative ground improvement techniques shall be evaluated. Techniques such as vertical drains, surcharge, stone columns, vibrocompaction, lime columns, cement columns, deep soil mixing, grouting and the use of lightweight fill may be included in the design in order to expedite the consolidation of areas, where it is required to increase bearing capacity or reduce post-construction settlements. Selection of the type of ground improvement method shall depend on the engineering properties of the subsoil, but factors such as material quality, performance, supply and installation time, and available expertise shall also be considered.

All ground improvement systems shall be designed using current practice and procedures, subject to acceptance by the Department. The performance of all ground improvement techniques shall be verified with a pre-production field testing program developed to demonstrate that the proposed methods and design will provide the ground improvement level required to satisfy the performance requirements specified herein.

3.8.3 Approach Slabs

To provide a smooth transition from at-grade section to elevated sections of grade separation structures, an Approach slab shall be provided at the abutments. The approach slab shall have a length not less than 4m., nor less than that given by the following:

\[ L = 1.5 H \tan \left(45^\circ - 0.5\phi \right) \]

Where,

- \( L \) = minimum length of transition slab from center of slab support seat at the abutment end;
- \( H \) = vertical distance from bottom of slab to bottom of abutment; and
- \( \phi \) = angle of internal friction of subgrade beneath slab, in degrees.

The approach slab shall be designed assuming that it receives no support from the subgrade for a distance not less than 3.7m. nor less than \( H \tan \left(45^\circ - 0.5\phi \right) \) from the back of the abutment. Backfill placement and compaction adjacent to abutments and along widened sections of fill or embankment shall conform the \[ \underline{\text{Backfill Compaction Detail as shown in Appendix A.}} \]

3.9 ROCK CUT SLOPES

3.9.1 Rock Slope Stability

Geotechnical analyses of rock cut slopes shall be performed to assess rock slope stability along new and existing rock cuts. The analyses shall include:
A) Review of existing geologic and geotechnical data;
B) Collection of new geologic and geotechnical data;
C) Evaluation of the potential slope stability problems;
D) Slope design and stabilization measures; and
E) Rock fall hazard analyses.

Rock properties for slope stability analyses shall be obtained from existing data provided herein and data generated from the subsurface investigation, field mapping and laboratory testing completed by the Design-Builder. The data collected shall include rock mapping information, boring data and other geotechnical/geologic data. Discontinuity orientation and strength shall be evaluated and discontinuity sets shall be established for each rock cut for use in stability analyses. Rock cuts with well-defined sets of discontinuities shall be evaluated for stability (potential planar, wedge and toppling failure modes) using rock mechanics analytical methods as described and defined in Section 2.1, Standard d) and rock mechanics software, such as DIPS, SWEDGE or ROCKPACK III® [Section 2.2, References e), f) and h)] or equivalent verified software. Planar, wedge and toppling failures shall be analyzed for potential occurrence for each rock cut and each slope and orientation. Groundwater shall be considered in the planar and wedge slope stability analysis. A dry slope condition shall be analyzed and a partial saturated slope shall be analyzed. The factor of safety for rock slope stability shall be 1.5 or greater.

For rock cuts, which do not exhibit well-defined sets of discontinuities, slope stability analyses shall be performed using soil mechanics methods. These analyses shall use a computer program, such as XSTABL (Section 2.2, Reference d)) or equivalent verified program. The analyses shall consider the following:

- Slope face, with a variety of slope angles;
- Boundaries between materials to show different thickness;
- Shear strength of the rock to be defined in terms of Mohr-Coulomb or Hoek-Brown criteria;
- Groundwater levels to be applied to show a dry slope and groundwater table within the slope;
- All external loads shall be accounted for;
- Shape and position of rupture surface defined as circular or as straight line segments (wedge) and show the rupture surface with the minimum factor of safety;
- Slope geometry, material boundaries and rupture surface to be plotted; and
- Factor of safety of 1.5 or greater.

3.9.2 Rock Fall Modeling

Rock fall modeling or rock fall simulation analyses shall be performed to predict rock fall behavior and to design rock fall catchment widths and depths for each rock cut. The Colorado Rock Fall Simulation Program (CRSP) (See Section 2.2, Reference g)) or equivalent verified software shall be used. Rock fall paths shall be plotted and histograms of bounce height, rock velocity, and energy shall be obtained and plotted for various rock block sizes. The number of rock blocks landing on roadways shall be presented. The maximum energy at an analysis point shall be used to design rock fall catchment barrier. The program shall complete a minimum of 500 iterations for each cut and block size modeled. A minimum of two block sizes (average and maximum) shall be modeled for each slope configuration. Block size shall
be established based on rock mapping and rock fall hazard-mapping data provided in Contract Documents Part 6 and determined by the Design-Builder during the Design-Builder’s investigation program. Rock cut slope roughness factor and tangential and normal coefficients shall be based on field data and suggested values from the verified software program. A basis for value selection shall be provided as part of the analysis documentation. Existing cuts and new cuts shall be modeled as stated above. Existing cuts shall model existing conditions (slope, ditch width and depth) to verify if existing slope conditions/configuration are adequate to contain rockfalls as defined below. All cuts shall be modeled to determine optimal ditch width and depth.

3.9.3 Stabilization Measures

All rock cut slopes that do not meet the design criteria referenced above for stability shall implement the following measures:

A) Reduce the slope angle to a produce a stable slope; and/or
B) Provide rock reinforcement, such as, rock bolts/dowels, high strength rock anchors, tied-back walls, or buttresses. Guidelines for design of rock reinforcement shall be based on the material in Section 2.1, Standard d).

All rock cut slopes that do not meet the design criteria referenced above for rock fall potential shall implement the following measures:

- Reconfigure the rock slope and/or increase the rock fall catchment ditch width and depth to provide an adequate catchment area; and/or
- Provide rock fall catchment barriers, such as concrete or gabion walls, rock fall catchment fences (woven wire-rope nets), or wire mesh hung on the rock face/slope. Rock fall catchment barriers shall be designed to resist the maximum energy obtained in the rock fall simulation analyses.

3.10 SOIL CUT SLOPES

Geotechnical analyses of soil cut slopes shall be performed to assess soil slope stability along new and existing soil cuts. The analyses shall include:

A) Review of existing geologic and geotechnical data;
B) Collection of new geologic and geotechnical data;
C) Evaluation of the potential slope stability problems; and
D) Slope design and stabilization measures.

Soil properties for slope stability analyses shall be obtained from existing data provided in Contract Documents Part 6 and data generated from the subsurface investigation, field mapping and laboratory testing completed by the Design-Builder. The data collected shall include mapping information, boring data and other geotechnical/geologic data. Potential circular and wedge type failure modes shall be analyzed for each soil cut and each slope and orientation. Geotechnical analyses of soil cut slopes shall be performed using soil mechanics software, such as XSTABL (See Section 2.2, Reference d)), or equivalent verified software. The analyses shall consider the following:
Slopes that do not meet the required safety factor referenced above shall be reconfigured with a reduced slope angle or shall be supported with a retaining wall. Retaining wall design is presented in Section 3.5.

3.11 EROSION CONTROL AND DRAINAGE

Slopes in both cut and fill areas are subject to erosion and deterioration through the action of water, wind and freeze/thaw cycles. Numerous existing slopes along the Project alignment have been significantly affected by erosion. Erosion control and drainage measures shall be evaluated, considered and designed for all new and existing slopes. Erosion of slopes presents a significant maintenance issue and stability problem on slopes. Rock and soil strata that are susceptible to erosion and/or freeze/thaw shall be mapped and delineated for all existing and new fills and cuts. Slope protection measures shall be evaluated on site-specific conditions, such as surface and subsurface conditions, cut geometry, and susceptibility of erosion or deterioration. Each cut and fill slope that requires erosion control and drainage measures shall be evaluated for the following:

A) Reduction of water flow across slope:

Where slope revegetation cannot be sufficiently established, reduce the quantity of water flowing over the slope from upland areas by means of drainage or interceptor ditches across the top of the slope and down the ends of the slope. At the base of the slope, water shall be directed to a discharge point. Coordinate discharge point drainage with the at-grade drainage system for the highway.

Drainage or interceptor ditches shall be lined and capable of carrying water generated from upland areas based on the 100-year storm. Lining materials shall be cast-in-place concrete, pre-cast concrete, reinforced shotcrete, or asphalt. Rock check dams to slow flows shall be designed and installed based on flow calculations.

B) Slope Revegetation:

Where the slope can be made to support vegetation, local plantings shall be used to establish root systems to stabilize the surface of the slope and prevent deterioration of the slope. Design and provide systems of degradable woven blankets to temporarily hold plantings in place and minimize erosion until vegetation has established a stable root system.

C) Slope Armor

Where slopes will not support vegetation, slope cover/protection or permanent facing shall be used to protect the slope. Such measures as mattress-shaped steel wire mesh containers, gabions, articulated concrete blocks, fabric formed concrete, shotcrete, geosynthetic cells filled with gravel, and rip-rap
The Crushed Stone placed on a graded filter shall be evaluated, designed, and installed. Stone sizes shall be designed based on design water flows.

D) Subsurface Water Control

Design of subsurface water drainage features shall be evaluated as water control measures. Design shall consider the use of horizontal drains, blanket drains, trench drains, and geocomposites for both cut and fill slopes. Design shall consider outlet design and address long-term performance and maintenance requirements for the drainage system.

3.12 MISCELLANEOUS CONSTRUCTION CONSIDERATIONS

Temporary excavation support required during construction shall be designed for short-term loading due to earth pressures, groundwater pressures, surcharge pressures, and construction equipment loading. Detailed design of the temporary decking, sheeting, and bracing shall be prepared by the Design-Builder.

The general requirements shall include development of empirical loading diagrams, computed following procedures presented in AASHTO Standard Specifications. The apparent earth pressure diagrams shall be developed based on the type of earth-retaining structure to be used, and on site-specific soil. Groundwater loading shall be developed based on the construction procedures and site-specific groundwater conditions.

Surcharge pressures due to structures, point, line, and area loads shall be considered. Construction materials and equipment loads shall be estimated using a minimum 3000 kg/m² distributed area load.

In addition to the general requirements for support of excavation, the Design-Builder shall indicate special requirements for the installation and removal of temporary bracing systems that relate to the designs of underpinning and protection walls, such as levels of bracing tiers, the maximum distances of excavation below an installed brace, and the amount of preloading. However, the detailed design of the temporary bracing system shall be the responsibility of the Design-Builder, based on the overall criteria stated in the documents.

3.13 CONSTRUCTION INSTRUMENTATION MONITORING PROGRAM

The Design-Builder shall prepare programs for using instrumentation to monitor the vibration, accelerations, vertical settlement, and lateral movement of temporary support structures and adjacent ground, and permanent structures during and after construction. The Design-Builder shall prepare a report detailing the proposed program of instrumentation and monitoring, establishing threshold values of monitored parameters, and describing the response plans that will be implemented when threshold parameters are exceeded. Upon acceptance of the instrumentation plan, threshold values and response plan, the Design-Builder shall provide, install, and monitor the instrumentation during and after construction and interpret the data. Construction instrumentation monitoring reports shall be submitted to the Department weekly. Corrective actions shall be taken where the instrumentation data so warrant.

3.13.1 Monitoring of Existing Structures and Utilities

The design shall provide that adjacent structures and utilities are protected against damage due to the construction of the permanent Work. Limiting values of movement (horizontal and vertical) and distortion on each building, structure, and utility within the zone of influence of the Work shall be
established. To establish these limiting values, the designer shall consider, the nature of buildings and facilities within the sphere of influence of the construction of the Project, including their use, foundation systems, structural design and current condition. Records of buildings, structures and utilities, where available, shall be examined during the design stage and, where no record exists, assessments shall be made and clearly stated. These assessments shall be the subject of verification at the commencement of the construction phase prior to the adjacent construction activity. Monitoring of each structure shall be required during construction, as specified herein.

As part of the design of all permanent structures, a system of construction monitoring shall be established to include the following:

A) Measurement of ground water levels and ground water pressure;
B) Measurement blast-induced vibrations and displacements;
C) Monitoring of settlement of the permanent structures and surrounding area both during and after construction. In all cases, monitoring shall be initiated well in advance of construction to establish baseline readings; and
D) Measurement of lateral movement of excavation support walls and permanent structures.

The extent of the monitoring program will depend on the size and type of the facilities. A detailed monitoring program shall be prepared for each structure affected by the Work, subject to review by the Department.

Where adjacent properties may be affected by the Work, the monitoring program shall allow for readings on fixed points on the structures and buildings, to allow both total and differential settlements to be assessed and lateral movements to be determined.

3.13.2 Instrumentation

The instrumentation and monitoring program shall include appropriate types and quantities of monitoring instruments capable of measuring horizontal and vertical movements, tilt of adjacent structures, soil pore pressures, vibrations, and noise, as applicable.

Instrumentation to be used in the monitoring programs to control and assist design and construction could include:

A) Piezometers and observation wells;
B) Inclinometers;
C) Survey stations on structures and at ground level locations;
D) Tiltmeters;
E) Deep and shallow settlement points and extensometers;
F) Strain and load-measuring devices; and
G) Seismographs and noise monitors.
The types and numbers of instruments will depend on factors including the size, type and location of proposed Work. The design and distribution of instrumentation shall demonstrate an understanding of the need, purpose and advantages of using each proposed type.

Responsibilities for design, procurement, installation, recording, maintenance and protection shall be clearly stated in the specifications and Contract Documents. These shall also contain the procedures to be followed when readings during construction reach any specified threshold values, or when construction changes are deemed necessary. Threshold values and response plans shall be developed by the Design-Builder, subject to review by the Department.

The design shall include consideration of environmental effects such as temperature, rain, sun, wind, corrodibility, and electromagnetic wave interference.

Test installations shall be performed, if necessary, to demonstrate the compliance and acceptability of instrumentation in relation to the Contract requirements.

### 3.14 EXISTING SLOPES

#### 3.14.1 Existing Slopes Needing Design-Builder Attention

Regardless of whether or not there is any other impact from the Design-Builder’s design and construction activities, the following slopes require analysis and correction by the Design-Builder:

- A) Station 460 to Station 478 left;
- B) Station 484 to Station 500 left; and
- C) Sta. 512 to 531.

#### 3.14.2 Failure of Existing Slopes

Correction of a failure of any existing slope, either during construction or following, that has not been impacted directly or otherwise by the Design-Builder’s activities will not be the Design-Builder’s responsibility.
SAMPLE

MAINTENANCE AND PROTECTION OF TRAFFIC AND ACCESS PERFORMANCE SPECIFICATION

1.0 INTRODUCTION

This Performance Specification specifies the requirements for:

A) Management and inspection of MPT activities;
B) Maintenance and Protection of Traffic and Access (MPTA) Plan;
C) Maintenance of traffic operations during construction for the Project and its intersections with US and State highways;
D) Maintenance and Protection of Traffic (MPT) Details; and
E) Maintenance of traffic and access to private and public properties adjacent to and along the Project during construction of the Project.

The Design-Builder shall:

1. Provide management and supervisory personnel specified herein;
2. Prepare, submit and update MPTA Plans and MPT Details as specified in this PS; and
3. Provide continuous maintenance of traffic on the Project and intersecting highways and access to private and public property along the length of the Project during construction, including any period(s) of suspension of Work, in accordance with accepted MPTA Plans and MPT Details.

This PS replaces ____________________________.

2.0 STANDARDS AND REFERENCES

The planning, design, construction and implementation of maintenance of traffic and access shall be in accordance with this PS__ and the relevant requirements of the following Standards, unless otherwise stipulated in this specification. Standards and References specifically cited in the body of the specification establish requirements that shall have precedence over all others. Should the requirements in any standard conflict with those in another, the standard highest on the list shall govern. Listed under References are guidelines that the Design-Builder may use in addressing the requirements as the Design-Builder sees fit. It is the Design-Builder’s responsibility to obtain clarification of any unresolved ambiguity prior to proceeding with design or construction.

2.1 STANDARDS

A) A Policy on Geometric Design of Highways and Streets, AASHTO, 1990;
B) Manual on Uniform Traffic Control Devices, 2001 Edition (MUTCD);
C) MUTCD, Part VI, “Standards and Guides for Street and Highway Construction, Maintenance, Utility and Incident Management Operations”;
2.2 REFERENCES

None.

3.0 REQUIREMENTS

3.1 MPT MANAGEMENT AND INSPECTION

3.1.1 Traffic Control Supervisor

The Design-Builder shall assign a traffic control supervisor (TCS) to provide MPT management for the Project. The TCS shall be considered one of the Key Personnel _________________.

3.1.1.1 Qualifications

The TCS shall meet the following minimum qualifications:

A) Possess a Registered Professional Engineer License in New York, or obtain registration within six (6) months of NTP;

B) Have eight (8) years experience in Traffic and Highway Engineering with Design-Builder, consultant, city, county or state transportation agencies; and

C) Possess certification as a Work Zone Safety Supervisor in accordance with Subsection 3.1.3 of this PS, or possess a PTOE certificate received through ITE.

3.1.1.2 Duties

The sole responsibility of the TCS shall be management of the MPT program.

The TCS shall have readily available at all times the most current copies of:

A) Accepted MPT Plan;

B) All accepted MPT Details; and

C) MUTCD.

Duties of the TCS shall include:
4. Managing and supervising MPT services at the Project Site;
5. Serving as Design-Builder’s point of contact for all MPTA coordination with the Department;
6. Managing on-going revisions and updates to the MPTA Plan, including coordinating between the Design-Builder’s schedule and the MPTA Plan so that the MPTA Plan meets Design-Builder’s schedule requirements while meeting the Department’s requirements for public mobility and safety during construction;
7. Coordinating MPTA requirements and MPT Details with design;
8. Managing and supervising development of MPT Details;
9. Supervising the implementation, maintenance and inspection of MPT Details, either directly or through certified and accepted Traffic Control Technicians (TCTs);
10. Correcting all deficiencies in MPTA Plan and MPT Details implementation;
11. Coordinating traffic control operations of Subcontractors, Utility Owners and suppliers to ensure their operations:
   • Are included in the accepted MPT Plan;
   • Do not result in conflicting traffic control situations; and
   • Meet all Project MPT requirements;
12. Maintaining a Project MPTA Diary per ____________;
13. Notifying Department’s Project Manager or designee of all traffic accidents within 24 hours (Record the accident and time and date of notification in the MPTA Diary and submit to the Department’s Project Manager); and
14. Obtaining vehicle accident reports from local law enforcement agencies for traffic accidents reported with the Project limits, proving copies to the Department’s Project Manager and obtaining general data for accidents on- and off-Site for comparisons.

3.1.1.3 Availability

An accepted TCS shall be available 24 hours per day, 7 days per week, throughout the duration of the Project, including times of Project suspension.

If the Design-Builder assigns more than one (1) TCS to MPT management, the Design-Builder shall submit to the Department’s Project Manager or designee a weekly schedule identifying who will be proving MPT management each day of the coming week.

At times when a TCS is not on the Site, a TCS shall be on call and be able to respond to the site within 45 minutes. The Design-Builder shall provide the Department’s Project Manager and his/her designee(s) a phone number for contacting the on-call TCS.

3.1.2 Traffic Control Technician (TCT)

All MPT implementation, inspection and maintenance not performed under the direct supervision of the
TCS shall be directly supervised by a TCT. The Design-Builder may assign one or more TCTs to work under the direction of the TCS and to act for the TCS in emergencies. At least one (1) TCT shall be on duty at all times, including times of Project suspension.

TCTs shall meet the following minimum qualifications:

A) Possess certification as a Work Zone Safety Supervisor in accordance with requirements in Subsection 3.1.3; and
B) Have three (3) years work zone experience.

3.1.3 Certification

Prior to commencing work requiring traffic control management, including field survey and geotechnical investigations, the Design-Builder shall submit to the Department’s Project Manager a copy of the Work Zone Safety Supervisor certificate (wallet size card) issued by the American Traffic Safety Services Association (ATSSA) or any agency or firm approved by the Department.

The Department will accept certification by ATSSA or any agency or firm only if all of the following minimum requirements are met:

A) Successful completion of a work zone traffic control course approved by the Department;
B) Passing a written examination on the work zone traffic control course; and
C) A minimum of one (1) year full-time field experience, verified by the agency or firm, in work zone traffic control. The experience may be verified by the Department at its discretion.

3.1.4 MPTA Diary

The TCS shall maintain a Project MPTA Diary in a format acceptable to the Department’s Project Manager. The TCS shall keep the MPTA Diary current on a daily basis and shall sign each daily diary entry. Photographs may be used to supplement the written text.

MPTA Diaries shall at all times be available for inspection by the Department’s Project Manager. A copy of the MPTA Diary(ies) shall be submitted to the Department’s Project Manager monthly with the Monthly Progress Report.

The MPTA Diaries shall become the property of the Department at completion of the Project. Failure to submit the MPTA Diaries will result in the withholding of final payment until the MPTA Diaries are submitted.

3.1.5 MPTA and MPT Details Inspection

The TCS or designated TCT shall inspect traffic control devices according to the following schedule:
Traffic Control Device | Inspection Frequency
--- | ---
Pavement Markings | Weekly
Fixed Signage | Weekly
Signage on Temporary Supports | Daily
Drums, Cones and Portable Delineators | Beginning and end of each work day and as necessary dictated by weather and site conditions
Barricades | Daily
Temporary Traffic Signals | Daily
Temporary Flashing Beacons | Daily
Temporary Roadway Lighting | Nightly
Dynamic Message Signs | Daily

The Design-Builder shall provide for immediate repair or replacement of traffic control devices not functioning as required to ensure the safety of public traffic and construction personnel.

3.1.6 Extra Police Patrols

In recognition of the normal traffic volumes and speeds encountered along the Project and the Department’s goal to provide a safe travel environment during construction, the Design-Builder is encouraged to provide for additional police patrols along the Project for the duration of the construction period to enhance safety and control speeds. The personnel engaged in the patrols must have jurisdiction and be authorized by law to issue citations and/or arrest persons violating traffic laws along the Project. Such personnel shall be available to assist in responding to emergencies along the Project.

3.1.7 Emergency Medical Technicians and Emergency Response Vehicle

The Design-Builder is required to provide emergency medical technicians (EMTs) primarily for the treatment of injured workers from the start of construction until Substantial Completion of the entire Project. The Department also desires to enhance responsiveness to other emergencies along the corridor. Therefore, the Design-Builder shall make these EMT’s available to respond to other medical emergencies only as requested by other emergency response agencies. Therefore, the EMT’s shall be equipped with an appropriate emergency response vehicle.

The emergency medical technicians (EMTs) shall be at least EMT(Basic), licensed by __________. The EMTs shall be on-call during Design-Builder’s construction working hours.

Prior to Final Acceptance, the Design-Builder shall turn over ownership and deliver the emergency response vehicle specified herein to __________ County, free of all liens, for use by local emergency responders.

The EMTs shall be located so as to provide Project-wide coverage for the Design-Builder’s work force. This may require shifting locations as various construction activities take place.

3.1.8 Spot Speed Radar Detectors
The Design-Builder shall provide spot speed radar detectors that display the speed of approaching traffic to approaching Motorists to assist in controlling speeds in the Project vicinity, particularly in areas where speed control is essential, such as severely constrained work areas. The detectors should be moved as job and traffic conditions change.

3.1.9 Dynamic Message Signs

The Design-Builder shall provide dynamic message signs in the Project vicinity, particularly in areas such as severely constrained work areas. The message signs should be moved as job and traffic conditions change.

3.2 MPTA PLAN

The Design-Builder shall prepare and submit the Maintenance and Protection of Traffic and Access (MPTA) Plan that provides an overall plan of general traffic operations during construction within 60 days of NTP for the Department’s Project Manager’s written acceptance. The plan shall identify stages and phases for each Project Section and provide appropriate operating procedures. The plan shall be signed and stamped by a New York-registered professional engineer. The plan shall be organized into the following sections:

A) Section 1 - Construction Staging Plan;
B) Section 2 – Traffic Impact Plan;
C) Section 3 - Traffic Mitigation Plan;
D) Section 4 - Emergency Vehicle Access Plan;
E) Section 5 - Maintenance of Property Access Plan; and
F) Section 6 - Emergency Response Plan.

The MPTA plan shall address, at a minimum, the following issues.

3.2.1 Construction Staging Plan

The Design-Builder shall identify the general sequencing for construction and detouring for each stage of construction. The plan shall include contingency plans for weather, Utility issues, and other unforeseen interruptions. The plan shall address major special events occurring in the vicinity of the Project.

The plan shall address detours, warning devices, major special events, impact on local businesses, deployment of construction equipment, trailers, supplies, materials and other items for the Project, noise abatement, time of construction and public information requirements. See ______________________.

The Design-Builder shall produce a graphical representation of the staging with colored sections representing different stages and linear chronological representation of major Progress Check Points.

The plan shall be updated as necessary throughout the Contract.

3.2.2 Traffic Impact Plan
The Design-Builder shall prepare a traffic impact plan for the Project area to evaluate traffic flow during construction and document anticipated impacts. The plan shall use the most recent traffic data available.

The plan shall include measures to minimize traffic disruption and provide for safe traffic movement during construction. The plan shall include a traffic engineering analysis demonstrating how vehicular traffic will be accommodated in all directions. The plan shall take into account other construction projects that may affect traffic in and near the Project.

Minimum contents of the traffic impact plan shall include:

- A) Base set of traffic volumes for all area routes;
- B) Level of Service (LOS);
- C) Vehicular delays;
- D) Traffic detour/alternate route plans; and

The plan shall be updated as necessary throughout the Contract.

3.2.3 Traffic Mitigation Plan

The Design-Builder shall analyze and provide detailed mitigation measures that include various methods of detouring and minimizing the loss of traffic capacity on existing roads on the Project and the Project vicinity. Detouring traffic onto frontage roads not within Department ROW will not be permitted except in an emergency and only with the consent of the Department’s Project Manager.

The Traffic Mitigation Plan shall be updated as necessary throughout the Contract.

3.2.4 Emergency Vehicle Access Plan

The Emergency Vehicle Access Plan shall address maintenance of traffic access for emergency vehicles to all businesses and residences in all areas of the Project from the time that construction starts until construction is completed. Emergency service vehicles shall include:

- A) Emergency medical vehicles;
- B) Utility maintenance vehicles for emergency purposes (gas, electric, etc.);
- C) Fire protection vehicles; and
- D) Police vehicles.

The Emergency Vehicle Access Plan shall address the special needs of facilities such as police, fire, businesses, schools, crossing areas and other high risk areas. The plan shall define routes through and around construction sites.

The Design-Builder shall consult with emergency service providers and submit an updated Emergency Vehicle Access Plan to the Department’s Project Manager for written acceptance at least 15 days prior to starting construction on any Project Section. The Design-Builder shall consult with emergency service providers regarding emergency access the week prior to construction. The Design-Builder shall provide
weekly written information prior to Friday noon regarding emergency vehicle access routes through and around construction sites for the following week. A copy shall be provided to the Department’s Project Manager at the same time that emergency service providers are notified.

The Design-Builder shall develop and maintain a contact list of emergency service providers.

3.2.5 Maintenance of Property Access Plan

The Maintenance of Property Access Plan shall address maintaining access to all businesses, residences, institutions, and properties at all times along the Project.

Prior to starting construction on any Project Section, the Maintenance of Property Access Plan shall be updated to more specifically address access in the Section. The updated access plan shall be coordinated with the affected property owners. The updated access plan shall be submitted 30 days prior to construction for the Department’s Project Manager’s written acceptance.

Included in the updated access plans, shall be access maps that detail the access requirements for each property. The maps shall show existing and planned patron and delivery and residential access during any construction period. The access maps shall identify times of business operation and deliveries. Adjacent driveways may be used if written permission is obtained from the agency or owner having jurisdiction over such driveways.

Access for essential services, such as trash pickup and mail delivery, shall be maintained.

Access for deliveries shall be maintained by an agreed upon schedule between the Design-Builder and affected business. A record of all negotiations between affected businesses and residences shall be maintained by the Design-Builder.

Written documentation that supports residents’ or business owners’ approval to temporarily or permanently close a current driveway shall be retained by the Design-Builder and submitted to the Department prior to Final Acceptance.

Design-Builder shall provide and implement a sign plan identifying significant access changes during construction and “Open for Business” signing. Signs shall be rectangular, colored white on blue background, with lettering size consistent with MUTCD guidelines for the traffic speed.

3.2.6 Emergency Response Plan

The Emergency Response Plan shall address plans for responding to incidents (caused by Design-Builder or others) along the Project, such as inadvertent traffic stoppages or delays, traffic accidents, on-site emergencies and/or emergencies requiring police or emergency vehicles. The plan shall identify how the Design-Builder will determine where and when incidents occur and how the Design-Builder will facilitate movement of traffic through work zones once the cause of the incident has been cleared. This plan shall be consistent with ____________, Emergency Vehicle Access Plan.

The Design-Builder shall designate point(s) of contact who shall be accessible to the emergency service providers 24 hours per day. An updated Emergency Response Plan, including the 24 hour per day contacts with phone and/or pager numbers shall be submitted to the Department’s Project Manager for
written acceptance at least 15 days prior to the start of construction.

3.3 MAINTENANCE OF TRAFFIC DETAIL

The Design-Builder shall have full responsibility for developing and implementing MPT Details (traffic control plans). The Maintenance and Protection of Traffic Detail (MPT Detail) shall include detailed design plans to maintain traffic operations during construction, and identify the location and type of all temporary traffic control devices affecting vehicular traffic. The MPT Detail shall identify the duration of construction, sequencing of construction, detouring required for each construction stage and provide detailed Emergency Response Procedures in accordance with Section 3.1.6, Emergency Response Plan. The MPT Detail shall include Maintenance of Traffic Detail Sheets that shall be signed and sealed by a New York-registered professional engineer who is a certified TCS or Professional Traffic Operations Engineer.

The MPT Detail for the Project shall be developed and reviewed per ________________, and be submitted to the Department's Project Manager for review and written acceptance prior to the start of construction. Any revisions to the MPT Detail shall be submitted to the Department’s Project Manager for review and written acceptance as far in advance as possible of construction covered by the MPT Detail update or revision. The Design-Builder will be responsible for any delays caused by revisions to (and subsequent reviews of) the MPT Detail that Design-Builder initiates.

3.3.1 Requirements of the Maintenance of Traffic Detail

The MPT Detail shall receive the Department’s Project Manager's written acceptance prior to release of design for construction. The review of the MPT Detail shall be coordinated with the review of applicable designs. See ______________.

The Design-Builder shall submit Maintenance and Protection of Traffic Detail sheets for construction to the Department’s Project Manager for review and written acceptance at least 10 days prior to the start of each stage of construction.

The Design-Builder shall provide traffic control measures that conform to the requirements of the MUTCD Part VI “Standards and Guides for Street and Highway Construction, Maintenance, Utility and Incident Management Operations”. The Traffic control requirements in MUTCD shall be followed except as modified in this Subsection.

All temporary pavement markings, construction signing, removal of permanent pavement markings, removal or covering of permanent signs shall be in accordance with Section 2.1, Standards (d), (e) and (f).

3.3.2 Elements of the MPT Detail

The MPT Detail shall contain at a minimum the following:

A) Location and scheduled dates of use for all traffic control devices, including but not limited to traffic channelization devices, barriers, impact attenuators, signs, pavement markings and variable message signs;

B) Detailed Emergency Response Procedures in accordance with the Emergency Response
3.3.3 Changes to the MPT Detail

Changes to the MPT Detail necessitated by unforeseen circumstances as determined by either the Design-Builder or Department’s Project Manager shall be submitted to the Department’s Project Manager for review and written acceptance at least 48 hours prior to implementation, unless the Department’s Project Manager determines an emergency situation exists requiring immediate traffic control adjustments. The Design-Builder shall also obtain comments from Stakeholders as necessary for the changed MPT Detail (Stakeholder comments shall come through the Department’s Project Manager) necessitated by unforeseen circumstances.

3.3.4 MPT Detail Implementation

The Design-Builder shall notify the Department’s Project Manager at least 10 days prior to the beginning of construction and/or the implementation of the MPT Detail, in any construction phase. The Design-Builder shall have signs in place advising the public of detours, closures and alternate routes prior to implementing the provisions of the MPT Detail. Each detour, closure and alternate route, shall have signs with the dates of work as well as the Project Sections involved. Signing shall be sufficient to inform the traveling public.

3.3.5 Pre-Construction Requirements

The Design-Builder shall not begin construction or close any traffic lanes until:

A) The Design-Builder has obtained appropriate permits;
B) Required notices have been given regarding closures, alternate routes and/or detours; and
C) The Design-Builder has received the Department’s Project Manager’s written acceptance of the MPT Detail.

3.4 SPECIFIC TECHNICAL REQUIREMENTS/LIMITATIONS

The Design-Builder shall plan, design and implement its MPT and MPT Details in accordance with the technical requirements and limitations specified in this Section 3.4.
### 3.4.1 Project Mainline and Intersecting Highways

<table>
<thead>
<tr>
<th>Sub-paragraph</th>
<th>Item</th>
<th>Requirement/Limitation</th>
</tr>
</thead>
<tbody>
<tr>
<td>a</td>
<td>Number of lanes</td>
<td>Provide two(2) travel lanes (1 in each direction) at all times, except during permitted closures</td>
</tr>
<tr>
<td>b</td>
<td>Surface</td>
<td>Travel lanes shall be paved at all times</td>
</tr>
<tr>
<td>c</td>
<td>Striping/marking</td>
<td>Travel lanes shall be striped/marked with temporary markings prior to opening to traffic</td>
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<tr>
<td>d</td>
<td>Speed reduction</td>
<td>Speed limits may be reduced a maximum of 10 mph below existing posted speed limits except spot speed reductions of 20 mph for special conditions upon acceptance of the Department’s Project Manager</td>
</tr>
<tr>
<td>e</td>
<td>Detours</td>
<td>Old frontage roads that are within the Department ROW limits may be used for detours provided other technical requirements can be met</td>
</tr>
<tr>
<td>f</td>
<td>Seasonal/special event limitations</td>
<td>There are no specific limitations but Design-Builder shall be prepared to accommodate anticipated high use periods, particularly on Memorial Day and Labor Day weekends</td>
</tr>
<tr>
<td>g</td>
<td>Business Signing</td>
<td>Provide “Business Open as Usual” signs for businesses impacted by on-going construction</td>
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<tr>
<td>h</td>
<td>Special Zones of Concern</td>
<td>School zone (Monday through Thursday)</td>
</tr>
<tr>
<td>i</td>
<td>Traveled Lane widths</td>
<td>Not less than 3.3m</td>
</tr>
<tr>
<td>j</td>
<td>Shoulder widths</td>
<td>Not less than 0.6m</td>
</tr>
<tr>
<td>k</td>
<td>Drainage</td>
<td>Maintain existing drainage and prevent water from crossing across the road</td>
</tr>
<tr>
<td>l</td>
<td>Public Notices of traffic shifts</td>
<td>Five (5) days advance notice by publication in local media</td>
</tr>
<tr>
<td>m</td>
<td>Closures</td>
<td>Except for closure necessary to accommodate blasting, no closures will be permitted. Closures for blasting will be limited to two (2), one (1) hour periods per day on weekdays only between the hours of 7 am and 7 pm.</td>
</tr>
<tr>
<td>n</td>
<td>Design Vehicle</td>
<td>MPT Details shall accommodate the WB-62 design vehicle.</td>
</tr>
</tbody>
</table>
3.4.2 Driveways/Access Roads

<table>
<thead>
<tr>
<th>Sub-paragraph</th>
<th>Item</th>
<th>Requirement/Limitation</th>
</tr>
</thead>
<tbody>
<tr>
<td>a</td>
<td>Surface</td>
<td>Temporary gravel or pavement</td>
</tr>
<tr>
<td>b</td>
<td>Grade</td>
<td>Not to exceed existing</td>
</tr>
<tr>
<td>c</td>
<td>Alignment</td>
<td>Not be to more restrictive than existing</td>
</tr>
<tr>
<td>d</td>
<td>Temporary combined access to highway</td>
<td>Acceptable with concurrence of affected landowners, business operators and residents</td>
</tr>
<tr>
<td>e</td>
<td>Gates and fences</td>
<td>Maintain existing features or provide replacement in kind</td>
</tr>
<tr>
<td>f</td>
<td>Width</td>
<td>Not less than 4.8m unless agreed by affected landowners, business operators and residents</td>
</tr>
<tr>
<td>g</td>
<td>Drainage</td>
<td>Maintain existing drainage</td>
</tr>
<tr>
<td>h</td>
<td>Notice of change in access</td>
<td>At least 24 hours by personal contact with affected landowners, business operators and residents</td>
</tr>
<tr>
<td>i</td>
<td>Maintenance of access/road surface</td>
<td>As required to the limits of Department ROW</td>
</tr>
<tr>
<td>j</td>
<td>Design Vehicle</td>
<td>Access shall accommodate needs of individual businesses, residents and/or landowners and provide access for emergency and essential services vehicles.</td>
</tr>
<tr>
<td>k</td>
<td>Closure</td>
<td>Only upon written agreement by all businesses, residents and/or landowners served by the access and the Department’s Project Manager.</td>
</tr>
</tbody>
</table>

3.4.3 Temporary Bridges

Temporary bridges shall be designed in accordance with the AASHTO Standard Specifications for Highway Bridges, 1990 Edition, and all applicable provisions of the Contract Documents. The bridges shall be designed for HS-20 live loads. Temporary bridges shall be designed and reviewed per Special Provision 114. Temporary bridges shall be inspected by a New York-registered Professional Engineer at least once every two (2) months while in service. Condition reports shall be submitted to the Department’s Project Manager within five (5) days of the inspection.

3.4.4 Temporary Retaining Structures

Temporary retaining walls and shoring shall be provided where cut or fill slopes require support and shall comply with all applicable provisions of the Contract Documents. Design shall be designed and reviewed per __________. Mechanically stabilized earth or soil nail retaining walls shall be designed and constructed in accordance with ____________________.

3.4.5 Temporary Roadway Structural Section

Temporary roadway sections shall be designed using pavement section of the Design-Builder’s choosing. The pavement section shall be designed and constructed to perform as intended throughout its life.
3.4.6 Parking of Vehicles and Equipment

The following restrictions apply to the parking of personal vehicles of Design-Builder’s/Subcontractor’s personnel or Design-Builder’s/Subcontractor’s vehicles or equipment:

A) Personal vehicles of the Design-Builder’s/Subcontractor’s employees shall not be parked within the Clear Zone as defined in the AASHTO Roadside Design Guide;

B) During non-working hours, vehicles or equipment shall not be parked within the Clear Zone;

C) Neither personal vehicles nor equipment shall be parked on accesses to businesses, residences or public or private land where such parking blocks access; and

D) Private land or public land, including parking areas at businesses, shall not be used to park personal vehicles of Design-Builder’s employees or Design-Builder’s/Subcontractor’s vehicles or equipment.

The same restrictions apply to supplier vehicles.

3.5 COURTESY PUBLIC ASSISTANCE

The Design-Builder shall expeditiously clear the Project of disabled vehicles and/or assist Motorists to continue their travel. Personnel assisting Motorists should respond in vehicles bearing the Design-Builder’s or a Subcontractor’s logo and identify themselves as employees of the Design-Builder.

4.0 PROGRESS AND PAYMENT PROGRESS CHECK POINTS

The Design-Builder shall include in its Progress Check Point descriptions and schedule of Progress Check Points:

A) Submittals of initial MPTA Plan and updates;

B) Implementation of MPTA Plan components; and

C) Other Progress Check Points as the Design-Builder deems necessary.

5.0 COMPLIANCE, SUSPENSION AND LIQUIDATED DAMAGES

5.1 FAILURE TO COMPLY

The Department’s Project Manager may suspend all or part of Design-Builder’s construction operations and/or suspend payment for Price Center 4 for failure to comply with the accepted MPTA Plan and/or accepted MPT Details, or failure to correct unsafe traffic conditions within a reasonable period of time after such unsafe condition is known by Design-Builder or notification is given to the Design-Builder in writing. Design-Builder shall not wait for Department’s written direction to take corrective action.

If the Design-Builder does not take appropriate action to bring the deficient MPTA condition into compliance with the accepted MPTA Plan and/or accepted MPT Details, or to correct the unsafe traffic conditions, the Department may proceed with the corrective action using its own forces or forces retained by the Department. If Department must take action on its own, the cost of such will be documented and
deducted from moneys owed the Design-Builder.

If the Design-Builder’s operations are suspended, the normal assessment of Contract time will not cease for the period required to correct the unsafe conditions and MPTA/MPT Details deficiencies.

5.2 SUSPENSION AND LIQUIDATED DAMAGES

The Design-Builder shall not be relieved of the responsibility to provide MPT and access to the traveling public and landowners, residents and landowners when the Project is under full or partial Project suspension.

When the Project is under suspension due to the Design-Builder’s failure to comply with this PS6 or when the Contract is under liquidated damages, the Design-Builder shall continue to provide MPT and Traffic Control at no additional cost to the Department.

If suspensions or partial suspensions are requested by the Design-Builder, any MPT work will be at the Design-Builder’s expense.
1.0 SCOPE

The Design-Builder shall design and construct pavement sections in accordance with the criteria established in this section such that the pavement will perform under the given conditions (climate and loading), for the specified periods. These criteria shall apply to mainline, ramps, collector/distributor roads, frontage roads, cross roads and local streets to be constructed as a part of the Project. Driveways and other minor roads shall be designed and constructed in accordance with Specifications.

2.0 APPLICABLE STANDARDS AND REFERENCES

Design and construction of all pavements shall be in accordance with this Performance Specification and the relevant requirements of the following standards unless otherwise stipulated in this specification. Standards and references specifically cited in the body of the specification establish requirements that shall have precedence over all others. Should the requirements in the standards conflict with those in another, the standard highest on the list shall govern. Listed under references are guidelines that the Design-Builder may use addressing the requirements, as it sees fit. It is the Design-Builder’s responsibility to obtain clarification of any unresolved ambiguity prior to proceeding with any design and construction.

2.1 Standards

A) AASHTO Guide for Design of Pavement Structures, 1993;
B) Contract Specification; and
C) Traffic Report.

2.2 References

A) Draft Pavement Design/Management;
B) Manual of Instructions;
D) Darwin Pavement Design Software; and
E) American Concrete Pavement Associations Pavement Analysis Software (PAS), 1993.

3.0 REQUIREMENTS
3.1 Design

The pavement sections for mainline, ramps, collectors/distributors, auxiliary lanes and the east/west arterial pavement under the new SPUI’s shall be designed and constructed to perform in an excellent manner for a period of not less than 40 years. The Design-Builder shall provide a pavement section that deals with surface and subsurface drainage giving due consideration to frost and elimination of trapped water. Other pavement sections for frontage roads, cross streets and local streets shall be designed and constructed to perform in an excellent manner for a period of not less than 20 years. The pavement sections shall be designed by a qualified engineer with at least 10 years experience in pavement design and management. The Design-Builder shall design pavement sections in accordance with the requirements set forth in the AASHTO Guide for Pavement Structures, 1993, for the following conditions:

A) The Design-Builder’s plan shall provide for total reconstruction of pavements within the project limits;

B) The Design-Builder shall design a Portland Cement Concrete Pavement (PCCP) section for mainline, ramps, collectors/distributors, auxiliary lanes and the east/west arterial pavement under the new SPUI interchanges for a minimum distance of 60 meters beyond the ramps or at the beginning of the left turn bays, whichever is greater;

C) The Portland cement concrete pavement section shall consist, as a minimum of, a drainable subbase that will not trap water (A-1-a non plastic material with maximum size of 100 mm), a base and a Portland cement concrete surface course;

D) The Design-Builder shall make adjustments to minimum layer thicknesses to accommodate climatic conditions such as frost depth. A minimum of 915mm will be required to address frost;

E) The Design-Builder shall design either hotmix asphalt concrete or Portland cement concrete pavement sections for cross streets, local streets and frontage roads, except as specified otherwise in b) above;

F) The PCCP shall not be continuously reinforced;

G) For the mainline the Design-Builder shall use same type/cross section for the HOV Lanes, General Purpose Lanes, Auxiliary Lanes and shoulders.

H) The Design-Builder may use information regarding subsurface conditions and existing pavement sections as provided by the Department at the Design-Builder’s discretion;

I) Pavement sections shall be designed for the anticipated traffic (including percent increases) provided by the Department;

J) The Design-Builder shall design the PCCP pavement with maximum joint spacing of 4.5 m;

K) The Design-Builder shall design the PCCP joints with load transfer devices (i.e. dowels) to ensure minimum 80 % load transfer at the joints; and

L) The Design-Builder shall design and provide underdrain system where necessary to adequately drain the base and subbase courses.
3.2 Materials

All materials shall meet or exceed the requirements established by Standard Specifications. The following materials, in addition to those restricted in the Standard Specifications shall not be used on the project:

A) Bottom Ash;
B) Type C flyash;
C) Slag;
D) Fines from recycled material;
E) Asphalt grades lower than high temperature performance grade (PG) of 64 and higher than low temperature performance grade (PG) of –28; and
F) Cement types not permitted in _______ of Standard Specifications.

All materials not meeting contract requirements shall be rejected and removed immediately by Design-Builder and replaced with approved/suitable materials. Materials not identified in the specifications may be submitted by the Design-Builder at least 30 days prior to being used for review and approval by the Department.

3.3 Performance

The parameters that will be used by the Department to evaluate performance of all constructed pavements for this project are a) ride quality, b) skid resistance, c) durability, d) structural capacity and e) material quality. These parameters will be evaluated by the Design-Builder in coordination with the Department, during construction, at Final Owner Acceptance (FOA) as defined in _______ and, if the maintenance option is exercised, at the end of the fourth and ninth years of the Maintenance Term. If corrective action needs to be taken, the Design-Builder shall coordinate all such activities to minimize disruption to the traffic, with the approval of the Department.

3.3.1 Ride Quality

Ride quality will be evaluated in all lanes using a profilograph as indicated ________________.

FOA will require a value for ride quality for the project excluding structures in accordance with ________________. If these criteria are not met, the Design-Builder shall diamond grind the profile back to acceptable limits provided the area requiring grinding does not exceed five (5) percent of surface area of a day’s production and does not compromise the structural capacity of the section. If this limit is exceeded or the section thickness is reduced by more than five (5) percent, the Design-Builder shall replace the defective pavement for the full lane width over the section at Design-Builders expense.

The ride quality value determined using a profilometer at the end of four years and nine years after the project is determined by the Department to be Substantially Complete, shall not exceed 1000 millimeters/kilometer and 1400 millimeters/kilometer, respectively. If this criteria is not met, the Design-Builder shall take corrective action as indicated above to bring this parameter within the limits.
The Design-Builder shall conduct the profilograph measurements prior to/for FOA and the profilometer measurements during year 4 and year 9 of the Maintenance Term.

3.3.2 Skid Resistance

Skid resistance shall meet the following performance criteria:

A) FOA will require a value for skid resistance greater than 50. Pavements exhibiting values less than 50 will require corrective action (i.e. skid abrader process) to provide values that exceed 50; and

B) The skid resistance value at the end of four years and nine years after the Substantial Completion of the Project occurs may vary from initial value of 50+ to no less than 40. The Design-Builder shall evaluate the skid resistance at the end of four years and nine years respectively. Pavements with skid resistance values less than 40 will require corrective action within 6 months.

3.3.3 Durability

Pavement shall meet the following performance criteria:

A) FOA will permit no identifiable distress as defined by SHRP manual (SHRP-P-338). If these criteria are not met, the Design-Builder shall take corrective action per guidelines outlined in ____________; and

B) Distress types exceeding the allowable level of severity outlined in RFP Section 6.6.6 at the end of four years and nine years after project is Substantially Complete, shall require corrective actions as outlined in ______________.

3.3.4 Structural Capacity

The structural capacity (thickness, strength) of pavement sections shall be evaluated during the construction phase through the Design-Builder’s approved QC/QA program. The parameters that will be evaluated include thickness, strength and quality of materials. Load transfer capacity between pavement sections shall be verified to comply with design assumptions. The strength, thickness and quality of materials will be evaluated to ensure compliance with the approved design.

FOA will require meeting or exceeding the design criteria.

If the structural capacity is determined to be deficient by the Department, the Design-Builder shall take corrective action in accordance with ____________.

3.3.5 Material Quality

Material quality shall be evaluated prior to and during construction through the Design-Builder’s approved QC/QA program. Materials specified in the design and meeting the requirements of ______ shall be evaluated to meet or exceed requirements set forth in the _________________. Materials not meeting these specifications shall be removed immediately and replaced with acceptable material ____________.
3.4 DISTRESS TRIGGER VALUES

The Design-Builder shall ensure that the allowable level of severity and allowable extent of severity for the various distress types identified do not exceed those trigger values identified in the following table for the two pavement types. If these values are exceeded, the Design-Builder shall take the recommended corrective action to bring that these parameters within the limits.

### 3.4.1 Rigid Pavements

<table>
<thead>
<tr>
<th>Distress Type</th>
<th>Allowable Level of Severity</th>
<th>Allowable Extent of Severity</th>
<th>Corrective Action</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cracking</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corner Breaks:</td>
<td>Low Severity: Crack is not spalled for more than 10% of the length of crack, there is no measurable faulting; and the corner piece is not broken into two or more pieces.</td>
<td>Low Extent: 2 panels per 1.5 lane kilometers.</td>
<td>Full depth repair required.</td>
</tr>
<tr>
<td>Durability Cracking (“D” Cracking):</td>
<td>Crescent shaped hairline cracking with no loose or missing pieces.</td>
<td>Not allowed.</td>
<td>Total slab replacement.</td>
</tr>
<tr>
<td>Longitudinal Cracking:</td>
<td>Low Severity: Crack widths &lt; 3mm, no spalling, no measurable faulting; or well sealed and with a width that cannot be determined.</td>
<td>Low Extent: 4 slabs per 1.5 lane kilometers.</td>
<td>If cracking exceeds low severity, full depth slab replacement required.</td>
</tr>
<tr>
<td>Transverse Cracking:</td>
<td>Low Severity: Crack widths &lt; 3mm, no spalling, and no measurable faulting; or well sealed and with a width that cannot be determined.</td>
<td>Low Extent: 4 slabs per 1.5 lane kilometers.</td>
<td>Seal low severity cracks. If cracking exceeds low severity, full depth slab replacement required.</td>
</tr>
</tbody>
</table>

### Joint Deficiencies

<table>
<thead>
<tr>
<th>Transverse Joint Seal Damage:</th>
<th>Low Severity: When joint sealant damage as described by SHRP. Etrusion, hardening, adhesive failure, cohesive failure, complete loss of sealant.</th>
<th>Low Extent: 10% of joint length per 1.5 lane kilometers.</th>
<th>Joint resealing required.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Longitudinal Joint Seal Damage:</td>
<td>Allowable: When joint sealant damage as described by SHRP (transverse joint sealant damage). Etrusion, hardening, adhesive failure, cohesive failure, complete loss of sealant.</td>
<td>Low Extent: 10% of joint length per 1.5 lane kilometers.</td>
<td>Joint resealing required.</td>
</tr>
</tbody>
</table>
### Pavement Performance Spec

#### Spalling of Longitudinal Joints:

<table>
<thead>
<tr>
<th>Severity</th>
<th>Low Extent</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>Less than 5% of joint length per 1.5 lane kilometers</td>
<td>If severity is low, hot pour sealant may be used to fill void. If low severity is exceeded, then partial depth repair is required.</td>
</tr>
</tbody>
</table>

#### Spalling of Transverse Joints:

<table>
<thead>
<tr>
<th>Severity</th>
<th>Low Extent</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>Less than 5% of joint length per 1.5 lane kilometers or 25% of a joint</td>
<td>If severity is low, hot pour sealant shall be used to fill void. If low severity is exceeded, then partial depth repair is required.</td>
</tr>
</tbody>
</table>

#### Surface Defects

<table>
<thead>
<tr>
<th>Defect</th>
<th>Low Extent</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surface Crazing</td>
<td>Less than 5% of surface area per 1.5 lane kilometers</td>
<td>Seal.</td>
</tr>
<tr>
<td>Sealing</td>
<td>Less than 5% of surface area per 1.5 lane kilometers</td>
<td>Seal.</td>
</tr>
<tr>
<td>Map Cracking</td>
<td>Not allowed</td>
<td>Total slab replacement.</td>
</tr>
<tr>
<td>Polished Aggregate</td>
<td>Skid resistance value greater than 40 at the end of 4 and 9 years</td>
<td>Abraid or grind surface to exceed skid resistance values established.</td>
</tr>
<tr>
<td>Popouts</td>
<td>Number of popouts exceeds 3 per square meter</td>
<td>Surface treatment will extend from no action to full replacement depending on severity.</td>
</tr>
</tbody>
</table>

#### Miscellaneous Distress

<table>
<thead>
<tr>
<th>Defect</th>
<th>Low Extent</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blowups</td>
<td>Not applicable. However severity levels can be defined by ride quality</td>
<td>Temporary repair required within 24</td>
</tr>
</tbody>
</table>
Faulting of Transverse Joints and Cracks:

| Allowable: 3mm. | 5% of joint length per 1.5 lane kilometers. | Diamond grinding back to zero tolerance without compromising of the pavement section. If the structural integrity of the pavement section is compromised then a full depth slab replacement is required. |

Faulting of Transverse Joints and Cracks:

| Allowable: max. 6mm, mean width less than 6 mm | 5% of joint length per 1.5 lane kilometers. | Retrofit #5 tie bars @ 1 m centers and grind/overlay. |

Faulting of Transverse Joints and Cracks:

| Allowable: max. 6mm, mean width less than 6 mm | 5% of joint length per 1.5 lane kilometers. | Retrofit #5 tie bars @ 1 m centers and grind/overlay. |

Faulting of Transverse Joints and Cracks:

| Low Severity: Patch has at most low severity distress of any type; and no measurable faulting or settlement at the perimeter of the patch. | Not allowed. | Full depth patch. |

Faulting of Transverse Joints and Cracks:

| Allowable: 85% + | Load transfer will not fall below 80%. | Load transfer dowel bar retrofit with 37.5mm diameter bars, 45 cms long, 3 bars per wheel path. |

Faulting of Transverse Joints and Cracks:

| Seeping or ejection of water from beneath the pavement through cracks. | Not allowed. | Underseal slab and seal joint. |
## 3.4.2 Flexible Pavements

<table>
<thead>
<tr>
<th>Distress Type</th>
<th>Allowable Level of Severity</th>
<th>Allowable Extent of Severity</th>
<th>Corrective Action</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cracking</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fatigue Cracking:</td>
<td>Low Severity: An area of cracks with no or only a few connecting cracks; cracks are not spalled or sealed; pumping is not evident.</td>
<td>Low Extent: Less than 5% of surface area per 1.5 lane kilometers.</td>
<td>Full depth repair and overlay.</td>
</tr>
<tr>
<td>Block Cracking:</td>
<td>Low Severity: Cracks with a mean width &lt; or = 6mm; or sealed cracks with sealant material in good condition and with a width that cannot be determined.</td>
<td>Low Extent: Less than 5% of surface area per 1.5 lane kilometers.</td>
<td>Seal cracks and overlay.</td>
</tr>
<tr>
<td>Edge Cracking:</td>
<td>Low Severity: With no breakup or loss of material.</td>
<td>Low Extent: Less than 10% of pavement edge per 1.5 lane kilometers.</td>
<td>Seal crack.</td>
</tr>
<tr>
<td>Longitudinal Cracking:</td>
<td>Low Severity: Cracks with a mean width &lt; or = 6mm; or sealed cracks with sealant material in good condition and with a width that cannot be determined.</td>
<td>Low Extent: Less than 10% of pavement edge per 1.5 lane kilometers.</td>
<td>Reseal crack and overlay.</td>
</tr>
<tr>
<td>Reflection Cracking at Joints:</td>
<td>Low Severity: An unsealed crack with a mean width &lt; or = 6mm; or sealed cracks with sealant material in good condition and with a width that cannot be determined.</td>
<td>Low Extent: Less than 10% per 1.5 lane kilometers.</td>
<td>Reseal crack and overlay.</td>
</tr>
<tr>
<td>Transverse Cracking:</td>
<td>Low Severity: An unsealed crack with a mean width &lt; or = 6mm; or sealed cracks with sealant material in good condition and with a width that cannot be determined.</td>
<td>Low Extent: Less than 10% of surface area per 1.5 lane kilometers.</td>
<td>Seal/reseal crack/joint and overlay.</td>
</tr>
<tr>
<td><strong>Patching and Potholes</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Patch/Patch Deterioration:</td>
<td>Low Severity: Patch has at most low severity distress of any type.</td>
<td>Not allowed.</td>
<td>Full depth repair.</td>
</tr>
<tr>
<td>Potholes:</td>
<td>Less than 25mm deep.</td>
<td>Not allowed.</td>
<td>Full depth patch.</td>
</tr>
</tbody>
</table>
### Surface Deformation

<table>
<thead>
<tr>
<th></th>
<th>Less than 3mm deep.</th>
<th>Low Extent: Less than 5% of traveled surface per 1.5 lane kilometers.</th>
<th>Rotomill and overlay.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Rutting:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Shoving:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Surface Defects

<table>
<thead>
<tr>
<th></th>
<th>Low Extent: Less than 5% of surface area per 1.5 lane kilometers.</th>
<th>Surface treat with plant mix friction course.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bleeding:</strong></td>
<td>Low Severity: An area of pavement surface discolored relative to the remainder of the pavement by excess asphalt.</td>
<td></td>
</tr>
<tr>
<td><strong>Polished Aggregate:</strong></td>
<td>Reduction in surface friction.</td>
<td></td>
</tr>
<tr>
<td><strong>Raveling:</strong></td>
<td>Low Severity: The aggregate or binder has begun to wear away but has not progressed significantly. Some loss of fine aggregate.</td>
<td>Low Extent: Less than 5% of surface area per 1.5 lane kilometers.</td>
</tr>
</tbody>
</table>

### Miscellaneous Distress

<table>
<thead>
<tr>
<th></th>
<th>Allowable: max. 6 mm, mean width less than 6 mm</th>
<th>Low Extent: Less than 5% of joint length per 1.5 lane kilometers.</th>
<th>Restore shoulder elevation.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lane-To-Shoulder Drop Off:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Water Bleeding and Pumping:</strong></td>
<td>Seeping or ejection of water from beneath the pavement through cracks.</td>
<td>Not allowed.</td>
<td>Seal / Reseal.</td>
</tr>
</tbody>
</table>
SAMPLE

STRUCTURES PERFORMANCE SPECIFICATION

1.0 SCOPE

This specification covers the design and construction of permanent bridges, retaining walls, barriers, noise walls, sign structures and box culvert drainage structures. The design and construction of all structural systems and components shall provide functionality, durability, ease of maintenance, safety, and pleasant aesthetics.

2.0 APPLICABLE STANDARDS AND REFERENCES

The design and construction of structures shall be in accordance with this Performance Specification and the relevant requirements of the following standards and references, unless otherwise stipulated in this specification. Standards and references specifically cited in the body of the specification establish requirements that shall have precedence over all others. Should the requirements in any reference conflict with those in another, the reference highest on the list shall govern. It is the Design-Builder’s responsibility to obtain clarification of any unresolved ambiguity prior to proceeding with design or construction.

2.1 Standards

A) Seismic Hazard Analysis;
B) Standard Specifications;
C) Design Requirements;
F) AASHTO Guide Specifications for Horizontally Curved Highway Bridges, 1993;
G) AASHTO Guide Specifications for Fatigue Design of Steel Bridges, 1989, with Interims to 1995;
H) AASHTO Guide Specifications for Thermal Effects on Concrete Bridge Superstructures, 1989;
K) ANSI/AASHTO/AWS D1.5-95 Bridge Welding Code, 1995;
2.2 References

A) Standard Drawings;
B) Implications for Pile Design;
C) ATC-32, Improved Seismic Design Criteria for California Bridges: Provisional Recommendations, Applied Technology Council, 1996;
D) Life Cycle Cost Analysis;
H) Permanent Ground Anchors, FHWA DP-68-1R, March 1984;
I) Permanent Ground Anchors, Volumes 1 and 2, FHWA DP-90-068, 1991;
J) Tiebacks, FHWA RD-82-04, July 1982;
K) Drilled Shafts, FHWA-RD-92-042, 1988; and

3.0 REQUIREMENTS

3.1 Material

3.1.1 Concrete

Use Type II cement for cast-in-place concrete. Type III cement may be used for precast concrete. Class B(AE) or higher shall be used for filling postholes of post and panel noise walls. Class A(AE) or higher shall be used for piles, caissons, and slope protection. Class AA(AE) or higher shall be used for all other bridge, box culvert, wall and barrier components. Concrete for cast-in-place decks shall contain 5% silica fume by weight of cementacious material unless an initial bridge deck overlay is used. Lightweight concrete aggregate shall be furnace surface sealed and coarse nonreactive.

Minimum allowable concrete strengths shall meet the requirements of Section 505 of RFP Section 7.1.

Maximum allowable concrete strengths used for design shall be:
^Structures Performance Specification 3
Cast-in-place: $f_c' = 35$ MPa
Precast concrete: $f_c' = 52$ MPa
Lightweight concrete: $f_c' = 35$ MPa

3.1.2 Prestressing Steel
The maximum diameter for prestressing strands shall be 15 mm for a 50 mm minimum spacing and 15 mm for a 45 mm minimum spacing. Prestressing tendons shall be from PTI Certified plants.

3.1.3 Post-tensioning Steel
Provide corrosion protection for the strands consisting of grout filled galvanized or non-metallic ducts. Grout shall contain 5% silica fume by weight of cementacious material.

3.1.4 Reinforcing Steel
All reinforcing steel shall be hot dip galvanized after fabrication or epoxy coated, except for that used in caissons, or piles. Reinforcing steel may be English or Metric sizes but shall be consistent for the entire structure and coincide with the design.

Provide minimum concrete cover in accordance with the AASHTO Standard Specifications for Highway Bridges with the following modification: Minimum cover for concrete exposed to weather shall not be less than 50 mm.

3.1.5 Structural Steel
Structural steel shall conform to AASHTO M 270, Grades 36, 50, or 50W. Structural steel shall be painted per ____________.

The thickness of any web or flange plate shall not change by more than a factor of 2 at any splice. See Standard Drawing “Standard Steel Details Sheet” for welded plate girder detail guidelines. The minimum thickness of steel to which shear studs are to be connected is 13 mm. The minimum thickness of any flange of a girder or composite girder shall be 15 mm. The minimum thickness of any stiffener, or web plate of a girder shall be 10 mm. The minimum width of any flange of a girder or composite girder shall be 205 mm. Provide diaphragms at centerline bearing of abutments when they are monolithic. The bottom flange of steel plate girders shall be constant width. Steel flange plate guards shall be used at the exterior bottom flanges of exterior steel plate girders adjacent to abutments where access without a ladder is possible to prevent pedestrian access along the exterior girders.

Shear studs shall not be placed on splice plates. Shear connectors shall penetrate at least 75 mm into the slab and shall be not less than 75 mm from the top of the slab.
Do not use partial length cover plates welded to rolled sections. Do not use pins and hangers.

3.2 Design Parameters

3.2.1 General
Design in accordance with AASHTO Standard Specifications for Highway Bridges, Sixteenth Edition, except as otherwise noted in this specification. The design may use Strength Design (Load Factor Design), or Service Load Design (Allowable Stress Design). Design calculations may be performed in English or metric units. All final numbers and results shall be converted to metric units. Only metric units shall appear on the plans except where dual (metric with English equivalent) units are required for railroad submittals.
All retaining wall designs shall address internal stability, external stability, liquefaction and seismic loading.

### 3.2.2 Loads and Forces

Design all structures for loads and forces in accordance with the AASHTO Standard Specifications for Highway Bridges or as stated herein.

**A)** Live Loads
Bridges shall be designed for HS 20 using Service Load Design (Allowable Stress Design) or HS 25 using Strength Design (Load Factor Design). Bridges shall be load rated to a minimum HS 25 (Inventory) using Strength Design (Load Factor Design).

**B)** Dead Loads
Add 1.70 kPa unit dead load for a future wearing surface (75 mm) to all bridge structures which will not have an initial bridge deck overlay.

**C)** Uplift
Proportion bridge spans to avoid uplift at supports due to non-seismic loads.

**D)** Thermal Forces
Use temperature ranges for moderate climates per AASHTO Standard Specifications for Highway Bridges.

**E)** Earthquake
All bridges shall be designed for forces resulting from the earthquake response corresponding to 10% exceedance in 250 years. All retaining walls adjacent to bridge supports shall be designed for forces resulting from the earthquake response corresponding to 10% exceedance in 250 years. All other retaining walls shall be designed for forces resulting from the earthquake response corresponding to 10% exceedance in 50 years.

Use site specific design response spectra from the Seismic Hazard Analysis (RFP Section 8.12), Section 6.0-Recommended Design Spectra, instead of the soil profile type response coefficient formulas in the AASHTO Standard Specifications for Highway Bridges, Division IA. Do not perform site specific liquefaction analysis to adjust design response spectra. (The design response spectra given is considered to be conservative for long periods when compared to site analysis using methods such as SHAKE.)

**F)** Load Rating
Load rate all bridges in accordance with the AASHTO Manual for Condition Evaluation of Bridges. The final load rating shall meet or exceed HS-25.

### 3.3 Aesthetics
See _____________ for structure aesthetic requirements.

### 3.4 Bridges
3.4.1 Geometry

All fill and cut slopes along the longitudinal axis of bridges with spill through abutments shall not be steeper than 1.5:1. There shall be no berm at the top of slopes in front of abutments. Provide 5.05 m minimum clearance for all grade separations. Provide 5.05 m minimum vertical clearance for all grade separations.

Horizontally curved bridges shall be designed in accordance with the AASHTO Guide Specifications for Horizontally Curved Highway Bridges. Locate supports radially for curved structures where practical. Open frame systems may be analyzed by the V-Load method.

Where practical, the maximum bridge skew should be less than 30 degrees. Bridges skewed greater than 30 degrees require either a finite element or grillage method for analysis.

3.4.2 Type

Bridge type will not be restricted to those traditionally used by the Department. Other types and components may be used, but will be allowed only if they have been accepted for general use by other transportation authorities, and the Design-Builder can demonstrate that its design of the bridge type and components will perform well under the Project’s environmental conditions including frequent freeze-thaw cycles and heavy road salt use. Experimental bridge types, timber bridges, masonry bridges, and structural plate arches are not permitted.

The Department uses large quantities of salt and deicing chemicals in the winter. This causes accelerated corrosion of bridge structures. Bridge design and construction shall address this concern. Bridges shall incorporate as few joints and bearings as possible, be continuous over supports, and use integral abutments wherever possible. When joints are required they shall be located at supports.

3.4.3 Seismic Requirements

All seismic design shall be in accordance with AASHTO Standard Specifications for Highway Bridges, Sixteenth Edition, Division IA, as modified herein. Use multi-mode response analysis for all bridges except single span bridges, with the Complete Quadratic Combination (CQC) method to determine the maximum responses (displacements and forces). Determine earthquake loading according to ________.

Use seismic performance category (SPC) D. Minimum bridge seat widths for expansion bearings shall either accommodate that required by the multi-mode analysis or determined by minimum seat width requirements of AASHTO Division IA, Section 3.10, whichever is greater.

Develop a seismic strategy for each bridge type proposed. Describe locations of flexural failure, redistribution of forces, mobilization of backfills, and the function of bearings as appropriate in determining seismic strategy. Provide adequate moment and shear connections in accordance with the joint shear requirements of ATC-32. Design for vertical acceleration of cantilever and outrigger supports in accordance with ATC-32.

3.4.4 Inspection Access

All bridge superstructures, joints and bearings shall be made accessible for long term inspection. Open framed superstructures shall be made accessible with walkways, ladders, or by use of a “snooper” truck. Box girders with an inside depth of 1.5 m or more shall be made available for interior inspection. Provide
New York State Department of Transportation

(Information provided for format and general approach. Technical requirements may not be applicable to Department work. Cross-references do not match other contract document templates.)

a 1.0 m x 1.0 m minimum opening with a hinged metal door and padlock. The door shall swing into the box girder. Provide a method of ladder support where required for inspection access.

3.4.5 Components

A) Parapets and Pedestrian Fencing
Design and construct bridge parapets that match the face and overall shape of roadway barriers and meet barrier requirements in AASHTO Standard Specifications for Highway Bridges. Metal bridge railing shall not be used. Use transition barriers on approach slabs where design speeds are equal to or greater than 60 kph (40 mph). Design and construct pedestrian fencing using Standard Drawings, Bridge Chain Link Fence Details as guidance.

B) Approach Slabs
Provide an approach slab at the end of each bridge. The approach slab shall be a minimum of 8.0 m in length measured along the control line of the bridge. The approach slab shall be the same width as the bridge deck and extend over the abutment wingwalls. Allow for settlement between the approach slab and wingwall by using details of Section B-B of Parapet Details Sheet for guidelines. Provide for expansion and contraction at approach pavement interface where required.

Provide a stepped joint at the approach pavement interface for integral abutments, or other means of preventing lateral movement of the approach slab at the pavement interface due to expansion and contraction, when the skew is more than 20 degrees.

C) Decks
Provide a minimum deck thickness of 205 mm. Open or filled grating decks and orthotropic decks are not permitted. Concrete decks designed to the simplified “Ontario” method are not permitted. Precast deck slabs require cast-in-place joint closures, post tensioning across joints, and an overlay. Pretensioned, precast concrete deck forms shall be a minimum of 75 mm in thickness, and have a full grout bearing. Stay in place metal deck forms are not permitted.

Parallel bridges shall have a minimum 100 mm longitudinal gap between decks or parapets.

D) Deck Joints
Avoid or minimize joints wherever possible. Unless skewed more than 30 degrees, or located on a sharp curve, bridges up to 110 m long shall contain no joints. Use only strip seal, modular, or steel finger joints. Design and location of joints shall provide for maintenance accessibility and future replacement. Aluminum joints are not permitted. Modular joints shall be designed for high cycle fatigue loading.

E) Overlays
An initial bridge deck overlay shall be provided with segmental systems, precast deck slab systems and concrete box girders. Cast-in-place deck slabs shall contain 5% silica fume for the full depth or utilize an initial bridge deck overlay. Overlays shall be either dense bonded low slump concrete, latex modified concrete or silica fume concrete. Thin bonded overlays such as epoxy or polyester shall not be used. Concrete overlays shall
not be considered part of the structural component of the deck. Overlays shall include approach slabs unless the bridge utilizes a deck joint at the abutment.

F) Superstructures
All superstructures shall meet the requirements for redundancy, fatigue, and deflection in AASHTO Standard Specifications for Highway Bridges. Steel box girders with an inside depth less than 1.5 m shall not be used as fracture critical members. Utilities shall not be placed on structures without the approval of the Department and a New York licensed engineer. Hide utilities from view if they are required.

Sufficient internal post-tensioning shall be provided for segmental box girders to support dead loads for a design seismic event using ultimate capacity.

G) Bearings
Design and location of bearings shall provide for maintenance accessibility and future replacement. Elastomeric bearings are preferred. Sole plates shall have a 30 mm minimum thickness. At expansion bearings, the edge of the sole plate shall not slide past the edge of the elastomeric pad. Provide at least 150 mm cover between anchor bolts and the edge of the concrete pedestal. Provide reinforcement for pedestals greater than 75 mm high. Seismic isolation bearings conforming to AASHTO Guide Specifications for Seismic Isolation Design are acceptable if their use does not increase the number of joints required on a structure.

H) Pier Caps
Type of pier cap shall be consistent with the bridge system and aesthetic strategy proposed for the corridor. Drop caps or internal caps are acceptable. Integral caps are preferred with concrete box section systems. Minimize integral steel pier caps. Provide inspection access for integral steel pier caps.

I) Abutments
Unless bridge is skewed more than 30 degrees or is on a sharp curve, integral abutments shall be provided for structures up to 110 m long. Develop a seismic strategy for the final design of the abutments. Mechanically stabilized earth (MSE) walls shall not serve as, or support, abutments. Retaining walls may replace wingwalls at abutments.

J) Slope Protection
Provide concrete slope protection for all bridges with spill through abutments. Slope protection shall be consistent with aesthetic strategy and conform to details contained in the Standard Drawing “Concrete Slope Protection”.

K) Foundations
Differential settlement shall not exceed 12 mm within a bent or abutment or between adjacent bents or abutments. Design for down drag on deep foundations where required. Abutments adjacent to mechanically stabilized earth (MSE) walls require deep foundations. Spread footings are acceptable only for single span structures with no more than 12 mm differential settlement at or between abutments. Provide a seismic strategy for all foundations. The design of pile foundations may utilize the results and analysis of Implications for Pile Design. The Design-Builder’s QC/QA plan shall include Inspection of all drilled caisson operations and non-destructive testing for non-redundant drilled caissons and drilled caissons where concrete is placed below water.
3.4.6 Maintenance Plan

Provide a maintenance plan for each bridge type used. Describe routine maintenance and items specific for all components of the bridge type used. Include a detailed list of all maintenance and rehabilitation work and the number of times each procedure is anticipated to be performed over the 75 year structure life itemized by the year performed. This list shall be the same that is used for life cycle costs.

3.5 Retaining Walls

The following criteria shall apply to permanent wall structures. The Design-Builder will have sole responsibility for the type, material, performance, and safety of temporary retaining structures.

3.5.1 Geometry

Retaining wall layout shall address slope maintenance above and below the wall. Provide returns into the retained fill or cut at retaining wall ends where possible. Final tolerances shall be 15 mm in 3 m for level and plumb. Where 4.5 m (minimum) of generally level terrain is not available between the wall and R/W line for maintenance, the wall shall be located at the R/W line. Design and construction shall consider surface and subsurface drainage. A system shall be provided to intercept or prevent surface water from entering behind walls. A fence or pedestrian railing shall be provided at the top of walls over 2 m high where access is open to the public. Bridge deck and approach slab surface smoothness shall not deviate more than 10 mm in 7.6 m using a profilograph described in __________. The profile index shall start and terminate on the roadway pavement 7.6 m from each bridge approach slab. One profile shall be taken for each traffic lane.

3.5.2 Type

Metal walls including bin walls and sheet pile walls, recycled material walls, timber walls, or walls utilizing geofabrics will not be permitted for permanent retaining walls. Wall types shall have successfully been used in geotechnically similar locations and environmental conditions.

3.5.3 Seismic Requirements

See __________ for seismic criteria.

3.5.4 Characteristics

A) Mechanically Stabilized Earth (MSE) Walls

Wall panels shall be constructed of reinforced concrete. Provide corrosion protection for prestressing or post-tensioning steel. Cover to reinforcing steel shall be a minimum of 50 mm. Panel joints shall accommodate differential settlement.

Special global stability designs shall be performed on walls higher than 12 m.

See ________________ for backfill requirements.

A representative from the wall manufacturer shall be at the job site during all phases of wall construction to assist the Design-Builder in QC/QA.

Use FHWA-SA-96-071, FHWA-SA-96-072 and FHWA-HI-95-038 as guidance for design requirements.

B) Modular Walls
Modular wall height shall not exceed 4.5 m. The minimum factor of safety shall be 1.5. A mechanical connection to the wall facing shall be provided; friction connections relying on gravity will not be acceptable.

See _______________ for backfill requirements.

A representative from the wall manufacturer shall be at the job site during all phases of wall construction to assist the Design-Builder in QC/QA.

Use FHWA-SA-96-071, FHWA-SA-96-072 and FHWA-HI-95-038 as guidance for design requirements.

C) Cast-in-Place Walls
Cast-in-place walls shall be designed and constructed in accordance with AASHTO Standard Specifications for Highway Bridges, Sixteenth Edition. Construction joint spacing shall account for differential settlement. The Standard Concrete Retaining Walls in shown in _______________ are acceptable.

D) Anchored Walls
Design and construction shall use FHWA DP-68-1R, FHWA DP-90-068 and FHWA RD-82-04 as guidelines. Anchors shall be encapsulated with plastic sheathing. Proof load tests for anchors shall be provided in accordance with the above FHWA guidelines.

Shotcrete shall meet the aesthetic requirements of ________________.

E) Soil Reinforcement
Soil reinforcement for MSE and modular walls shall be steel, galvanized or epoxy coated (0.45 mm minimum coating thickness), with 28 micrometers/year sacrificial metal (based on 75-year life); or geogrids meeting creep requirements of AASHTO Standard Specifications for Highway Bridges. The Design-Builder shall embed 18 retrievable samples of steel soil reinforcement in the soil mass per 150 m² of wall at 200 m spacing. Design shall account for any item projecting through the soil reinforcement. Avoid placing culverts perpendicular to soil reinforcement within the reinforced soil mass.

3.6 Noise Walls
Noise walls shall be designed and constructed in accordance with AASHTO Guide Specifications for Structural Design of Sound Walls. Noise walls shall be designed for an 80 mph wind with additional 30 mph gusts. Final tolerances shall be 6 mm in 3 m for level and plumb. Height and grade changes shall satisfy the aesthetic guidelines in RFP Section 6.11. The design of noise walls shall provide for adequate surface drainage. Wall types shall have successfully been used in geotechnicaly similar locations and environmental conditions.

3.6.1 Geometry
When placed behind barrier, noise walls shall be offset a minimum of 3 m from the barrier; except across bridges, transitioning from bridges, or where it would be necessary to purchase right of way to meet this requirement.

3.6.2 Components
A) Panels
Panels shall be constructed of reinforced masonry blocks, bricks or concrete. Brick shall not come in contact with soil. Brick and masonry block shall have a cap. Panels may be cast-in-place or precast. Panels on bridges shall be cast-in-place concrete and jointed from longitudinal structural elements of the bridge. Panel design and construction shall consider ease of replacement and/or repair.

B) Posts
Posts shall be reinforced concrete, prestressed pile or galvanized steel H-pile.

C) Foundations
Foundations shall be posts set in concrete, caissons or cast-in-place or precast reinforced concrete footings. The bottom of all spread footing foundations shall be placed a minimum of one meter below finished grade. Uncoated reinforcing steel may be used for caissons.

3.7 Sign Structures
Sign structures shall be designed and constructed in accordance with AASHTO Standard Specifications for Structural Supports for Highway Signs, Luminaries, and Traffic Signals. The sign structures shown in __________ are acceptable. Provide minimum vertical clearance in accordance with above AASHTO requirements. Loadings shall consider natural period of vibration from vortex shedding and upward wind pressures from passing trucks. Sign structures shall be galvanized structural steel tubing.

3.7.1 Components

A) Foundations
Caissons shall be used to support overhead and cantilever sign structures. Prepare a Project foundation report for sign structures. Only cast-in-place retaining walls may be used to support signs and lighting. All other wall types must isolate the loads from signs and lighting.

B) Connections
Connections shall be made with A325 bolts. Shop splices shall be made with full penetration butt welds. Base connections shall be made with full penetration shop butt welds. All sign connection hardware shall be galvanized. Strengthen structural tubing at electrical connection openings.

C) Bridge Mounted Signs
The Design-Builder shall not mount signs on bridges unless no reasonable alternative is available. The bottom of the signs that are mounted on bridges shall be a minimum of 75 mm above the bottom of the girder. Details of bridge mounted signs shall be included with the bridge drawings. Drilling into concrete will not be permitted; use concrete insert.
1.0 INTRODUCTION

The Preliminary Design provided to the Design-Builder contains geometric elements (horizontal alignments, vertical alignments, superelevation, typical sections, etc.) that have evolved through a series of design efforts:

A) An Alignment Study Report was prepared for the corridor in 1999;
B) A "Value Engineering" workshop was conducted by the Department in __________;
C) With input from the public through a series of public information meetings, open houses and other interactions with residents and interested parties, the roadway geometry has been refined over a period of two years, bringing it to the current design level; and
D) The right-of-way has been established and purchased as a result of the footprint defined by the Preliminary Design.

The current design provides a workable solution to the Corridor’s needs and the roadway geometry meets the established design criteria except as noted in __________. The Design-Builder may, however, find ways to improve this geometry. Any innovative alternatives that increase benefits or savings to the Department or the Design-Builder are encouraged and will be accepted if they do not deviate from these Performance Specifications.

2.0 STANDARDS AND REFERENCES

The design of roadway geometrics shall be in accordance with this PS11 and the relevant requirements of the following Standards, unless otherwise stipulated in this specification. Standards and References specifically cited in the body of the specification establish requirements that shall have precedence over all others. Should the requirements in any standard conflict with those in another, the standard highest on the list shall govern. Listed under References are guidelines that the Design-Builder may use in addressing the requirements as the Design-Builder sees fit. It is the Design-Builder’s responsibility to obtain clarification of any unresolved ambiguity prior to proceeding with design or construction.

2.1 STANDARDS

A) AASHTO A Policy on Geometric Design of Highways and Streets (Green Book), 1990;
B) AASHTO Roadside Design Guide, 1996;
C) Access Management Requirements, 2001; and

2.2 REFERENCES

A) Standard Drawings
3.0 REQUIREMENTS

3.1 GENERAL

The Design-Builder shall design all roadway geometrics (horizontal alignments, vertical alignments, superelevation, typical sections, etc.) such that the final roadway prism lies within the established right-of-way. All roadway geometrics shall be designed in accordance with the Standards listed in this PS11.

Any material changes to the Basic Project Configuration may require a review in relation to the Final Environmental Impact Statement (FEIS) and other Environmental Approvals. If it is determined by the Department that the FEIS must be supplemented, the Design-Builder, in coordination with the Department and the Federal Highway Administration will be responsible for conducting the supplemental process.

The right-of-way acquisition instruments are directly tied to the Preliminary Design Project centerline alignment and stationing. The Design-Builder shall clearly document any changes to the alignment and stationing of the centerline and maintain a complete record of all such changes for Department reference.

3.2 DESIGN EXCEPTIONS

The Preliminary Design contains elements that do not meet the established Project design criteria. Design Exceptions have been approved for the elements listed below. The Design-Builder’s design shall not create additional Design Exceptions, or increase the magnitude of deficiencies. Exemptions from this requirement may be considered on a case-by-case basis, at specific locations, where the Design-Builder demonstrates that substantial benefits to the Department and the public would accrue from the Design-Builder’s recommendation. However, no assurance is made that such Design Exceptions will be approved. Any Design Exception Requests shall be submitted in accordance with the procedures outlined in _________________________________.

Horizontal Curvature for Design Speed of 65mph.

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<th>Radius (ft.)</th>
<th>Degree</th>
<th>Design Speed</th>
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Shoulder Width Reduction

<table>
<thead>
<tr>
<th>Location</th>
<th>Direction</th>
<th>Median Width</th>
<th>Shoulder Width</th>
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</table>

Shoulder Elimination

For the communities of ________________, an urban section consisting of four lanes with curb and gutter is proposed in the Preliminary Design. Because of the right-of-way constraints due to the concentrations of residences and businesses along these sections of the highway, the provision of a six-foot wide shoulder, as recommended by AASHTO, would likely require the acquisition of several of these structures. Therefore, a design exception for the elimination of shoulders in these two sections has been obtained.

3.3 BASIC PROJECT CONFIGURATION CHANGE

A Basic Project Configuration Change is defined as one or more departures from the Preliminary Design as specified in ________________.

Basic Project Configuration Changes shall meet the requirements of this PS11, and shall be submitted as described in ________________. All Basic Project Configuration Changes require approval from the Department.

3.3.1 Basic Project Configuration Change Submittal

3.3.1.1 Design

The Design-Builder’s designs will be reviewed in accordance with ________________. Requests for exemptions from the requirement related to Design Exceptions may be submitted, as noted in Subsection 3.2.
Basic Configuration Changes proposed by the Design-Builder after the Contract is awarded, shall be submitted for Definitive Design Review per ________________, or as Cost-Reduction Proposals, if applicable, in accordance with ________________. The Proposer shall submit the following in support of any and all proposed Basic Project Configuration Changes:

A) Conceptual Plans showing the proposed changes relative to the Preliminary Design (1 cm = 50m scale or larger);

B) A statement that describes the proposed changes relative to the Preliminary Design and the comparative advantages and disadvantages of each, including effects on safety, traffic operations, desired appearance, and maintenance operations. Compliance with the project design criteria should also be discussed;

C) Analysis of each proposed change, indicating benefits and/or savings; and

D) A statement detailing the effect the proposed change will have on construction staging, maintenance of traffic, and the overall schedule for completing the Project.

Only Basic Project Configuration Changes that are in accordance with these Performance Specifications will be considered by the Department. Basic Project Configuration Changes that do not result in increased benefits or savings to the Department, or that require excessive time or costs for review, evaluation, or investigations, or that are not consistent with these Performance Specifications, will not be accepted.
SAMPLE PERFORMANCE SPECIFICATION –
GENERAL ENVIRONMENTAL

1.0 INTRODUCTION
This Performance Specification, specifies the requirements for:

A) Design-Builder’s Environmental Team;
B) Design-Builder and Department roles and responsibilities for the environmental program;
C) Mitigation and monitoring plans and measures; and
D) Community enhancement program.

Design-Builder shall prepare its design and conduct its construction activities such that no action or inaction on the part of the Design-Builder shall result in non-compliance with the mitigation requirements contained in the FEIS and/or Record of Decision (ROD).

The Record of Decision (ROD) is incorporated in this Contract as Appendix A to this Performance Specification. The FEIS is incorporated into this Contract as Appendix B to this Performance Specification.

1.1 GENERAL PHILOSOPHY
The Project passes through an area of rich and diverse environmental, community, and cultural resources. Preservation of these resources is of paramount importance. The philosophy followed by the Department during the development of the preliminary design plans and environmental impact statement was to avoid and minimize impacts to the natural, cultural, and community resources to the extent feasible and practical. It is the desire and intent of the Department that the Design-Builder continue this approach and philosophy during the preparation of final design plans and through Project implementation.

2.0 STANDARDS AND REFERENCES
Standards and References specifically cited in the body of the specification establish requirements that shall have precedence over all others. Should the requirements in any standard conflict with those in another, the standard highest on the list shall govern. Listed under References are guidelines that the Design-Builder may use in addressing the requirements as the Design-Builder sees fit. It is the Design-Builder’s responsibility to obtain clarification of any unresolved ambiguity prior to proceeding with design or construction.

2.1 STANDARDS
None.

2.2 REFERENCES
The discussion of environmental, community, and cultural resource impacts, mitigation measures, and commitments included in the Project’s Environmental Impact Statement and Record of Decision shall
serve as a guideline for the Design-Builder in avoiding impacts, developing strategies to mitigate unavoidable impacts, working closely with the public.

3.0 REQUIREMENTS

3.1 ENVIRONMENTAL TEAM

The Design-Builder must include individuals capable and qualified to perform the following types of investigations and activities:

A) Environmental investigations to determine the effect of the Project (design elements and construction activities) on terrestrial and aquatic biological resources, cultural resources, visual and aesthetic conditions, irrigation systems and farmlands, water quality, communities, roadside businesses, and other issues present within the Project area;

B) Preparation of biological, environmental, and cultural documents consistent with FHWA and Department policies and procedures;

C) Completion of applications for required environmental permits;

D) Development and implementation of plans to mitigate impacts to wetlands, wildlife and wildlife habitat, water quality, irrigation ditches, visual and aesthetic resources, cultural resources, especially as related to slope cuts and fill embankments, revegetation and tree replacement, businesses and parking, driveways, and other similar issues; and

E) Other environmental activities as determined necessary by an environmental oversight team consisting of Department and FHWA representatives. If these activities are not contained in or reasonably inferred by the Contract Documents (including the Design-Builder’s Proposal) or applicable laws and regulations, such other environmental activities may be considered Extra Work under ____________.

The environmental coordinator shall be among the Design-Builder’s key personnel and shall be directly responsible to the Design-Builder’s project manager. Lead personnel with the Environmental Team shall have experience with highway engineering drawings and concepts and be capable of communicating with and working cooperatively and effectively with design engineers, construction staff, resource agencies, and the general public. The lead person for the Environmental Team shall have prior experience in the areas of construction oversight and environmental monitoring. The Environmental Team lead shall be expected to work closely with the Public Involvement Specialist and Community Relations Specialist.

3.2 GENERAL ROLES AND RESPONSIBILITIES

Except where otherwise noted, the Department shall be responsible for providing the Record of Decision, cultural resource concurrence from the SHPO, any 404/401 Permit (as defined in ____________) and all archaeological testing and data recovery for the scoped Project. All other permits and clearances are the responsibility of the Design-Builder.

The Design-Builder shall be responsible for obtaining environmental and cultural resources clearances for all Design-Builder-located areas and activities such as but not limited to material pits, staging yards, haul roads, etc., per ____________.
The Design-Builder shall identify and assemble an environmental oversight and monitoring team, under the direction of the environmental coordinator, prior to Definitive Design Review and prior to the start of construction. The role of this team shall be to oversee the implementation of mitigation measures and Project commitments, and to monitor construction activities to ensure that impacts beyond those described in the EIS do not occur.

The Department will provide an independent environmental oversight team to assure that all environmental commitments are adhered to by the Design-Builder. It is expected that the Design-Builder’s environmental team and the Department environmental team will consult on a regular and frequent basis regarding the environmental commitments and mitigation measures.

Key personnel with the Design-Builder including the project manager, environmental coordinator, and other lead personnel shall participate in a pre-design and construction conference to discuss environmental, cultural, and community issues. The Department shall be responsible for organizing, hosting, and leading the conference.

Material changes to the highway alignment that result in environmental, cultural, or community impacts beyond those identified in the environmental impact statement will not be allowed without the prior written consent of the Department. All changes shall be supported by the necessary investigations, documentation, and approvals of applicable resource management agencies. Time and cost implications resulting from material changes for the convenience of the Design-Builder shall be borne by the Design-Builder. Time and cost implications due to Necessary Basic Project Configuration Changes shall be the responsibility of the Department.

In general, the environmental reevaluation requirements for this project shall follow the procedures and requirements established by the ___________________. It is anticipated that the environmental reevaluation and related approvals will be completed in sections that coincide with each major design and construction element, such as, but not limited to, refinements made to roadway alignment, typical sections, slope designs, retaining wall designs and completion of mitigation plans. Coordination with Stakeholder agencies shall occur as part of the re-evaluation process. Final determination regarding the necessity of environmental re-evaluations will be made by the Department’s ______________ and the Department’s Project Manager.

All environmental re-evaluations will be subject to written approval by the FHWA.

3.3 MITIGATION MEASURES AND PLANS

The mitigation measures and Project commitments included in the final environmental impact statement and record of decision shall be included in final design plans and specifications and implemented as part of Project construction. While it is anticipated that revisions and refinements to the mitigation measures will become necessary as additional information is collected and roadway design details are developed, all revisions that alter the intent, quantity, and/or location of mitigation measures, or that result in other substantive changes to mitigation measures shall have advance written acceptance by the NMSHTD Environmental Program Manager and the Department’s Project Manager. Input from the affected property owners, land/resource management agencies, and other stakeholders shall be obtained before substantive revisions are made.
The specific mitigation measures and plans to be implemented by the Design-Builder are listed below. While it is the responsibility of the Design-Builder to develop and refine all mitigation measures and plans, the Design-Builder shall collaborate with the Department’s __________ or his/her designee through the Department’s Project Manager during the development of plans and shall have the written concurrence of the Department’s ____________ and Department’s Project Manager before any mitigation measures are implemented.

3.3.1 Threatened and Endangered and Other Special Status Species Protection Plan

A Threatened and Endangered and Other Special Status Species Protection Plan to avoid impacts to threatened or endangered and other special status species and to minimize impacts to wildlife shall be developed prior to Project construction. The plan shall be developed in consultation with wildlife and land management agencies and shall include, but shall not be limited to, the following specific provisions:

A) The Design-Builder shall perform updated surveys for special status species during the design-construction phase.

B) The Design-Builder shall perform raptor surveys prior to construction to document the condition and location of bald eagle and black hawk populations within the study area. A baseline survey for eagles and other raptors will be performed by the Department for the period of 2002 that precedes the Design-Builder’s Notice to Proceed. The data from this survey and all pertinent reports will be provided to the Design-Builder. The surveys performed by the Design-Builder shall serve to determine the presence of other raptor nests that require special treatment. The locations of nest areas and important roost sites shall be discussed with the construction team and flagged for avoidance. The need for avoidance measures shall be determined in collaboration with the USFWS and applicable land management agency, depending on location. The removal of any raptor nests shall be conducted in collaboration with the USFWS.

C) Swallow nest removal will be conducted by the Department within the entire project limits for the period of 2002 that precedes the Design-Builder’s Notice to Proceed. Continuation of the nest removal for the remainder of the year and all subsequent years of the Project is the responsibility of the Design-Builder. All removals shall be in compliance with the Migratory Bird Treaty Act.

D) An initial survey for ________ will be necessary at the project onset. Because this plant flowers in late May, the Design-Builder will be required to perform the necessary surveys for this plant in 2002 (if NTP is issued by mid-May; otherwise the survey for 2002 will be performed by the Department) and all subsequent years of the Project, as appropriate.

3.3.2 Wetland Mitigation Plan

The Design-Builder shall prepare a Wetland Mitigation Plan during the design process and prior to Project construction affecting wetlands. This plan shall be developed in collaboration with the Department, the US Army Corps of Engineers and the US Fish and Wildlife Service. Location of replacement wetlands and methods to restore impacted wetlands shall be included in the mitigation plan.

The Department will acquire land required for replacement wetlands with survey, engineering and design and document preparation support from the Design-Builder.
3.3.3 Water Quality and Water Quality Permits

The responsibilities for obtaining water quality permit requirements are described in __________. A baseline testing program of domestic wells at roadside developments will be implemented by the Design-Builder before construction commences. The objective of testing will be to establish pre-construction water quality conditions as a measure against future claims of water contamination resulting from construction activities and/or roadway runoff. Wells shall be baseline tested at 50 locations for fecal coliforms and hydrocarbons.

3.3.4 Cultural Resources

The Department has received concurrence from SHPO and has commenced with an archaeological testing and data recovery for the scoped Project. The Pre-Construction Conference and Field Review involving Department staff and the Design-Builder shall be held prior to Definitive Design Review and Project construction to review the locations and boundaries of known cultural resource sites to be avoided. Avoidance of these sites includes any physical taking and harm from vibration that affects the structural integrity of the resource. The requirements of the vibration monitoring program are defined in Section 3.3.10.

The locations for the following cultural resources are included in the Cultural Resource Report that is available to the Design-Builder as a Reference Document. If other sites are encountered or other specific measures are required that cannot be accommodated as part of other Project Work additional Work may be considered Extra Work under __________.

The following cultural resources must be avoided (all activity will take place within the new ROW limits):

3.3.4.1 Archaeological Sites

The following are identified as Archaeological sites:

A) LA 129578 (MP 277.5 North, within ROW, outside slope limits);
B) LA 129574 (MP 292.3-292.5 South, outside ROW – Historic District. A retaining wall extending approximately from STA 1497+000 to STA 1506+000 shall be constructed to avoid encroachment into the adjacent potential historic district located to the south (right) side of the highway.)
C) LA 129577 (old highway retaining wall, MP 300.4 – 301.1, in and out of the ROW) -- This site is susceptible to damage from vibration-producing activities. Measures to avoid vibration levels that could result in physical damage to this site shall be identified by the Design-Builder and shall require acceptance by the NMSHTD Environmental Program Manager and Department’s Project Manager prior to implementation.

3.3.4.2 Historic Buildings

The following buildings have been identified as Historic Buildings:

A) #143 – ________ Art Center
B) #37 – _______ apple house (MP 273.9, south of frontage road)
C) #38 – ________ Church
D) #75 – _________ house
E) #100 – vacant barber shop, just west of Sun Country Food Mart
F) #104 – ________ Gas
G) #114 – ________ Residence (north, MP 287)
H) #116 – ________ Residence
I) #118 – _________ Station
J) #119 – _________ General Store (Old PO)
K) #129A – _________ residence

3.3.4.3 Historic Districts
In the ______ area, the buildings near ____/____ intersection on the north side of ________, MP 292.3 – 292.5, south (LA 129574) have been designated an Historic District.

3.3.4.4 Cultural Landscapes
Due to designated Cultural Landscapes, the Design-Builder must stay within existing ROW in these areas:
A) ____________, MP 273.7 – 274.5, south)
B) ____________, MP 275.2 – 275.7, south)

3.3.4.5 Others
Design-Builder shall preserve Structure 1 on LA 55370, at MP 298.3 north.

3.3.5 Property Acquisitions
The acquisition of residences, structures, property, and any resulting relocations of persons and businesses shall be conducted in accordance with federal and state laws including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and Title VI. All property acquisitions and relocations beyond those identified in ______ shall be the responsibility of the Design-Builder [except those required due to a Necessary Basic Project Configuration Change] and shall require approval by the Department and FHWA.

3.3.6 Community Enhancement Program
Specific community enhancements, in addition to the aesthetic design elements identified in _____, shall be included in the project. The Proposer/Design-Builder shall have included its proposed Community Enhancement Program in its Proposal. After Award, the Design-Builder shall continue to identify feasible components of this program with input from Stakeholder communities. The Department has identified several potential community enhancements that may be considered by the Design-Builder; however, the
Design-Builder is encouraged to identify, develop, and implement community enhancements, as appropriate.

The components of the Design-Builder’s community enhancement program shall be accomplished within a Provisional Sum of $_____________.

The Proposer/Design-Builder shall describe, quantify and price the components of its proposed community enhancement program per ITP Appendices A and B.

The information contained in the Proposer’s/Design-Builder’s Proposal shall be considered the baseline for future development of the final community enhancement program.

During the course of the Contract as the Design-Builder addresses and considers the input from the Hondo Valley communities, it will likely be necessary to adjust the work contained in the Proposal to satisfy the needs and desires of the communities. In making such adjustments the total cost of the community enhancement program shall not exceed the specified Provisional Sum for the Work except as may be as agreed between the Department and Design-Builder by Change Order.

Adjustments made will be based on the descriptions, scope and price information included in the Proposer’s/Design-Builder’s Proposal.

The final scope of the community enhancement program work shall be agreed between the Design-Builder and the Department and be documented by Change Order. No additional time or cost will be allowed for developing and implementing the final community enhancement program.

Potential community enhancement measures that may be considered include, but are not limited to, the following:

A) Traffic calming measures within the communities of Glencoe, San Patricio, Hondo, Tinnie, and Picacho;
B) Implementation of Intelligent Transportation Systems (ITS) technologies for the purposes of speed detection and message boards to advise motorists of their speed. These devices should be considered in the communities of Glencoe, San Patricio, Hondo, Tinnie, and Picacho;
C) Educational programs developed in collaboration with local schools that provide exposure of students to potential career opportunities associated with highway planning, design and construction and environmental and cultural resource mitigation;
D) Assisting the Hondo Valley School in the design and implementation of an alternative access route for use by school buses and for emergency evacuation needs;
E) Development of a local eco-tourism program in collaboration with the local communities. It is anticipated that this program would focus on the various historic sites within the Hondo Valley and serve as a potential source of economic income for the Valley residents and contribute to the overall economy of the Ruidoso area;
F) Coordination with the Billy the Kid National Scenic Byway Committee to identify the location and design of a scenic pullout area adjacent to the highway. If a suitable site is
identified, it is anticipated that the improvements would be funded in part from funds available to the Billy the Kid National Scenic Byway Committee; and

G) Removal and re-establishment of Descanses along corridor, including consultation with families.

3.3.7 Emergency Response Plan

Emergency medical service providers shall be consulted during the design phase to develop an emergency response plan that would provide continuous and acceptable service during Project construction. See PS6, Maintenance of Traffic and Access, Subsection 3.2.4.

3.3.8 Construction Access

Access to roadside businesses, side roads, and driveways shall be maintained throughout construction. See PS6, Maintenance of Traffic and Access, Subsection 3.2.5.

3.3.9 Livestock and Wildlife Underpasses

Existing underpasses used to cross livestock and wildlife under the highway shall be maintained. The size of the box opening for underpasses shall be no smaller than as currently exists. Larger sized openings and/or median grates shall be provided if the highway widening results in the existing box size being inadequate for use as an effective livestock crossing. NMSHTD Standard Serial CB-31 will be used to establish the size of livestock crossings and other relevant Department Standards.

Locations known to be used for livestock crossings include existing box culverts at the following approximate locations: stations 392+00, 662+00, 1248+00, 1393+00, 1423+00, 1461+00, 1496+00, 1544+00, and 1610+00. It shall be the Design-Builder’s responsibility to determine any additional locations used for livestock under crossings in collaboration with adjoining landowners.

Channel bottom and side treatments shall be constructed so as not to prevent use of the box culvert by livestock and wildlife.

3.3.10 Vibration-Monitoring Plan

A vibration-monitoring plan shall be developed and implemented during the design-construction phase. This program shall include monitoring and inspections of buildings and irrigation wells in proximity to areas where construction activities such as blasting or pile driving have the potential to result in substantial vibration. The vibration program will include monitoring before and during project construction, and visual inspections of potentially affected buildings, cultural sites, and wells to determine pre-construction conditions and to identify any structural damage that occurs during construction. Damages resulting from construction will be repaired. If vibration impacts are identified, the construction methods determined to cause impact will be modified as a preventative measure in other areas of the Project.

The vibration-monitoring plan will also identify the specific measures to prevent vibration impacts at the cultural resource identified as LA 129577 (old highway retaining wall near milepost 300.4 to 301.1).
The Design-Builder shall identify methods to establish the pre-construction and post-construction condition of irrigation wells potentially affected by construction activities. These measures could include water quality and volume tests and/or video footage of well casings.

### 3.3.11 Game Animal Detection and Crossings

The Department is investigating the feasibility of measures to reduce automobile/deer accidents. It is anticipated that these measures will include game under crossings, animal detection devices, and active motorist warning devices. The feasibility of these measures shall be investigated by the Department in collaboration with the New Mexico Department of Game and Fish and potentially affected land owners. If these measures are determined to be feasible, they shall be implemented by the Design-Builder under a Change Order for Extra Work. The specific measures to be implemented will be defined in the Change Order.
1.0 SCOPE

This specification covers the illumination of the Project. The Design-Builder shall design and construct a well lighted corridor that will provide a safe and comfortable environment for those that use and maintain the facility.

2.0 APPLICABLE STANDARDS AND REFERENCES

The design and construction of all lighting and related equipment shall be in accordance with this Performance Specification and the relevant requirements of the following standards, unless otherwise stipulated in this specification. Standards and references specifically cited in the body of the specification establish requirements that shall have precedence over all others. Should the requirements in any reference conflict with those in another, the reference highest on the list shall govern. Listed under references are guidelines that the Design-Builder may use in addressing the requirements as the Design-Builder sees fit. It is the Design-Builder’s responsibility to obtain clarification of any unresolved ambiguity prior to proceeding with design or construction.

2.1 Standards

A) Contract Specifications;
B) AASHTO Informational Guide to Roadway Lighting (1985);
C) AASHTO Roadside Design Guide (1996); and

2.2 References

A) Lighting Report (for information only); and
B) Standard Drawings.

3.0 REQUIREMENTS

The Design-Builder shall design and construct a durable lighting system that provides appropriate illumination and avoids light pollution outside of the corridor, avoids disability and discomfort glare to users and provides for ease of maintenance and servicing.

The Design-Builder shall provide continuous freeway illumination for the entire length of the Project including the improvements to the legs of I-___ East and West, and SR ____. The Design-Builder may use the following types of illumination to light the corridor: High Mast, Offset, Mid-Height, Median Mount, Shoulder Mount, and other acceptable methods. If High Mast is utilized, no loads shall be placed on the maintenance cables, of the lowering device, after the luminaries have been raised to their functioning location. If High Mast is utilized, the High Mast poles shall be manufactured or
recommended by the manufacturer of the lowering device. The Design-Builder shall coordinate and incorporate ATMS requirements (see ________) and aesthetics (see ________) with those of the illumination system.

The Design-Builder shall provide an average to minimum uniformity ratio of 3:1 with a minimum lux of 1.85 and an average lux of 6.5 to 8.6 on all traveled roadways to be illuminated. Traveled roadways include: general purpose lanes, HOV lanes, auxiliary lanes, ramps, collector/distributor roads and ramp terminal intersections with cross streets. The Design-Builder shall provide no more than three (3) different wattages of luminaries in the corridor for ease of maintenance. Independent power sources from public utilities shall be provided for the illumination system. The Department will continue to pay for power for lighting as long as the existing lighting is in use. The Design-Builder shall notify the Department seven days prior to disconnecting the existing lighting from existing power feeds. After the existing lighting in any Work Segment is disconnected from existing feeds, the lighting costs shall be borne by the Design-Builder until such time as a Work Segment is Substantially Complete and all permanent lighting is in place, operational and connected to the permanent feeds on that Work Segment, and accepted by the Department. The Design-Builder shall design and construct the illumination system so as to minimize lane closures during maintenance. The Design-Builder shall use high-pressure sodium lamps for roadway lighting and overhead metal halide lamps for external illumination of signs as outlined in the FEIS (see ________).

The Design-Builder shall provide an average to minimum uniformity ratio of 3:1 for all understructure illumination. Understructure illumination includes all structures that are within the boundaries of the Project. For daytime understructure illumination, the Design-Builder shall provide a minimum lux of 30.3 with an average lux of 105.5 to 109.8. For nighttime understructure illumination, the Design-Builder shall provide a minimum lux of 9.25 with an average lux of 31.2 to 33.4. The Design-Builder shall place all understructure lighting so as to eliminate the need for lane closures during post-construction maintenance. The Design-Builder shall use high-pressure sodium lamps for all understructure lighting as outlined in the FEIS (see ________).

The Design-Builder shall use ___________ lamps for all lighting.

The Design-Builder shall provide reference markers for all junction box locations.

The Design-Builder shall maintain the illumination system after illumination system start-up, either by segment or entire project as the case may be, but not beyond the date of Final Owner Acceptance of the entire project. See ________________, regarding warranties and final acceptance of lighting work.

All lighting poles greater than 12.8 m in height shall have a lowering device.
(Project Name)
DESIGN-BUILD PROJECT

PIN ______

DB CONTRACT DOCUMENTS

PART 5

SPECIAL PROVISIONS
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Standard Special Provisions to the *Standard Specifications, Construction and Materials, January 2, 2002*
Additions or alterations should be made to this Special Provision on a project-by-project basis to detail any specific requirements the Department may have.

SPECIAL PROVISION SECTION 101
ABBREVIATIONS, SYMBOLS, AND TERMS AND DEFINITIONS

SP101-1 STAKEHOLDERS

A) The Stakeholders for this Project include the following:

(List)
SP102.0 DETERMINATION OF INCENTIVE FEE

SP102.1 GENERAL

Pursuant to DB Section 102-2, Innovative Contract Incentives, an Incentive Fee evaluation procedure is hereby established for determination of Incentive Fee payable under this Contract. The objective of the Incentive Fee provisions of the Contract is to afford the Design-Builder an opportunity to earn a fee commensurate with optimum performance. The Incentive Fee is intended to:

A) Encourage special management emphasis to the evaluation criteria set forth herein;
B) Encourage the Design-Builder to attain the highest standards of excellence in the performance of this Contract;
C) Encourage and reward attention to performance throughout the duration of the Project; and
D) Provide financial rewards to the Design-Builder if it is successful in performing at levels that exceed the minimum requirements specified in the Contract Documents.

The Incentive Fee is an amount that may be earned by the Design-Builder in whole or in part, based upon an evaluation of the Design-Builder’s performance. The payment of Incentive Fees is contingent upon compliance with Contract requirements and performance that exceeds the minimum standards specified in the Contract Documents.

It is the Department’s desire that the Design-Builder perform the required services in such a superior manner as to warrant the highest Incentive Fee.

Incentive Fee Determination Periods will be at intervals specified in SP102-1.2. The final Incentive Fee determination will be made upon Final Acceptance. Each determination will cover the preceding evaluation period.

Incentive Fee decisions will be unilateral decisions made solely at the discretion of the Department. The Incentive Fee determination is not subject to review or dispute resolution under DB Section 109-9 or otherwise until the appeal process in Section SP102-3.5 has been completed and any review or dispute resolution will be limited to a determination whether the Department’s decision was arbitrary or capricious.

Amount(s) not awarded in one evaluation period will be not carried over into subsequent evaluation periods.

SP102.2 INCENTIVE FEE AMOUNT AND PERIODS

[See DBPM Section 3.6.4 relative to determining appropriate amount for Incentive Fees.]

The total amount of the Incentive Fee pool that can be earned for the Project is specified in this SP102-1.2. This amount may be increased if Work is added to the Project and may be reduced if Work is deleted from the Project.
The Incentive Fee available for each Incentive Fee Determination Period (IFDP) is shown in Table 1. Each IFDP for the Project shall be a period of 3 months, except IFDP No. 1 shall commence at NTP and end on __________.

<table>
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<tr>
<th>IFDP Number</th>
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Of the $________ available for each of IFDPs 2 through ____, a maximum of:

a) $________ is available for payment to the Design-Builder for exceeding progress indicated in the Baseline Progress Schedule and for meeting all Milestone Dates (Design-Builder- and Department-designated) within the IFDP;

b) $________ is available for payment to the Design-Builder for exceeding specified requirements (including those in the Design-Builder’s Proposal Documents) in environmental monitoring and mitigation and aesthetics;

c) $________ is available for payment to the Design-Builder for exceeding specified requirements (including those in the Design-Builder’s Proposal Documents) for quality;

d) $________ is available for payment to the Design-Builder for exceeding specified requirements (including those in the Design-Builder’s Proposal) for Maintenance and Protection of Traffic;

e) $________ is available for payment to the Design-Builder for meeting the public safety goals stated in SP102-3.2.5; and

f) $________ is available for payment to the Design-Builder for exceeding specified requirements (including those in the Design-Builder’s Proposal Documents) in Community Interaction.

[This example shows the amount for each IFDP and the amount for each factor being the same for each IFDP. However, the total amount per IFDP and the amount for each factor could be set up to be different during the course of the contract.]

The inclusive dates of the IFDP are shown in Table 2.
If the Design-Builder completes the Work by the end of IFDP No. (the next to last IFDP), the total fee available for IFDP No. (the next to last IFDP) will be increased by the sum of the fees available for the for IFDP No. (the last scheduled IFDP).

SP102-1.3 RATIONALE FOR INCENTIVE FEE POOL DISTRIBUTION

The rationale for the distribution of the Incentive Fee pool (SP102-1.2) is as follows:

- The Incentive Fee for IFDP 1 recognizes the startup, mobilization, and early management aspects of the Project (including preparation and submittal of written plans required by the Contract and accepted by the Department) of the Project;
- Timely Performance for the last IFDP and the Supplemental Incentive Fee for early completion emphasize the critical nature of achieving Substantial Completion for the Project prior to the original date set forth in Part 1, Article 2.2;
- Providing safe travel through the Project and avoiding accidents during the construction period must be a high priority; and
- All IFDPs reflect an incentive distribution that encourages a high emphasis on meeting or exceeding the Contract requirements and those portions of the Design-Builder’s Proposal Documents relating to environmental monitoring and mitigation (including aesthetics), quality, maintenance and protection of traffic, public safety, and community interaction.

SP102-2.0 EVALUATION AND ORGANIZATION FUNCTIONS

SP102-2.1 ORGANIZATION

The Incentive Fee evaluation process shall consist of a two-tiered organization arrangement consisting of the Regional Director and the Department Incentive Fee Team.

SP102.9-2.1.1 Design-Builder’s Responsibilities

At the end of each IFDP, the Design-Builder shall prepare its “Incentive Fee Self-Evaluation Report” covering Contract performance.

For IFDP 1, the report shall focus on progress of mobilization, successful completion and submittal of the Baseline progress Schedule and other specified plans and documents, initiation of community interaction, and initiation of coordination efforts with Project stakeholders, including Federal, state and local agencies, utilities, railroads, and similar entities, as applicable.

For all other IFDPs, the report shall cover:

       | Table 2 | IFDP INCLUSIVE DATES |
       | IFDP No. | Inclusive Dates | IFDP No. | Inclusive Dates |
       | NTP – 6 | 7  | 8  | 9  | 5  |
New York State Department of Transportation

a) Schedule;
b) Environmental Monitoring and Mitigation, including aesthetics;
c) Quality;
d) Traffic management;
e) Public safety; and
f) Community Interaction.

This report shall be submitted to the Department’s Project Manager.

The Design-Builder shall also make an oral presentation to the Department Incentive Fee Team.

**SP102.9-2.1.2 Department Incentive Fee Team**

The Department Incentive Fee Team shall consist of:

_______________________________
_______________________________
_______________________________
_______________________________

The team will convene to consider all aspects of the Incentive Fee Self-Evaluation Report and Design-Builder’s performance in the areas listed in SP102-2.1.1 submitted by the Design-Builder and any other pertinent information, including the oral presentation. The team, guided by SP102-3.3, will make a written recommendation of what it considers to be a fair and reasonable Incentive Fee for each IFDP and forward the recommendation, along with supporting information, to the Regional Director. The team may make recommendations regarding evaluation criteria and distribution of the Incentive Fee pool.

**SP102.9-2.1.3 Regional Director**

The Regional Director will review the findings and recommendations of the Department Incentive Fee Team and other pertinent information, and will determine the amount of earned Incentive Fee for each IFDP. The Regional Director also may approve changes to the evaluation criteria and the IFDPs (schedule and/or pool allocation).

No payment of Incentive Fee for any IFDP will be made prior to the final decision of the Regional Director.
SP102-3.0  EVALUATION AND INCENTIVE FEE DETERMINATION PROCEDURES

SP102-3.1  DESIGN-BUILDER’S REPORT

The report specified in SP102-2.1.1 shall include, at minimum, facts and discussions of the evaluation factors and key indicators, particularly those noted in SP102-3.3. The report may address other factors affecting performance, and in all cases, should identify areas of noteworthy performance.

The reports shall be concise, written and factual and contain the data to be evaluated by the Department Incentive Fee Team. The Design-Builder may also forward written recommendations concerning changes to the evaluation criteria or other matters pertaining to administration of the Incentive Fee process.

SP102-3.2  DEPARTMENT INCENTIVE FEE TEAM MEETINGS AND REPORTS

Within 30 days following the end of the IFDP the Department Incentive Fee Team will consider the Design-Builder’s report and receive its oral presentations. The team may also consider other data and information available to it in preparing its recommendations to the Regional Director.

The Department Incentive Fee Team will rate the performance during the IFDP and prepare written reports of its deliberations and forward their written recommendations to the Regional Director within 30 days of the end of the IFDP. The team will prepare written justification for each rating including specific examples or trends relating to performance, including positive and negative observations.

The Department Incentive Fee Team may also forward written recommendations concerning changes to the evaluation criteria or other matters pertaining to administration of the Incentive Fee process. Each report may also identify areas of performance that need improvement.

SP102-3.3  INCENTIVE FEE EVALUATION CRITERIA

The following are the evaluation factors that align with the areas of performance to be evaluated, the key indicators which define the Department’s performance expectations, and the rating scheme for each factor.

SP102.9-3.3.1  Rating basis for IFDP No. 1

The rating will consider those critical activities scheduled for IFDP No. 1, including progress of mobilization, successful completion and submittal of the Baseline Progress Schedule and other specified plans and documents (such as Quality and Safety Plans), initiation of community interaction, and initiation of coordination efforts with Project stakeholders, including Federal, state and local agencies, utilities, railroads, and similar entities, as applicable. (Add or subtract from listed critical activities to meet specific project requirements.)

Performance will be compared to the requirements stated in the Contract Documents, including the Design-Builder’s Proposal Documents. The percentage of Incentive Fee allocated to this factor to be awarded will be based on the following scale.

71-100%: The Design-Builder has demonstrated performance in planning, mobilizing and initiating project management and coordination that is considered to significantly exceed stated requirements/objectives in a way beneficial to the Department and indicates a consistently outstanding level of attention to critical activities. There is very little or no indication that the
New York State Department of Transportation

Design-Builder has not met Contract requirements. There are essentially no weaknesses.

31%-70%: The Design-Builder has demonstrated performance in planning, mobilizing and initiating project management and coordination that is considered to exceed stated requirements/objectives and indicates good and notable attention to critical activities. There is little indication that the Design-Builder has failed to meet Contract requirements. Weaknesses, if any, are very minor.

1%-30%: The Design-Builder has demonstrated performance in planning, mobilizing and initiating project management and coordination that indicates a better than average level of attention to critical activities. The Design-Builder demonstrates a reasonable achievement of meeting Contract requirements. Weaknesses are minor and can and have been readily corrected.

If the Design-Builder fails to submit a Baseline Progress Schedule or Quality Plan (or Contract Periodic Payment Schedule for larger, more complex projects) that is approved by the Department, no Incentive Fee will be payable for IFDP No. 1.

SP102.9-3.3.2 Rating Basis for Schedule Performance

The rating for schedule will consider all aspects of schedule performance. Schedule performance will not be rated for IFDP No.1.

The amount of Incentive Fee calculated per the following procedures may be adjusted downward if there is documented evidence that performance on other Incentive Fee evaluation factors and the Project overall does not meet Contract requirements, especially quality.

The key schedule indicators shall be:

A) Achieving Department-designated milestones by the date or within the time specified. If the Design-Builder fails to achieve a Department-designated construction milestone or PCP by the date or within the time specified, no Incentive Fee for schedule performance will be payable for that IFDP.

B) [Insert criteria based on project size and complexity as shown below]

[For larger more complex projects]

PCP performance
- The number of design and construction PCPs achieved on or ahead of schedule during the IFDP;
- The number of PCPs in Price Centers 1 and 3 through 6 met on or ahead of schedule during the IFDP.

Indicator No.1: Calculate:

\[
\text{Factor No.1} = \frac{\text{No. design & construction PCPs met ahead of schedule during IFDP}}{\text{No. of design & construction PCPs due during IFDP}}
\]

Raw Score No.1 = 80X(Factor No.1). Maximum raw score shall be 80.

Indicator No.2: Calculate:

\[
\text{Factor No.2} = \frac{\text{No. PCPs in Price Centers 1 and 3-6 ahead of schedule during IFDP}}{\text{No. PCPs in Price Centers 1 and 3-6 during IFDP}}
\]
Raw Score No.2 = 20X(Factor No.2). Maximum raw score shall be 20.

Calculate the amount of the Incentive Fee to be paid for the IFDP for schedule performance as follows:

Fee earned = (Sum of Raw Scores)x(Amount of Incentive Fee Available for the IFDP)
\[ \text{Maximum Raw Score (i.e. 100)} \]

If factor No.1 is less than 0.1, no incentive fee will be awarded.

\[ \text{[For smaller, less complex projects]} \]
Exceeding rate of progress shown on the current version of the Baseline Progress Schedule.

Indicator: Calculate:

\[ \text{Factor} = \frac{(\text{Actual} \% \text{complete at end of IFDP})}{(\text{Planned} \% \text{complete shown on Baseline Progress Schedule for the end of IFDP})} - 0.75 \]

Raw Score = Factor. Maximum raw score is 1.0. If factor is equal to or less than zero, and no schedule incentive fee will be paid for that IFDP.

Fee earned = (Raw Scores)x(Amount of Incentive Fee Available for the IFDP)

**SP102.9-3.3.3 Rating Basis for Environmental Monitoring/Mitigation & Aesthetics**

The rating will consider all aspects of environmental monitoring and mitigation and aesthetics, including such indicators as:

[Need to add list of indicators, such as compliance with SPDES, 404 permit, protection of historic sites, etc.]

Environmental Monitoring/Mitigation and Aesthetics will not be rated for IFDP No.1.

Performance will be compared to the requirements stated in the Contract Documents, including the Design-Builder’s Proposal Documents. The percentage of Incentive Fee allocated to this factor to be awarded will be based on the following scale.

71-100%: The Design-Builder has demonstrated performance in management, design and construction that is considered to significantly exceed stated requirements/objectives in a way beneficial to the Department and indicates a consistently outstanding level of attention to environmental and aesthetic indicators. There is very little or no indication that the Design-Builder has not met Contract requirements. There are essentially no weaknesses.

31%-70%: The Design-Builder has demonstrated performance in management, design and construction that is considered to exceed stated requirements/objectives and indicates a generally good and notable attention to environmental and aesthetic indicators. There is little indication that the Design-Builder has failed to meet Contract requirements. Weaknesses, if any, are very
The Design-Builder has demonstrated performance in management, design and construction that indicates a better than average level of attention to environmental and aesthetic indicators. The Design-Builder demonstrates a reasonable achievement of meeting Contract requirements. Weaknesses are minor and can and have been readily corrected.

If the Design-Builder receives a citation or fine from any environmental regulatory agency during the IFDP, no Incentive Fee for environmental monitoring and mitigation will be paid for that IFDP.

**SP102.9-3.3.4 Rating Basis for Quality**

The rating for quality will consider all aspects of quality performance. Quality will not be rated for IFDP No.1.

The key indicators shall be:

A) Effectiveness of Design-Builder’s quality program;

B) The results of materials sampling and testing;

C) Design-Builder’s responsiveness to correcting quality deficiencies; and

D) Results of the Department’s audits of the Design-Builder’s quality program.

The amount of Incentive Fee will be calculated as follows:

**Indicator No.1** (Measure of Relative Effectiveness of Design-Builder’s Inspection)

Calculate:

\[
\text{Factor No.1} = \frac{\text{[No. Non-Conformance Reports (NCRs) Issued by Department]}}{\text{(Total No. NCRs by Design-Builder’s Quality Team and the Department)}}
\]

For the purpose of this calculation, NCRs issued by the Design-Builder’s Quality Team that are subsequently duplicated by an NCR issued by the Department shall be counted only once and shall not be included in the number of NCRs issued by the Department. If the Design-Builder’s Quality Team issues an NCR after the Department issues an NCR for the same issue, the Design-Builder-issued NCR shall not count in the numbering of the denominator or numerator for Factor No.1 calculation.

\[
\text{Raw Score No.1} = 100 \times [1.0 - \text{(Factor No.1)}].
\]

**Indicator No.2** (Measure of Design-Builder’s Materials QC and Process Control)

Calculate:

\[
\text{Factor No.2} = \frac{\text{(No. passing material tests taken by Design-Builder and Department during IFDP)}}{\text{(No. materials test results taken during IFDP by Design-Builder and Department)}}
\]

\[
\text{Raw Score No.2} = 100 \times [(\text{Factor No.2})]. \text{ If Factor No.2 is less than 0.85, the raw score shall be zero.}
\]
Maximum raw score shall be 100.

**Indicator No.3** (Measure of Design-Builder’s Responsiveness to Correcting Deficiencies)

Calculate:

\[
\text{Factor No.3} = \frac{\text{No. NCRs outstanding more than a 30 day period during IFDP}}{\text{Total NCRs Issued during IFDP (by Design-Builder and Department) during IFDP}}
\]

Raw Score No.3 = 200x[1- (Factor No.2)]. Maximum raw score shall be 200.

**Indicator No.4** (Measure of Design-Builder’s implementation of Quality Plan)

Calculate:

\[
\text{Factor No.4} = \frac{\text{(No. of passing design & construction Quality Plan audits by Department)}}{\text{(No. design & construction Quality Plan audits by Department)}}
\]

Raw Score No.4 = 100x[(Factor No.4)]. If Factor No.4 is less than 0.85, the raw score shall be zero. Maximum raw score shall be 100.

Calculate the amount of the Incentive Fee to be paid for the IFDP for quality performance as follows:

For period(s) when only design is underway:

Include only Indicators No.1, No.3 and No.4.

Fee earned = \(\frac{\text{(Sum of Raw Scores)}\times(\text{Amount of Incentive Fee Available for the IFDP})}{\text{Maximum Raw Score (i.e. 400) }}\)

After construction starts:

Include Indicators No.1 through No.4.

Fee earned = \(\frac{\text{(Sum of Raw Scores)}\times(\text{Amount of Incentive Fee Available for the IFDP})}{\text{Maximum Raw Score (i.e. 500) }}\)

Notwithstanding the above, no Incentive Fee will be paid if the Design-Builder has not submitted a Quality Plan that has been approved by the Department or provided updates required by the Contract.

If in the opinion of the Department Incentive Fee Team there is an excessive occurrence of NCRs, the Department may reduce the incentive fee awarded.

**SP102.9-3.3.5 Rating Basis for Maintenance and Protection of Traffic**

Maintenance and Protection of Traffic will not be rated for IFDP No. 1.
The rating shall consider all aspects of maintenance and protection of traffic (MPT). The key indicators shall be:

A) Documented MPT inspections by the Design-Builder’s Traffic Management Engineer (TME) or Traffic Control Supervisor(s) (TCS);
B) Road and/or lane closures; and
C) Non-Conformance Reports (NCRs) issued by the Department or the Design-Builder’s Quality Team for MPT-related issues.

Indicator No.1: (Frequency of MPT Inspections by Design-Builder’s TME and/or TCSs)

Factor No.1 = \[
\frac{\text{No. of documented (written) inspections by Design-Builder’s TME and/or TCS}}{\text{No. inspections required during IFDP}} - 1.0
\]

Raw score = 200x(Factor No.1). Maximum raw score is 100.

Indicator No.2: [Frequency of MPT-related Non-Conformance Reports (NCRs)]

Factor No.2 = \[
\frac{\text{No. MPT-related NCRs issued by Design-Builder’s Quality Team and the Department}}{\text{No. Days in IFDP}}
\]

Raw score = 100(1 – Factor No.2). Maximum raw score is 100. If Factor No.2 is greater than 0.2, the raw score shall be zero.

Indicator No.3: (Road and lane closures)

Factor No.3 = \[
\frac{\text{No. of lane and/or total road closures that occurred during IFDP}}{\text{No. of lane and/or road closures allowed during IFDP}}
\]

Raw score = 100(1 – (Factor No.3)). Maximum score is 100. If Factor No.3 is 1.0 or greater, the raw score shall be zero.

Incentive Fee Earned = \[
\frac{\text{(Amount of Incentive Fee Available) x (Sum of Raw Scores)}}{\text{Sum of maximum Raw Scores (i.e., 300)}}
\]

SP102.9-3.3.6 Rating Basis for Public Safety

Public Safety will not be rated for IFDP No. 1.

The Incentive Fee evaluation process shall consist of the Department’s analysis of the public travel accident record within the Project limits for the IFDP.

The Department’s Incentive Fee Team will review the public travel accident record and will determine the amount of earned Incentive Fee for each IFDP.

The basis of the rating for Public Travel Safety will be the number of injury (including fatalities) traffic accidents (not number of people injured) occurring within the Project Limits during the IFDP, excluding accidents that are alcohol or game animal related. The amount of the Incentive Fee to be paid for each period shall be calculated as follows:
Amount of Incentive Fee Payment = (Amount Available for IFDP)x(1-0.25A),

where “A” = number of injury accidents during IFDP.

If A equals or exceeds 4, no Incentive Fee will be paid for the IFDP.

SP102.9-3.3.7 Rating Basis for Community Interaction

Community Interaction will not be rated for IFDP No. 1.

The rating for quality will consider all aspects of maintenance of traffic and access performance, including such factors as:

A) Effectiveness and timeliness of public notifications;

B) Accommodation of the following special community needs and concerns, especially during periods of high traffic use;

[Need to add to list of needs and concerns]

Performance will be compared to the requirements stated in the Contract Documents, including the Design-Builder’s Proposal Documents. The percentage of Incentive Fee allocated to this factor to be awarded will be based on the following scale.

71-100%: The Design-Builder has demonstrated performance related to community interaction activities and overall performance of work, including design and construction, that is considered to significantly exceed stated requirements/objectives in a way beneficial to the Department and indicates a consistently outstanding level of attention to community needs and concerns. There is very little or no indication that the Design-Builder has not met Contract requirements. There are essentially no weaknesses.

31%-70%: The Design-Builder has demonstrated performance related to community interaction activities and overall performance of work, including in design and construction, that is considered to exceed stated requirements/objectives and indicates good and notable attention to community needs and concerns. There is little indication that the Design-Builder has failed to meet Contract requirements. Weaknesses, if any, are very minor.

1%-30%: The Design-Builder has demonstrated performance related to community interaction activities and overall performance of work, including in design and construction that indicates a better than average level of attention to community needs and concerns. The Design-Builder demonstrates a reasonable achievement of meeting Contract requirements. Weaknesses are minor and can and have been readily corrected.

SP102-3.4 THE REGIONAL DIRECTOR’S DECISION

Within ten (10) working days after receipt of a recommendation from the Department’s Incentive Fee Team, the Regional Director will review the recommendations and other pertinent information and determine the amount of the earned Incentive Fee. The Design-Builder will be notified in writing of the amount within 15 working days after the Regional Director receives the Department Incentive Fee Team’s recommendations.
If no appeal is filed under SP102-3.5, the Regional Director’s initial determination shall be considered the Final Incentive Fee Determination for the preceding IFDP. See also SP102-1.1.

SP102-3.5 DESIGN-BUILDER’S OPTIONAL APPEAL

A) Within five (5) working days after receipt of notification of the Regional Director’s determination, the Design-Builder may submit a written appeal to the Chief Engineer or designee within five (5) calendar days after receipt of the decision of the Regional Director. The Chief Engineer or designee will appoint a Protest Committee of at least three members to review the protest and the decision of the Regional Director. Such an appeal will include a full explanation of the reasons, facts, and circumstances justifying a re-determination. The Design-Builder may also request a meeting with the Chief Engineer or designee to discuss the appeal; and

B) The Protest Committee will notify the Design-Builder in writing and make a Final Incentive Fee Determination within ten (15) working days.

SP102-3.6 PAYMENT OF INCENTIVE FEE

Each installment of the Incentive Fee shall be approved for payment upon the Final Incentive Fee Determination for that period with the next Interim Payment following the execution of an Order-on-Contract incorporating the amount of the Incentive Fee into the Contract Price.

SP102-4.0 CHANGES TO EVALUATION CRITERIA AND IFDP

The Department and the Design-Builder may make recommendations for changes for a subsequent period. Changes to the Incentive Fee evaluation criteria or IFDP’s may be made upon mutual agreement and execution of appropriate Orders-on-Contract. The Design-Builder will be notified in writing by the Regional Director of any changes in the evaluation criteria or IFDP at least fifteen (15) calendar days prior to the start of each IFDP. If the Design-Builder is not provided with this notification, or if the notification is not provided within the number of days specified before the beginning of the next period, the existing evaluation criteria and Incentive Fee allocation will continue in effect for the next IFDP.

SP102-5.0 SUPPLEMENTAL INCENTIVE FEE FOR EARLY COMPLETION

The Design-Builder may earn a Supplemental Incentive Fee for early completion. The maximum Supplemental Incentive Fee for early completion is specified in SP102-2.1, based on Substantial Completion by 90 days prior to the Substantial Completion Date specified for the Project in Part 1, Article 2.2. The amount of Supplemental Incentive Fee will be pro-rated downward in daily increments to zero at the Substantial Completion Date shown for the Project in Part 1, Article 2.2.

However, the Design-Builder will be eligible to earn the regular Incentive Fee for the last IFDP if the Project is Substantially Complete within the time limits specified in Part 1, Article 2.2, provided the requirements of other evaluation criteria in SP102-2.1.1 are met.

The Supplemental Incentive Fee is subject to adjustment downward based on recommendations of the Department Incentive Fee Team and the sole discretion of the Regional Director if Contract performance
fails to meet Contract requirements, especially quality requirements.

[Note: If actual traffic flow is a desired evaluation criteria, Appendix SP102A describes a system successfully used to incentivize a design-builder to keep traffic flowing rapidly through a project area.]
SPECIAL PROVISION SECTION 104

WARRANTIES

[This is a general warranty. Additions or alterations should be made to this Special Provision on a project-by-project basis to detail any specific warranty requirements or time frames the Department may have.]

SP104-1  WARRANTIES

The Design-Builder warrants to the following:

A) That all design Work performed pursuant to the Contract Documents, including that done by its Subcontractors and manufacturers, shall conform to all professional engineering principles generally accepted as standards of the industry;

B) That the Project shall be free of defects (except to the extent that such defects are inherent in the standards and Specifications provided by the Department contained in the Contract Documents) including design defects, errors, and omissions and shall be fit for use for the intended function;

C) That Material and Equipment furnished under the Contract Documents shall be of good quality and new; and

D) That the Specifications and/or Plans selected or prepared for use during construction are appropriate for their intended use.

SP104-2  WARRANTIES SHALL COMMENCE UPON FINAL ACCEPTANCE.

Warranties for all Work shall remain in effect until two years after the date that Final Acceptance is achieved. If the Department determines that any of the Work has not met the standards set forth in this Section SPB-1 at any time during the Warranty period for such Work, then the Design-Builder shall correct such Work as specified below even if the performance of such correction Work extends beyond the stated Warranty period.

Within seven days of receipt by the Design-Builder of notice from the Department specifying a failure of any of the Work to satisfy the Design-Builder’s Warranties, or of any Subcontractor representation, Warranty, guarantee, or obligation which the Design-Builder is responsible to enforce, the Design-Builder and the Department shall mutually agree when and how the Design-Builder shall remedy such violation, provided, however, that in case of an emergency requiring immediate curative action, the Design-Builder shall implement such action as it deems necessary and shall notify the Department of the urgency of a decision. The Design-Builder and the Department shall agree on a remedy immediately upon notice by or to the Department of such emergency. If the Design-Builder does not use its best efforts to proceed to effectuate such remedy within the agreed time, or if the Design-Builder and the Department fail to reach such an agreement within such seven-day period (or immediately, in the case of emergency conditions), then the Department, upon notice to the Design-Builder, shall have the right to order the Design-Builder to perform the work or to perform or have performed by third parties the necessary Department-approved remedy, and the costs thereof shall be borne by the Design-Builder.
SP104-3  SUBCONTRACTOR AND MANUFACTURER WARRANTIES

SP104-3.1  Subcontractor Warranties

Without in any way derogating the Design-Builder’s own representations, Warranties, and other obligations with respect to all of the Work, the Design-Builder shall obtain from all Subcontractors and cause to be extended to the Department appropriate representations, Warranties, guarantees, and obligations with respect to design, Material, workmanship, Equipment, tools, and supplies furnished by such Subcontractors. All representations, Warranties, guarantees, and obligations of Subcontractors shall be written so as to survive all Department and Design-Builder Inspections, tests, and approvals, and shall run directly to and be enforceable by the Design-Builder and/or the Department and their respective successors and assigns.

SP104-3.2  Performance Responsibility

The Design-Builder retains responsibility for all Work performed on the Project, including all Work of Subcontractors and all Materials and Equipment provided by suppliers, vendors and/or manufacturers. Upon receipt from the Department of notice of a failure of any of the Work to satisfy any Subcontractor Warranty, representation, covenant, guarantee, or obligation, the Design-Builder shall be responsible for enforcing or performing any such representation, Warranty, guarantee, or obligation, in addition to the Design-Builder’s other obligations hereunder. The Department’s rights under this Section SPB-3.2 shall commence at the time such representation, Warranty, guarantee, or obligation is furnished and shall continue until the expiration of the Design-Builder’s relevant Warranty (including extensions for redone Work). Until such expiration, the cost of any Equipment, Material, labor (including re-engineering), and/or shipping shall be for the account of the Design-Builder if such cost is covered by such a Warranty, and the Design-Builder shall be required to replace or repair defective Equipment, Material, or workmanship furnished by Subcontractors.

SP104-1  EXTENSION OF WARRANTIES

The Design-Builder’s Warranties shall apply to all Work re-done pursuant to the terms of this Contract. The Design-Builder’s Warranty for re-done elements of the Work shall extend beyond the original Warranty period if necessary to provide a two year Warranty period following acceptance for any re-done Work.

SP104-2  NO LIMITATION OF LIABILITY

The foregoing Warranties are in addition to all rights and remedies available under the Contract Documents or applicable law, and shall not limit the Design-Builder’s liability or responsibility imposed by the Contract Documents or applicable law with respect to the Work, including liability for design defects, latent construction defects, strict liability, negligence, or fraud provided.

SP104-4  DAMAGES FOR BREACH OF WARRANTY

In addition to all rights and remedies available under the Contract Documents or applicable law, if the Design-Builder fails or refuses to provide the Warranty remedy described in Section SPB-1, notwithstanding a valid request by the Department, the Design-Builder shall be liable for the cost of performance of the Warranty work by others. The Department may also call the warranty performance bond.
SP104-5  EXCLUSIONS

The Warranties shall not require the Design-Builder to perform repair or replacement Work to the extent necessitated by the following:

A) Normal wear and tear provided that damage and/or deterioration outside allowable limits specified in Contract Documents shall not be considered normal wear and tear;

B) Failure to perform routine maintenance consistent with polices and/or procedures established by the Department or other maintenance agencies, including Utility Owners, or in the absence of such policies and/or procedures in accordance with industry standards of maintenance for similar Projects in the United States;

C) Rebellion, war, riot, act of sabotage, civil commotion, or acts of vandalism;

D) Wind, flood, and/or earthquakes and other acts of God which exceed the severity or intensity specified in the design Specifications included in the Contract Documents (see Occurrences in DB Section 107-26.2);

E) Fire, except when fire results from, or is exacerbated by, failure of a component otherwise covered by the Warranty provisions of this Special Provision B;

F) Spill or release of hazardous or contaminated substances not caused by the Design-Builder’s organization; and/or

G) Street/highway traffic loadings (equivalent single axle loadings) more than 25% greater than loadings projected by the agency having jurisdiction over the facility as of the Proposal Due Date.

SP104-3  WARRANTY INSPECTIONS

The Department and the Design-Builder shall conduct joint annual Warranty Inspections of the Project commencing one year after Final Acceptance. A semi-final Warranty Inspection shall also be conducted six months prior to the end of the Warranty period. The measurements and/or tests for those Warranty items that require specific measurements and/or tests, such as pavement condition and rideability, shall be taken during the scheduled joint inspections. Notwithstanding the provisions of this Section SPB-8, the Department may inspect any component of the Project at any time and issue notice to Design-Builder pursuant to Section SPB-2.

The failure to conduct any inspection specified herein shall not invalidate or cancel the warranty provisions, responsibilities or performance requirements.

SP104-4  WARRANTY PERFORMANCE REQUIREMENTS

In addition to the Warranty provisions of Section SPB-1, Project components shall meet the specific performance requirements specified in the Contract Documents.
SPECIAL PROVISION SECTION 105

DEPARTMENT’S PROJECT ORGANIZATION

SP105-1 PROJECT ORGANIZATION CHART

The Department’s Project organization is shown in Figure 105-1 below.

SP105-2 DUTIES OF OTHER DEPARTMENT STAFF

SP105-2.1 Design Compliance Engineer

The Design Compliance Engineer (DCE) employed/retained by the Department will be primarily responsible to oversee, monitor, audit, and inspect design and engineering Work. The DCE, acting for the Department’s Project Manager, may decide on questions that may arise pertaining to the following topics:

A) Acceptability of design documents;
B) Design/engineering Work performed;
C) The rate of progress of design/engineering Work;
D) Interpretation of design and engineering provisions of the Contract;
E) Acceptable performance of the Contract’s design and engineering requirements; and
F) Design Quality Assurance (QA) and Quality Control (QC).

The DCE is authorized to issue Non-Conformance Reports (NCR) for design/engineering performance and shall be the Department’s Project Manager’s representative at Design Reviews.

SP105-2.2 Construction Compliance Engineer
The Construction Compliance Engineer (CCE) employed/retained by the Department will be primarily responsible to monitor, audit, and inspect construction Work. The CCE, acting for the Department’s Project Manager, may decide on questions that may arise pertaining to the following topics:

A) Construction Work performed;
B) The rate of progress of construction Work;
C) Interpretation of construction provisions of the Contract;
D) Acceptable performance of the Contract’s construction requirements; and
E) Construction QA and QC.

The CCE is authorized to issue NCRs for construction performance. The CCE may also participate in Design Reviews.

**SP105-2.3 Construction Compliance Monitors**

The Construction Compliance Monitors (CCM) employed/retained by the Department will be authorized to monitor, audit, and inspect construction Work done and Material furnished. Such oversight and audit may extend to all or any part of the Work and fabrication or manufacture of the Material to be used. The CCMs will not be authorized to alter or waive the provisions of the Contract.

**SP105-2.4 Design Compliance Monitors**

The Design Compliance Monitors (DCM) employed/retained by the Department will be authorized to monitor, audit, and inspect design Work done. Such oversight and audit may extend to all or any part of the Work and to the design preparation. The DCMs will not be authorized to alter or waive the provisions of the Contract.
SPECIAL PROVISION SECTION 108A

BASELINE PROGRESS SCHEDULE
(CRITICAL PATH METHOD SCHEDULE)

SP108A-1 DESCRIPTION

The schedule submitted in accordance with DB Section 108-01 shall be prepared using the Critical Path Method (CPM).

SP108A-1.1 General

The Project shall be planned and documented using the Baseline Progress Schedule, a conventional CPM schedule in the form of an activity on node diagram based on the principles defined by the 1994 issue of the Construction Planning & Scheduling Manual published by the Associated General Contractors of America. The schedule shall be used for coordination and monitoring of all Work under the Contract, including all activities of Subcontractors, design, and construction; shall compare the Work performed to the Contract time and phasing requirements; and shall assign necessary resources for Inspection and administration of the Contract.

Acceptance of the schedule by the Department’s Project Manager shall not be construed to imply approval of any particular method or sequence of construction or to relieve the Design-Builder of providing sufficient Materials, Equipment, and labor to guarantee completion of the Project in accordance with the Contract. Acceptance shall not be construed to modify or amend the agreement or the date of completion therein.

Failure by the Design-Builder to include in the Baseline Progress Schedule any element of Work required for the performance of the Contract shall not excuse the Design-Builder from completing all Work required within the completion date(s) specified in the Contract notwithstanding acceptance of the schedule by the Department’s Project Manager.

Float contained in the Baseline Progress Schedule is not for the exclusive use and benefit of either the Department or the Design-Builder.

If the Design-Builder fails to comply with the provisions of this Special Provision, the Department’s Project Manager may suspend payment for Price Center 1, per Section 109L-5.2(C).

SP108A-1.2 Schedule Submittals

A) Ninety Day Schedule

1) Within 15 Calendar Days following the Contract Award, the Design-Builder shall submit to the Department’s Project Manager, a detailed schedule for the first 90 Days of Work and a generalized schedule for the balance of the Work. The detailed portion of this schedule shall meet the requirements of Section 108A-1.2(B). The 90-day schedule must be consistent with the Proposed
Baseline Project Schedule submitted with the Proposal unless otherwise agreed by the Department.

2) The 90Day schedule will be reviewed by the Department’s Project Manager and revised by the Design-Builder to incorporate the Department’s Project Manager’s comments and to correct deficiencies. Upon acceptance by the Department’s Project Manager, the 90-Day schedule shall be used for all Project scheduling activities, and updated monthly until the issuance of the accepted Baseline Progress Schedule.

B) Baseline Progress Schedule

3) Within 45 Calendar Days following the Contract Award, the Design-Builder shall prepare and submit a Baseline Progress Schedule for the entire Project to the Department’s Project Manager for review and Approval. The Baseline Progress Schedule must be consistent with the proposed Baseline Project Schedule submitted with the Proposal unless otherwise agreed by the Department.

4) The Design-Builder will incorporate into this schedule all Project activities, activities for the placement of orders and anticipated delivery dates of Materials and Equipment, activities assigned to Subcontractors, activities assigned to the Department or the Department’s Project Manager and other outside agencies (such as, Design Reviews and permit reviews), and all Utility Work or work by other Contractors within or near the Contract limits.

C) Schedule Updates

See Section SP108A-3.3.

SP108A-2 MATERIALS

1) The Design-Builder shall furnish, maintain, and operate a system that can produce a CPM network diagram using the precedence diagramming method and other reports and graphics as described within this Special Provision. In addition, the Design-Builder shall provide a microcomputer with CPM scheduling software and necessary peripheral hardware for use by the Department’s Project Manager in monitoring the scheduling system meeting this specification.

2) [Insert current Department computer and hardware specification.]

SP108A-3 SCHEDULE REQUIREMENTS

SP108A-3.1 General

The Design-Builder’s Baseline Progress Schedule shall meet the following requirements:

A) Baseline Progress Schedule Format

The Design-Builder shall use the precedence diagramming methods. The Work breakdown schedule of the Baseline Progress Schedule shall be formatted in a manner consistent with the pricing and payment method contained in the Contract.

B) Project Calendars
Holidays and non-Work Days shall be established in coordination with the Department's Project Manager. Additional Project calendars shall be used for activities that have Contract imposed time restrictions, such as, seasonal limitations for asphalt paving.

C) Activities Data

1) Activity Identification Number – Each activity shall have a unique identification number.

2) Activity Description – Each activity shall be clearly described. Use of descriptions referring to percent of a multi-element item (i.e., construct deck 50%) will not be acceptable. Separate activities shall represent different elements of multi-element activities (i.e., construct forms, install rebars, and pour concrete). Multiple activities with the same Work description shall include a location description.

3) Activity Duration – The Design-Builder shall subdivide the Work into individual activities having durations of no longer than 60 Work Days each. Exceptions to this rule will be reviewed by the Department’s Project Manager on an activity by activity basis. If multiple shifts and/or overtime are anticipated during the development of activity durations, a list of affected activities and the shift/overtime assumptions shall be provided to the Department’s Project Manager. If requested by the Department’s Project Manager, the Design-Builder shall furnish production rates or other information needed to justify the reasonableness of activity time durations.

4) Expected seasonal weather conditions, such as precipitation and temperature, shall be included by the Design-Builder in the planning and scheduling of activities.

5) Start and Finish Dates – The earliest start date, earliest finish date, latest start date, and latest finish date shall be shown for each activity.

6) Total float shall be shown for each activity. Total float is the full amount of time by which the start on an activity may be delayed without causing the Project to last longer.

7) The Baseline Progress Schedule shall contain none of the following:
   a) Excessive leads or lags;
   b) Assigned constraints, except as specified in the Contract Documents or as specifically allowed by the Department’s Project Manager;
   c) Multiple calendars, except as allowed by the Contract Documents; or
   d) Retained logic.

8) Activity Codes – Activities shall be coded to allow for the following summaries:
   a) Responsible party for the accomplishment of each activity, i.e., Design-Builder, Subcontractor, Department, and Utility Owner. The name of each Subcontractor shall be included as soon as they are approved by the Department. Only one party can be responsible for an activity;
   b) Phase/stage during which activity is planned to be accomplished, including design; and
   c) Area/location, i.e., bridges, ramps, and mainline station.
9) Activity Constraints – The Design-Builder shall not constrain the start or completion of any activity unless specifically required by the Contract or specifically allowed by the Department’s Project Manager.

10) Activity Resources – The required labor and Equipment shall be shown for each activity as follows:
   a) Labor may be shown by trade, however, as a minimum the Department’s Project Manager will accept total Person Work Days per activity or crew Work Days per activity. If crew Work Days are used, the crew size shall be indicated in the coding, i.e., a crew designated as PAVE4 equals a four Person paving crew; and
   b) Major Equipment, such as, pile drivers, large cranes, asphalt paving Equipment, and concrete finishing machines shall be shown for each activity.

11) Material Quantities – Material quantities for each activity shall be indicated in the resource fields when they become available. Material descriptions such as concrete, asphalt, guide railing, and signs shall be used. Material quantities will be used to verify the reasonableness of the activity durations and to ensure that all Work required by the Design-Builder is accounted for within the schedule.

12) Price Center Designations – Price Center designations for labor, Material, and Equipment shall be included in the cost account fields for each activity resource.

13) Activity Cost – The total budgeted cost per activity shall be included. A labor, Material, and Equipment cost breakdown is not required, but may be provided at the Design-Builder’s option.

D) Sequence of Operations
   The logic diagram or PERT chart shall show the sequence and interdependence of activities required for complete performance.

E) Review of the Baseline Progress Schedule
   The Design-Builder shall submit to the Department’s Project Manager, three copies of the logic diagram (PERT chart) and three copies of the following activities listings:
   1) Activity Number Sort – Activities listed in ascending order of their numbers; and
   2) Total Float/Early Start Sort – Activities listed in ascending order based on amount of their float with consideration of activity early start dates.

An electronic back-up copy of the computerized Baseline Progress Schedule also shall be provided.

The Department’s Project Manager will review the Baseline Progress Schedule and then hold a discussion meeting with the Design-Builder. Within two weeks from this meeting the Design-Builder shall make adjustment to the Baseline Progress Schedule to eliminate conflicts, objections and ambiguities found by the Department’s Project Manager. The Design-Builder shall submit for review three copies of the revised schedule materials as described above.

Upon completion of the final review by the Department’s Project Manager, the Design-Builder shall incorporate the final revisions and submit two copies of the schedule diskettes containing the computerized Baseline Progress Schedule and three copies of each of the revised logic diagram (PERT chart) and computer printouts. The logic diagram (PERT chart) shall be on 279 mm x 425 mm size sheets
and not a continuous diagram. This final submission shall be submitted for approval within one week of
the Design-Builder’s receipt of the revisions.

SP108A-3.2 List of Submittals

Within 60 Calendar Days of the Contract Award, the Design-Builder shall provide a list of submittals
required under the Contract, i.e., Design Plans, Project Specifications, shop drawings, required permits,
and erection/demolition plans. The list shall show a schedule submission date for each submittal and
identify the earliest activity affected by each of these submittals. This list shall be revised and updated
monthly with each schedule submission.

SP108A-3.3 Schedule Updating

A) Monthly Progress Reports and Projections
The Design-Builder shall update the schedule monthly. Each update shall show actual
dates of activities started and completed; the percent of Work completed to date on each
activity started, but not yet completed and the status of procurement of critical Materials.
The updated schedule data shall be submitted to the Department’s Project Manager on
computer disk. The Design-Builder also shall provide updated activity number and total
float/early start sorts, a 60 Day look-ahead bar chart by early start, and a narrative report.
The narrative report shall include a description of problem areas, current and anticipated
delaying factors and their estimated impact on performance of other activities and
mandated contract dates, and the explanation of corrective action taken or proposed.

The Department’s Project Manager shall conduct a monthly review of the updated
schedule. The review shall occur after receipt of the Design-Builder’s updated
information and shall serve as a forum to discuss slippages, remedies, revisions, and other
relevant issues. The Design-Builder’s appropriate design, construction, and scheduling
personnel shall attend these working sessions. These reviews may result in the need for
submission of revised schedules.

B) Logic diagram (PERT chart) Updates
The logic diagram (PERT chart) shall be updated by the Design-Builder every four
months.

SP108A-3.4 Changes to the Accepted Baseline Progress Schedules

The Baseline Progress Schedule shall accurately reflect the manner in which the Design-Builder intends
to proceed with the Project and shall incorporate the impact of delays and Orders-on-Contract when these
factors can be accurately determined. All changes made to the schedule, i.e., the addition of activities,
changes in logic, or changes in activity durations, shall be submitted in writing and are subject to written
acceptance by the Department’s Project Manager before inclusion in the Baseline Progress Schedule.

To initiate changes to the approved schedules, the Design-Builder shall meet with the Department’s
Project Manager and provide the information necessary to prepare a revised (updated) logic diagram
(PERT chart) and computer-generated schedule listing.

SP108A-3.5 Compliance with the Schedule

The Design-Builder shall employ and supply a sufficient force of Workers, Materials, and Equipment and
shall prosecute the Work with such diligence so as to maintain the rate of progress indicated on the
approved schedule to prevent Work stoppage and ensure completion of the Project within the Contract time. Any additional or unanticipated costs or expense required to maintain the schedule, shall be solely the Design-Builder’s obligation and shall not be charged to the Department unless provided for in other provisions of the Contract.

In the event a notice is received of a change to the Contract which is likely to cause or is causing delays, the Design-Builder shall notify the Department’s Project Manager in writing within ten Calendar Days, of the effect, if any, of such change, or extra Work, or suspension or other conditions upon the Baseline Progress Schedule and shall state in what respects, if any, the approved Baseline Progress Schedule should be revised with the reasons therefore. The reasons for these revisions must be succinct, comprehensive, and factual to merit consideration.

**SP108A-4 PROGRESS CHECK POINTS AND PAYMENT**

Specified schedule submittals and schedule updates shall be considered Progress Check Points.

The cost of preparing and updating the CPM schedule and meeting all other requirements of this specification shall be included in Price Center 1.

Payment will be made under Price Center 1 per Part 2 – DB Section 100, Section 109[S or L].
[Add, subtract, or revise personnel and qualifications requirements as necessary to meet requirements of each Project.]

SPECIAL PROVISION SECTION 108B

KEY PERSONNEL QUALIFICATIONS REQUIREMENTS

In the qualifications specified below, the word “shall” indicates a required minimum qualification. The word “should” indicates the Department’s preferred qualifications, but such qualification is not a mandatory requirement.

Project Principal: Should have demonstrated a minimum of ___ years experience in construction and management of construction on highway projects that included work of a similar scope, nature, and complexity as included in the ____________ Project. The Project Principal should have Design-Build (DB) experience.

Design-Builder’s Project Manager: Should have demonstrated a minimum of ______ years experience in construction and management of construction on highway projects that included work of a similar scope, nature, and complexity as the ____________ Project. The Design-Builder’s Project Manager should have DB experience.

Design-Builder’s Deputy Project Manager: Should have demonstrated a minimum of ______ years experience in construction and management of construction on highway projects that included work of a similar scope, nature, and complexity as the ____________ Project.

Quality Control Manager: Should have demonstrated a minimum of ______ years experience in highway design and/or construction with at least ______ years experience in Quality Assurance (QA)/Quality Control (QC) activities, including preparation and implementation of Quality Plans and procedures for design and/or construction.

Construction Manager: Should have demonstrated a minimum of ___ years experience in construction and management of construction on highway projects that included work of a similar scope, nature, and complexity as the ____________ Project.

Design Manager: Shall be a New York-licensed professional engineer who is an employee of the Designer. Should have demonstrated experience in managing design for highway projects with similar scope and complexity of the ____________ Project.

Design Quality Control Manager: Shall be a New York-licensed professional engineer who is an employee of the Designer or a firm on the design team. The Design QC Manager should have a minimum of ______ years experience in QC/QA activities on large highway design projects with similar scope and complexity of the ____________ Project.

Construction Quality Control Manager: Shall be a New York-licensed professional Engineer who is an employee of the independent firm responsible for construction QC. Should have a minimum of ______ years experience in QC/QA activities (including management of construction QC programs) on large highway construction projects that have incorporated the type of construction included in the ____________ Project.

Safety Manager: Shall be a Work Zone Safety Supervisor as certified by the American Traffic Safety Service Association, Associated Contractors of New York, or any agency or firm approved by the

__________ Project
Department. The Safety Manager should have a minimum of ___ years experience in a work zone safety technician or supervisor capacity on large highway construction projects.

**Environmental Coordinator:** Shall have at least a Bachelor of Science (B.S.) or Bachelor of Arts (B.A.) degree and demonstrated experience related to the areas of responsibility outlined in Contract Documents Part 4, Performance Specification PS__. The Environmental Coordinator should have experience in managing others in environmental activities and experience with major highway projects. Should have experience with highway engineering drawings and concepts and working cooperatively and effectively with design engineers and construction staff.

**Utilities Design/Construction Coordinator:** Shall be a New York-licensed professional engineer. Shall have demonstrated experience in Utility design and/or construction and coordination for the types of Utilities encountered on the Project.

**Lead Geotechnical Engineer:** Shall be a New York-licensed professional engineer who is an employee of the Designer or a firm on the design team. Shall have demonstrated experience in geotechnical investigation and design with demonstrated expertise in _______.

**Public Interaction Specialist:** Shall have at least a B.S. or B.A. degree and demonstrated experience related to the areas of responsibility outlined in Contract Documents Part 4, Performance Specification PS__. The Public Interaction Specialist should have experience in managing others in community involvement activities and experience with major highway projects. Should have experience with highway engineering drawings and concepts and working cooperatively and effectively with design engineers and construction staff.

**Community Relations Specialist:** Shall have at least a B.S. or B.A. degree and demonstrated experience related to the areas of responsibility outlined in Contract Documents Part 4, Performance Specification PS__. The Community Relations Specialist should have experience in managing others in public relations activities and experience with major highway projects. Should have experience with highway engineering drawings and concepts and working cooperatively and effectively with design engineers and construction staff.

**Traffic Control Supervisor:** Shall be a New York-licensed professional engineer. Shall have demonstrated experience in traffic and highway engineering with contractor, consultant, city, county, or state transportation agencies, and possess certification as a Work Zone Safety Supervisor in accordance with Contract Documents Part 4, Performance Specification PS__, Section ___, or possess a PTOE certificate received through ITE.

The Project Principal and the Design Builder’s Project Manager positions may be combined. The Design-Builder’s Deputy Project Manager may be combined with another position.
“STANDARD SPECIFICATIONS
CONSTRUCTION AND MATERIALS”

Dated
January 2, 2002

[Update the Special Provisions as required for each project and to incorporate Engineering Instructions and other changes to the Standard Specifications.]
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SPECIAL PROVISION SECTION 100

Delete the entire Section 100 of the New York State Department of Transportation Standard Specifications Construction and Materials, dated January 2, 2002, as amended. Section 100 of the Standard Specifications is replaced by Part 2, DB Section 100.

SPECIAL PROVISION TO DB SECTIONS 200-600, INCLUSIVE

A) All contact with Department staff or offices except for personnel assigned to the Project shall be through the Department’s Project Manager.

B) References to “plans” shall mean “Design Plans” prepared by the Design-Builder’s designer.

C) Unless specified otherwise by a project-specific Special Provision, or other Contract Document, there will be no measurement for payment except for Unit Priced items specifically shown in the Price Proposal. All Work will be paid on the basis specified in Part 2 – DB Section 100, DB Section 109[S or L].

D) All references to “Section 100” Specifications shall mean DB Section 100 Specifications.

E) Delete the following phrases:
   1) “if deemed necessary by the Engineer”;
   2) “to the satisfaction of the Engineer”;
   3) “as determined by the Engineer”;
   4) “subject to the approval of the Engineer”;
   5) “or as specified by the Engineer”;
   6) “approved by the Engineer”;
   7) “ordered by the Engineer”;
   8) “established by the Engineer”;

   Replace such phrases with “as shown on Design Plans and/or Project Specifications released for construction per Part 2 – DB Section 111-12.3.” If the information is not shown on the Design Plans or covered in the Project Specifications, the Design-Builder shall have the Designer change the Design Plans and/or Project Specifications to incorporate the missing information.

F) Delete references to “payment lines” and replace with “lines shown on the Design Plans.”

G) References to “Proposal” or “proposal” shall be interpreted to mean the “Contract Documents.”

H) Delete references to “Contract Plans” and replace with “Design Plans.”

I) Unless specifically stated otherwise in the Contract Documents, sampling and testing specified to be done by the Engineer or other Department staff, shall be performed by the Design-Builder’s construction Quality Control (QC) staff.

J) Working Plans, as defined in Part 2 – DB Section 100, DB Section 101-3, shall be reviewed per Part 2 – DB Section 100, DB Sections 111-10 and 111-12.
K) “Submission” or “submittal” used in the design shall be subject to review and Department acceptance per Part 2 – DB Section 100, DB Section 111-12.

L) All references to “the Engineer” or “the Engineer-in-Charge” shall mean the “Department’s Project Manager.”

M) All references to “Contractor” shall mean “Design-Builder.”

N) Change references to “Pay Items” from “specification items.”

O) References to “preconstruction meeting” shall mean “pre-work meeting.”

P) There will be no quality payment adjustments under this Contract.

Q) Except for the first six paragraphs of Section 619-5, delete Section 4, Measurement, and Section 5, Payment, in each Specification.
SPECIAL PROVISION 201

CLEARING AND GRUBBING

SP 201-3.1, Limits of Work Areas

Delete the existing section and replace with the following:

“201-3.1, Limits of Work Areas. The Design Plans delineate the limits of areas to be cleared and grubbed; to be cleared but not grubbed; or areas, objects, or features that are designated to remain undisturbed. In general, the Work areas shall include road section, stream channels, ditches, temporary approaches to bridges, detours, and other areas shown on the accepted Design Plans. The Design Plans will designate fences, structures, debris, trees, and brush to be cleared where grubbing is not required. Clearing beyond the areas of construction shall be done only where shown on the Design Plans.”

SP 201-3.3, Disposal

Replace the words “Contract Documents” with “Design Plans.”
SPECIAL PROVISION 202

REMOVAL OF STRUCTURES AND OBSTRUCTIONS

SP 202-1, Description

Replace the existing second sentence with the following:

“The Work includes demolition of existing superstructures, substructures, supporting bents and columns, and surrounding Material and the removal of old bituminous concrete overlay and bituminous patches, within the Right-Of-Way designated in the scope of Work and/or shown in the Request For Proposals Plans and/or Design Plans.”

SP 202-3.1, General and Safety Requirements

In the third paragraph, delete “§107-05” and replace with “Part 2 – DB Section 100, DB Section 107-7.”

SP 202-3.8, Removing Old Bituminous Concrete Overlay

Delete the second paragraph and replace with the following:

“Should the percentage of asbestos be greater than one percent by volume, the Material is defined as Asbestos Containing Material by Industrial Code Rule 56 and shall be removed as specified in the Project Specifications and paid for under Price Center 6, if identified as a category of Hazardous Materials in the Instructions To Proposers or Contract Documents, or in accordance with an Order-on-Contract negotiated for previously unknown Asbestos Containing Material.”

SP 202-3.9, Removal of Substructures

In the fourth paragraph, delete “§107-05” and replace with “Part 2 – DB Section 100, DB Section 107-7.”
SPECIAL PROVISION 203
EXCAVATION AND EMBANKMENT

SP 203-1, Description

Replace the existing text with the following:

“This Work shall consist of excavation, disposal, placement, and compaction of all Materials that are not provided under another section of these Specifications, and shall be executed in conformance with lines, grades, thickness, and typical sections specified in the Design Plans and Project Specifications.”

SP 203-1.1, Unclassified Excavation

Delete “§102-05, Subsurface Information” and replace with “Part 2, DB Section 100, DB Section 104-5.”

SP 203-1.8, Suitable Material

Delete the second sentence of the second paragraph “The Regional Geotechnical ------use of such material” and replace with “The Design-Builder’s Designer shall make a New York-licensed geotechnical engineer available to provide guidance on the use of such materials.”

SP 203-1.13, Graded Surfaces

Replace the text with the following:

“The Design-Builder shall form and trim all graded surfaces to the lines shown on the Design Plans.”

SP 203-1.16, Modifying Cut Slopes And Other Means Of Obtaining Borrow

Delete the existing text and replace with the following:

“Cut slopes shall be designed and constructed to prevent unsafe conditions, damage and nuisances to property, wildlife areas, and haul routes within and outside the Project limits.

“Except where specifically restricted in the Contract Documents, cut slopes may be designed so as to provide borrow sources for use on the Project provided all relevant Design Requirements and performance requirements are met.

“No Material excavated from within the Project limits shall be used outside the Project limits, except that unsuitable Material may be disposed of in locations and in the manner allowed by law and/or permit.

“All requirements of Part 2 – DB Section 100, DB Section 107-21.2 shall also apply.”

SP 203-1.18, Culvert

Delete “See §101-15.”


SP 203-3.3, Scheduling Work to Minimize Soil Erosion and Water Pollution

Delete “§107-12” and replace with “Part 2 – DB Section 100, DB Section 107-10.”

SP 203-3.5, Rock Excavation

Delete reference to “a Departmental Engineering Geologist” and replace with “a New York-licensed engineering geologist experienced and trained in rock slope stability.”

Delete “§107-05” and replace with “Part 2 – DB Section 100, DB Section 107-7.”

SP 203-3.12, Compaction

A. General Requirements

After paragraph A.4., delete the sentence starting with “When the Engineer determines that density tests are necessary” and replace with the following:

“When density tests are necessary per Design Plans, Project Specifications, or Contract Documents, the Design-Builder shall conduct such tests and shall provide any assistance requested by the Department’s Project Manager to facilitate such tests as the Department may wish to conduct.”

SP 203-3.13, Proof Rolling in Embankment Sections

In C.1. and 2., delete “Engineer’s” and replace with “Designer’s.”

SP 203-3.14, Proof Rolling in Cut Sections

In D., last sentence, delete “Departmental Geotechnical Engineer” and replace with “New York-licensed geotechnical engineer.”

SP 203-3.16, Borrow

Delete the fourth sentence of the first paragraph.

SP 203-3.18, Embankment Construction Control Devices

In A., delete “Department Geotechnical Engineer” and replace with “New York-licensed geotechnical engineer in the Design-Builder’s construction Quality Control organization.”
SPECIAL PROVISION 204

CONTROLLED LOW STRENGTH MATERIAL (CLSM)

SP 204-2.1, Tests and Control Methods

In the fifth paragraph, delete “Engineer” and replace with “Design-Builder’s construction Quality Control staff.”

In the last paragraph, delete “Geotechnical Engineering Bureau” and replace with “Design-Builder’s Quality Control Testing Laboratory.”
SPECIAL PROVISION 206

TRENCH, CULVERT AND STRUCTURE EXCAVATION

SP 206-3.1, General

In the fourth paragraph, delete “§107-05” and replace with “Part 2 – DB Section 100, DB Section 107-7” and delete “§107-08” and replace with “Part 2 – DB Section 100, DB Section 107-21.”
SPECIAL PROVISION 209
SOIL EROSION AND SEDIMENT CONTROL

SP 209-1.1, General

In the second paragraph, delete “§107-12” and replace with “Part 2 – DB Section 100, DB Section 107-10.”

SP 209-3.3, Schedule of Work

Delete the first paragraph and replace with the following:

“Readiness for construction reviews (Part 2 – DB Section 100, DB Section 111-12.3) for applicable construction shall include a review of Design Plans, Project Specifications, and schedules for accomplishment of temporary and permanent erosion and sediment control Work. The Regional Landscape Architect will be invited to participate in these reviews, which will be completed within the time agreed per Part 2 – DB Section 100, DB Section 111-5. The Design-Builder shall begin Work only after receipt of the Department’s Project Manager’s written comments at conclusion of the readiness for construction review. All Work done under this Section shall be included as part of the Baseline Progress Schedule submitted by the Design-Builder per Special Provision 108A. The Design-Builder’s schedules and methods shall be consistent with the soil erosion and sediment control requirements included in the Contract Documents.”

SP 209-3.4, Areas of Work

Delete the first paragraph and replace with the following:

“The Design-Builder shall limit the areas of clearing and grubbing, excavation, borrow, and embankment operations in progress commensurate with the Design-Builder’s capability and progress in keeping the finish grading, mulching, seeding, and other temporary and/or permanent control measures current in accordance with the accepted schedule(s).”

In the sixth paragraph, delete “§107-14, Furnishing Right-of-Way” and replace with “Part 2 – DB Section 100, DB Section 107-22.”
SPECIAL PROVISION 210

REMOVAL AND DISPOSAL OF ASBESTOS CONTAINING MATERIAL

SP 210-3, Construction Details

In the first paragraph, delete “§107-06” and replace with “Part 2 – DB Section 100, DB Section 107-25 and Part 5 – Special Provisions, Special Provision 107.”

In the second paragraph, delete “§108-05” and replace with “Part 2 – DB Section 100, DB Section 108-8.”
SPECIAL PROVISION 302
BITUMINOUS STABILIZED COURSE

SP 302-3.4, Mixing For Option A

In the first paragraph, second sentence, delete “determined” and replace with “accepted in writing”; delete “by their Engineer” and replace with “in the Project Specifications.”
SPECIAL PROVISION 304

SUBBASE COURSE

SP 304-2.1, Test And Control Methods

In the first sentence, delete “Department” and replace with “Design-Builder.”
SPECIAL PROVISION 308
SOIL CEMENT COURSE

SP 308-2, Materials

In first sentence, third paragraph, after the words “sampled and test”, add “by the Design-Builder.”

SP 308-3.4, Application of Calcium Chloride and Cement

Delete the first paragraph and replace with the following:

“Where required in the Contract Documents, the quantity of calcium chloride in flake form specified in the project Specifications shall be uniformly added to the soil before adding the cement.”

SP 308-3.6, Compaction

In the last sentence, delete “as determined and ordered by the Engineer.”
SPECIAL PROVISION 401

PLANT PRODUCTION

SP 401-3.1, Quality Control

A. Control Plan

At the beginning of the first paragraph, add the following:

“The manufacturer shall provide an asphalt Quality Control supplement to the Design-Builder’s Quality Plan, meeting the requirements of this Section 402-3.01, through the Design-Builder to the Department’s Project Manager.”

B. Quality Control Organization

Add the following:

“All personnel having Quality Control (QC) responsibilities shall be considered part of the Design-Builder’s construction QC organization and shall Work under the direction of the Design-Builder’s Construction QC Manager.”
SPECIAL PROVISION 501
PORTLAND CEMENT CONCRETE – GENERAL

SP 501-2.2, Composition of Mixtures
In the first sentence, second paragraph delete “Contract Documents” and replace with “Design Plans or Project Specifications.”

SP 501-3, CONSTRUCTION DETAILS
Add the following:

“Notwithstanding the provisions of the Standard Specification, the Design-Builder’s construction Quality Control (QC) organization shall conduct all sampling and testing and provide documentation specified in this Section 501. The Department will conduct Verification Sampling and Testing (see Part 2 – DB Section 100, DB Section 112-3.1). The Design-Builder’s Construction QC Manager will be responsible for rejecting Materials not meeting specified requirements.”

SP 501-3.4, Concrete Mixing, Transporting and Discharging, G, Mobile Concrete Mixing Units
In the eighth paragraph, delete the second sentence “The Engineer will ----to the contractor” and replace with “The Design-Builder shall specify the mix design and the calibration procedure in the applicable Project Specification(s).”
SP 502-3, Construction Details

Add the following:

“Notwithstanding the provisions of the Standard Specification, the Design-Builder’s construction Quality Control (QC) organization shall conduct all sampling and testing and provide documentation specified in this Section 502. The Department will conduct Verification Sampling and Testing (see Part 2 – DB Section 100, DB Section 112-3.1). The Design-Builder’s Construction QC Manager will be responsible for rejecting Materials not meeting specified requirements.”
SPECIAL PROVISION 551
PILES AND PILE DRIVING EQUIPMENT

SP 551-1.2, Splices for Steel Bearing Piles

Delete the first sentence.

SP 551-2.1, Cast-in-Place Concrete Piles, B. Paint for Exposed Piles and Pile Casings

In the second sentence, delete “on the Plans and Proposal” and replace with “in the Contract Documents.”

SP 551-3, Construction Details

Add the following:

“Wherever permission, direction, or approval for the Deputy Chief Engineer for Structures Design and Construction is indicated, the written approval of the Design-Builder’s Designer (specifically the engineer of record) shall also be required.”

SP 551-3.1, General

F. Lengths of Piles

At the end of the first sentence, add the following:

“and specified in the Contract Documents.”

L. Furnishing Equipment and Personnel – Dynamic Testing of Piles

In the second paragraph, delete the first sentence and replace with the following:

“The actual tests shall be conducted by the Design-Builder under the direction of the Design-Builder’s Designer and observed by the Deputy Chief Engineer for Structures Design and Construction.”
SPECIAL PROVISION 552
SUPPORT AND PROTECTION SYSTEMS

SP 552-1.5, Alternate Design

Delete the section title and replace with the following:

“Section 552-1.05, Design” and delete the first and last sentences.
SPECIAL PROVISION 553
COFFERDAMS AND WATERWAY DIVERSION STRUCTURES

SP 553-1.4, Submittals

Add the following:

“Notwithstanding the provisions of the Standard Specification, for Design-Build projects all designs, methods and submittals shall be reviewed per Part 2 – DB Section 100, DB Section 111-12 within the time agreed per Part 2 – DB Section 100, DB Section 111-5.”

A.2. Cofferdams (Type 1)

Delete the first and second sentences and replace with the following:

“Design shall be reviewed and subject to written acceptance of Department’s Project Manager per Part 2 – DB Section 100, DB Section 111-12.”
SP 554-1, Description

In the second paragraph, delete the fourth through the sixth sentences and replace with the following:

“Check and review the Mechanically Stabilized Earth System design packages, including Working Plans of the wall design, design calculations, Working Plans for all job-specific facing panels not appearing on the approved list, and the designer-supplier’s installation manual per Part 2 – DB Section 100, DB Section 111 prior to release for construction. Begin Work only after receipt of written acceptance by the Department’s Project Manager.”

SP 554-3.1, Excavation and Disposal

A. Placement Area

Delete the last sentence and replace with the following:

“Treat all soils found to be unsuitable or incapable of being satisfactorily compacted because of moisture content per Project Specifications or as directed by the Responsible Engineer, in conjunction with recommendations of a New York-licensed geotechnical engineer.”

C. Depth of Excavation

Delete the second sentence.

SP 554-3.2, Facing Unit Inspection, Storage, Repair and Rejection

B. Tolerances

Before “Engineer” add the following:

“Design-Builder’s Construction Quality Control (QC) Manager or QC Inspectors or by the”

D. Rejection Responsibility

Delete the existing sentence and replace with the following:

“Responsibility for rejection of units delivered to the job Site rests with the Design-Builder’s Construction Quality Control Manager. The Department’s Construction Compliance Engineer may also reject units.”

SP 554-3.3, Structure Erection

A. Methods and Equipment
Delete the paragraph and replace with the following:

“Install units in accordance with the Designer-supplier’s Working Plans and installation manual, unless otherwise modified by the Design Plans and/or Project Specifications. Prior to installation of units, furnish detailed information concerning the proposed construction method, as well as specific construction equipment planned for use as part of the readiness for construction review (Part 2 – DB Section 100, DB Section 111-12.3). Begin Work only after completion of the readiness for construction review.”
SPECIAL PROVISION 555
STRUCTURAL CONCRETE

SP 555-3.2, Falsework

Delete the first sentence and replace with the following:

“Falsework plans shall be reviewed per Part 2 – DB Section 100, DB Sections 111-10, 111-12.3, and 111-14.”

SP 555-3.3, Forms

A. General

Delete the third and fourth sentences of the first paragraph and the second and third sentences of the ninth paragraph and replace with the following:

“Form work Plans shall be reviewed per Part 2 – DB Section 100, DB Section 111-12, before forms are used on the Work.”

B. Removal of Forms

Delete the first paragraph and replace with the following:

“Forms and their supports shall be removed as specified in the Project Specifications.”

SP 555-3.4, Handling and Placing Concrete

A. General

In the second paragraph, third sentence, delete “will be performed by the Engineer at his discretion” and replace with “shall be performed by the Design-Builder.”

SP 555-3.5, Depositing Structural Concrete Under Water

D. Test Cores

In the third paragraph, fourth sentence, delete “Engineer” and replace with “Design-Builder’s Quality Control Inspector.”

SP 555-3.9, Curing

C.1. Temperatures Below 7°

In the second paragraph, last sentence, delete “Engineer” and replace with the following:

“Design-Builder’s Construction Quality Control staff.”
In the third paragraph, second sentence, delete “The Engineer shall notify the Contractor and the.”

**SP 555-3.12, Foundation Concrete**

Delete the existing text and replace with the following:

“The footings of structures shall be checked by the Design-Builder’s Designer prior to placement of concrete to verify that the dimensions will give a satisfactory foundation.

“Concrete shall not be placed in any foundation form until the Design-Builder’s Designer (specifically the engineer of record) certifies in writing that the placement will result in satisfactory foundation. A copy of the certification will be provided to the Department’s Project Manager.”
SPECIAL PROVISION 556
REINFORCING STEEL FOR CONCRETE STRUCTURES

SP 556-3.1, General

C. Inspection

In the first sentence, delete “Engineer” and replace with “Design-Builder’s Construction Quality Control Manager.”

SP 556-3.2, Bar Reinforcement

A. Ordering

At the end of the second paragraph, delete “D.C.E.S.” and replace with “Responsible Engineer and the Design-Builder’s Design Quality Control Manager.”

D. Splices

In the first paragraph, second sentence, delete “D.C.E.S.” and replace with “Responsible Engineer and the Design-Builder’s Design Quality Control Manager.”

E. Placement in Structural Slabs

In the fourth paragraph, first sentence, delete “Engineer” and replace with “Design-Builder’s Quality Control Inspector.”

In the fifth paragraph, second “bullet” statement, delete the text and replace with the following:

“The Design-Builder shall provide special corrective measures subject to approval of the Responsible Engineer, the Design-Builder’s Design Quality Control Manager and acceptance of the Deputy Chief Engineer for Structures Design and Construction.”
SPECIAL PROVISION 563

PRESTRESSED CONCRETE UNITS (STRUCTURAL)

SP 563-2.1, Prestressed Units

Delete the first sentence and replace with the following:

“The Design-Builder shall notify the Department’s Project Manager of the source of prestressed units within seven days of selecting the source of the units.”
SPECIAL PROVISION 564
STRUCTURAL STEEL

SP 564-1, Description
Delete §106-10 and replace with “DB Section 106-1.”

SP 564-3, Construction Details
Delete the second paragraph and replace with the following:

“Shop drawings prepared for structural steel replacement shall be prepared, approved, and distributed in accordance with the SCM, except the term ‘D.C.E.S’ shall be interpreted as the ‘Responsible Engineer’.”
SPECIAL PROVISION 565
BRIDGE BEARINGS

SP 565-3.4, Bearing Pad Installation

In A.3.a(3), A.3.b(3), B.3.c, C.3.b, and D.3.b, delete the third sentence and replace with the following:

“All adjustments shall be accomplished according to a written procedure approved in writing by the Responsible Engineer with written concurrence of the Deputy Chief Engineer for Structures Design and Construction (through the Department’s Project Manager).”

In C.1.a, third sentence, after “and receives,” insert the following:

“written Responsible Engineer and.”

In C.1.b, fifth sentence, before “D.C.E.S” insert the following:

“Responsible Engineer and.”

In the sixth sentence replace “Engineer” with “Design-Builder’s Construction Quality Control Manager.”

In D.1.b, third sentence, before “D.C.E.S” insert the following:

“Responsible Engineer and.”

SP 565-3.6, Welding

A. Type S.R. Bearings

Delete the third sentence and replace with the following:

“The Design-Builder shall provide a welding procedure Specification for review during the applicable readiness for construction review (Part 2 – DB Section 100, DB Section 111-12.3).”

C. Type M.R. Bearings

In the fourth sentence, before “D.C.E.S.”, insert “Responsible Engineer.”

In the fifth sentence, delete “D.C.E.S.” and replace with “Responsible Engineer.”
SP 566-2.2, Shop Drawings

A. Delete the second sentence and replace with the following:

“Shop drawings shall be prepared and reviewed in accordance with the applicable portions of the SCM and Part 2 – DB Section 100, DB Section 111-10.”

C. In the second sentence, delete “D.C.E.S” and replace with “Responsible Engineer.”
SPECIAL PROVISION 567
ARMORED BRIDGE JOINT SYSTEMS

SP 576-2.2, Armored Joint System with Compressive Seal

A. In second paragraph after “D.C.E.S.,” add “and the Responsible Engineer.”

SP 576-2.4, Shop Drawings

1. Shop Drawings: At the end of the first sentence, add “and Part 2 – DB Section 100, DB Section 111-10.”

2. Welding Procedure Specification: In the first paragraph, before “D.C.E.S.,” insert “Responsible Engineer and.”

SP 576-3.1, Armored Joint System with Elastomeric Sealer

2. Field Inspection

Delete the first sentence and replace with the following:

“All installation Work shall be inspected by the Design-Builder’s construction Quality Control staff and shall be subject to Inspection by the Department’s Construction Compliance Engineer.”

In the fourth sentence, delete “Engineer” and replace with “Design-Builder’s Construction Quality Control staff.”
SPECIAL PROVISION 568

BRIDGE AND CULVERT RAILING

SP 568-1, Description

In the second paragraph, second sentence, delete “As soon as the Contract is awarded” and replace with “Within seven Days of selection of the fabricator.”
SPECIAL PROVISION 569
PERMANENT CONCRETE TRAFFIC BARRIER FOR STRUCTURES

SP 569-1.2, Methods
At the end of the second sentence, add “and the Responsible Engineer.”

SP 569-3.1, Approvals
A. Cast-in-Place Concrete, Modifications to Design (Contract) Plans
 Delete the existing text and replace with the following:
 “Modifications to Design Plans shall be reviewed per Part 2 – DB Section 100, DB Section 111.12.”

SP 569-3.1, Approvals, B, Precast Concrete
Delete the existing text and replace with the following:
“Precast barrier systems shall be reviewed per Part 2 – DB Section 100, DB Section 111-12.”

SP 569-3.1, Approvals
C. Repair
Delete the second sentence and replace with the following:
“Methods of repair shall be reviewed and approved by the Responsible Engineer and shall be acceptable to the Department’s Project Manager.”
SPECIAL PROVISION 569

PERMANENT CONCRETE TRAFFIC BARRIER FOR STRUCTURES

SP 569-3.1, Approvals

In paragraph A., delete “§108-04” and replace with “Part 2 – DB Section 100, DB Section 108-7.”
SPECIAL PROVISION 570

ENVIRONMENTAL GROUND AND WATER PROTECTION

SP 570-3.1, Environmental Ground Protection

In the second paragraph, delete “§105-19” and replace with “DB Section 102-6.”
SPECIAL PROVISION 576
BRIDGE DRAINAGE SYSTEM

SP 576-3.1, Fabrication

B. Welding

At the end of the last sentences in 1. and 2., add “and the Responsible Engineer.”
SP 579-3.3, Full Depth Patches

In the second sentence, after “Engineer” add “and the Responsible Engineer.”
SPECIAL PROVISION 580

STRUCTURAL CONCRETE REMOVAL

SP 580-3.1, General

At the end of the last sentence, last paragraph, add “and the Responsible Engineer.”

SP 580-3.5, Removal of Concrete from Structural Steel Members

Delete the second and third indented paragraphs after the third paragraph and replace with the following:

“Repair is necessary. In this case the Deputy Chief Engineer for Structures Design and Construction (D.C.E.S.) in consultation with the Design-Builder and Design-Builder’s Designer shall determine the method(s) of repair. The Design-Builder’s Designer shall design the repair, subject to review per Part 2 – DB Section 100, DB Section 111-12 and the Design-Builder shall perform repair Work in strict accordance with the design released for construction per Part 2 – DB Section 100, DB Section 111-12.3.

“Replacement of the structural member is necessary. In this case, the D.C.E.S in consultation with the Design-Builder and Design-Builder’s Designer shall determine the Material(s) and method(s) of replacement. The Design-Builder’s Designer shall design the replacement, subject to review per Part 2 – DB Section 100, DB Section 111-12 and the Design-Builder shall perform the replacement in strict accordance with the design released for construction per Part 2 – DB Section 100, DB Section 111-12.3.”
SPECIAL PROVISION 583
SHOTCRETE

SP 583-3.1, Preparation of Surfaces

Delete “§109-05, Extra and Force Account Work” and replace with “Part 2 – DB Section 100, DB Section 109-9[S or L].”

SP 583-3.3, Placement

C. Quality Control, 2. Coring

At the end of the fourth sentence, add “and the Responsible Engineer.”
SPECIAL PROVISION 585
STRUCTURAL LIFTING OPERATIONS

SP 585-3.1, General

In the second paragraph, delete “Deputy Chief Engineer (Structures)” and replace with “Responsible Engineer and the Design-Builder’s Design Quality Control Manager.”

SP 585-3.2, Working Drawings

Delete the third through sixth paragraphs, and replace with the following:

“Working Plans shall be reviewed per Part 2 – DB Section 100, DB Section 111-10 within the time frames agreed per Part 2 – DB Section 100, DB Section 111-5.”
SPECIAL PROVISION 594

TIMBER AND LUMBER

SP 594-2.4, Sampling and Inspection

In the first paragraph, first sentence, replace “Department” with “Design-Builder’s Quality Control organization.”

In the first paragraph, replace “Inspector” with Design-Builder’s Quality Control Inspector.”

In the second paragraph, replace “Department’s Inspection Agents” with “Design-Builder’s Quality Control Inspector(s).”
SPECIAL PROVISION 597
TIMBER BRIDGE RAILING AND TRANSITIONS

SP 597-1, Description

In the second sentence, delete “As soon as the Contract is awarded” and replace with “Within seven Days of selection of the fabricator.”

SP 597-3.1, Fabrication

A. Shop Drawings

Add the following:

“Shop Drawings shall be reviewed per Part 2 – DB Section 100, DB Section 111-10.”
SPECIAL PROVISION 604

DRAINAGE STRUCTURES

SP 604-3.2, Concrete Drainage Structures and Manholes

In the second paragraph, second sentence, and in the third paragraph, delete “submission of complete working drawings to the Engineer for review and approval” and replace with the following:

“review of complete Working Plans per Part 2 – DB Section 100, DB Section 111-10.”

In the fourth paragraph, second sentence, delete “and approval of the Engineer” and replace with “per Part 2 – DB Section 100, DB Section 111-10.”
SPECIAL PROVISION 606

GUIDE RAILING

SP 3.1, General, F.1.

In the first sentence, delete “to the Engineer for approval” and replace with the following:

“for review per Part 2 – DB Section 100, DB Section 111-10.”

In the third sentence, delete “approval” and replace with “successful completion of review per Part 2 – DB Section 100, DB Section 111-10.”
SPECIAL PROVISION 611

PLANTING

SP 611-3.6, Period of Establishment

In paragraph D., delete “§107-06” and replace with “Part 2 – DB Section 100, DB Section 107-25 and Part 5 – Special Provisions, Special Provision 107.”
SPECIAL PROVISION 619

MAINTENANCE AND PROTECTION OF TRAFFIC

SP 619-1.10, Railroad Protection

Delete “§105-09” and replace with “Part 2 – DB Section 100, DB Section 102-6.”

SP 619-3.10, Maintain Traffic Signal Equipment

In paragraphs B. and C., delete “§104-08” and replace with “Part 2 – DB Section 100, DB Section 104-15” and delete “§107-09” and replace with “Part 2 – DB Section 100, DB Section 107-26.”

SP 619-5, Basis of Payment

In the third paragraph, delete “Table 108-1 of §108-03” and replace with “Part 5 – Special Provisions, Special Provision 108C.”
SPECIAL PROVISION 625

SURVEY OPERATIONS, ROW MARKERS AND PERMANENT SURVEY MARKERS

SP 625-1.1, Project Survey and Stakeout

Delete the fifth sentence and replace with the following:

“The Design-Builder shall schedule and perform survey stakeout to meet the needs of its construction schedule. Prior to any design being released for construction, survey stakeout must be completed for the Work being released for construction. See Part 2 – DB Section 100, DB Section 111-12.3.”

SP 625-3.1, Project Survey and Stakeout

In the second paragraph, delete the second sentence and replace with the following:

“The Design-Builder may order Culvert at any time at its own risk, but preferably after determining the lengths of Culverts after staking the proposed Culvert in the planned location after appropriate and necessary engineering study by the Design-Builder.”

In the fourth paragraph, fourth sentence, delete “as the Engineer may direct.”

In the sixth paragraph, first sentence, delete “as directed by the Engineer.”

In the ninth paragraph, delete” §107-08” and replace with “Part 2 – DB Section 100, DB Section 107-21.”

Delete the 13th and 14th paragraphs.

Delete the 15th paragraph and replace with the following:

“The Design-Builder shall take the preconstruction and/or final cross-sections, if any, that are used for payment purposes. These surveys shall be conducted under the direction of and certified by a professional land surveyor or exempt professional engineer who is licensed in New York State. The survey data, calculations, and certifications shall be submitted to the Department with the request for periodic payment and the monthly progress report covering the Work (see Part 2 – DB Section 100, DB Section 108-1).

“The Department may perform verification and check surveys as it deems appropriate.”
SPECIAL PROVISION 632

CRIBBING

SP 632-3.1, Precast Concrete Cribbing

A. Excavation

In the second paragraph, delete “engineer” and replace with “Responsible Engineer.”

B. Erection

In the first sentence, delete “contract documents” and replace with “Design Plans.”

C. Backfill

In the first paragraph, first and second sentences, delete “Engineer” and replace with “Design-Builder’s Construction Quality Control Manager.”
SPECIAL PROVISION 635
CLEANING AND PREPARATION OF PAVEMENT SURFACES FOR
PAVEMENT MARKINGS

SP 635-3.1, General

In the first paragraph, first sentence, delete “contract documents” and replace with “Design Plans and
Project Specifications.”

In the fifth paragraph, first sentence, delete “Engineer at the job site” and replace with “Design Plans and
the Responsible Engineer.”
SPECIAL PROVISION 637
ENGINEER’S OFFICE AND LABORATORY BUILDING

Delete “Engineer’s Office” and replace with “Office(s).”

SP 637-1, Description

In the first sentence, delete “field” after “Consultant.”

Add the following:

“Offices provided for the Department shall not be lesser quality than those provided by the Design-Builder for its own staff, at comparable levels of the organization.”

SP 637-1.1, Engineer’s Office (Type A, B, C, D or E)

After “use a building,” add “office space.”

Delete “and shall be separate from any building used by the Contractor” and replace with “The office(s) will be used by the Department’s Project Manager, Design Compliance Engineer and Design Compliance Monitors, the Construction Compliance Engineer and Construction Compliance Monitors, and supporting staff, including consultant staff. If located in the same building as Design-Builder staff, access to Department office spaces shall be controlled by the Department through lockable doors and shall be physically separated from space used by the Design-Builder by appropriately sound-insulated floor-to-ceiling walls.”

Add the following:

“637-1.4, Design Compliance Office

“The Design-Builder shall supply, for the Department’s design compliance staff use of office space in the same building where the Design-Builder’s Design Manager and Design Quality Control Manager are located.”

Add the following:

“637-1.5, Office for Department’s Project Manager

“The Design-Builder shall supply for the Department’s Project Manager and staff, use of office space in the same building where the Design-Builder’s Project Manager is located.”

SP 637-2.2, General Requirements for All Engineer’s Offices

[Note: Provide Project-specific requirements items listed herein.]

Add the following:
“Provide courier service between all Department and Design-Builder offices on the project twice daily.”

SP 637-2.4, Specific Requirements for All Engineer’s Offices (Type A, B, C, D and E)

[Note: Update Table 1 for project specific requirements.]
SPECIAL PROVISION 640
REFLECTORIZED PAVEMENT MARKING TAPES

SP 640-3.1, General

In the first paragraph, delete “contract documents” and replace with “Design Plans.”
SPECIAL PROVISION 644
SIGN STRUCTURES

SP 644-3.1, Drawings

At the beginning of the section, add the following:

“All drawings shall be reviewed per Part 2 – DB Section 100, DB Section 111-10.”

SP 344-3.4, Excavation

In the first paragraph, delete “§107-05” and replace with “Part 2 – DB Section 100, DB Section 107-7.”

SP 644-3.6, Erection of Sign Structures

B. Field Inspection

In the second sentence, delete “Engineer” and replace with “qualified Design-Builder construction Quality Control staff.”

C. Setting Anchor Bolts

In the last sentence, first paragraph, delete “Engineer” and replace with “Design-Builder.”
SPECIAL PROVISION 645

SIGNS

SP 645-3.5, Sign Drawings

At the end of the first sentence add “or Design Plans.”

After the first sentence, add “Design Plans are required.”

SP 645-3.7, Sign Locations

Delete the existing text and replace with the following:

“Sign locations, if shown in the Contract Documents, are approximate. Locations on Design Plans may be approximate. The exact location for each sign will be determined by the Design-Builder in the field, subject to approval by the Department.”

SP 645-3.15, Field Inspection

Add the following:

“Notwithstanding the provisions of Section 645, all Inspection shall be performed by the Design-Builder’s construction Quality Control organization. Work may also be inspected by the Department’s Construction Compliance Engineer and/or Construction Compliance Monitors.”
SPECIAL PROVISION 648

SUBSURFACE EXPLORATIONS

Add the following:

“The Design-Builder shall be responsible to determine the nature, extent, and locations of subsurface explorations needed to obtain data and support subsequent analysis, design, and construction. The Design-Builder shall also be responsible for determining the adequacy of any subsurface exploration data provided by the Department to support its analyses, design, and construction and to supplement such data provided by the Department as the Design-Builder deems necessary.

“In planning and conducting its subsurface explorations, the Design-Builder shall comply with the technical requirements of Section 648, unless the Department agrees otherwise. The Design-Builder is not required to comply with the administrative requirements specified in Section 648.”

See also Part 4 - Performance Specifications regarding subsurface explorations and geotechnical analysis and design. The requirements of Part 4 – Performance Specifications shall supercede any requirements specified in this Special Provision or Section 648.
SPECIAL PROVISION 654
IMPACT ATTENUATORS

SP 654-3.1, General

A. Drawings

Add the following:

“Working Plans shall be reviewed per Part 2 – DB Section 100, DB Section 111-10 prior to their release for construction.”
SPECIAL PROVISION 663

WATER SUPPLY UTILITIES

SP 663-3.1, General

In the second paragraph, delete “§108-01” and replace with “Part 2 – DB Section 100, DB Section 108-1.”
SPECIAL PROVISION 670

HIGHWAY LIGHTING SYSTEM

SP 645-3, Construction Details

Add the following:

“Notwithstanding the provisions specified in Section 670-3, all Inspections shall be conducted and documented by the Design-Builder’s construction Quality Control staff.”

SP 670-3.1, Plans

Delete the first sentence, first paragraph, and replace with the following:

“The Design-Builder shall prepare Design Plans and Project Specifications covering procurement, installation and construction of the highway lighting system, including the location of its components.”

SP 670-3.2, Shop Drawings

Delete the first paragraph and replace with the following:

“The Design-Builder shall prepare shop drawings that shall be reviewed per Part 2 – DB Section 100, DB Section 111-10. The shop drawings shall cover the following items:

A) Light standards;
B) Breakaway transformer base;
C) Arms;
D) Precast concrete foundations;
E) High mast posts;
F) Head assemblies; and
G) Lowering devices.

“The Design-Builder may order these items and have them shipped as it desires, but shall do so at its own risk.

“Shop drawings shall be neatly drawn and legible.”

SP 670-3.3, Excavation and Miscellaneous Work

Delete “§107-05” and replace with “Part 2 – DB Section 100, DB Section 107-7.”
SPECIAL PROVISION 680

TRAFFIC SIGNALS

SP 680-3.1, Equipment List and Drawings

Delete the existing text and replace with the following:

“The Design-Builder shall conduct a review per Part 2 – DB Section 100, DB Sections 111-10 and 111-12 of Design Plans, detailed Project Specifications, catalog cuts, parts lists, instruction sheets, and shop drawings of Equipment and Materials proposed for use.”

SP 680-3.9, Excavation

In the first paragraph, delete “§107-05” and replace with “Part 2 – DB Section 100, DB Section 107-7.”

SP 680-3.10, Pole Excavation and Concrete Foundation

In the third sentence, second paragraph, insert “shall make and” prior to “assist the Engineer in making.”

Delete the third paragraph and replace with the following:

“Design calculations shall be reviewed per Part 2 – DB Section 100, DB Section 111-12 within the time frames determined and agreed per DB Section 100, DB Section 111-5.”

SP 680-3.11, Poles

Delete the first and third sentences of the fifth paragraph and replace with the following:

“Design calculations shall be reviewed per Part 2 – DB Section 100, DB Section 111-12 within the time frames determined and agreed per Part 2 – DB Section 100, DB Section 111-5.”
SPECIAL PROVISION 697

INTERIM PAYMENT

Delete the existing Section 697.
Delete the existing Section 698.
SPECIAL PROVISION 699

MOBILIZATION

Delete the existing Section 699. See Part 2 – DB Section 100, DB Section 109[S or L].
(Project Name)
DESIGN-BUILD PROJECT

PIN ______

DB CONTRACT DOCUMENTS

PART 6

UTILITY REQUIREMENTS
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APPENDIX A – UTILITY AGREEMENTS

APPENDIX B – UTILITY AGREEMENT STATE LOG
1.0 INTRODUCTION

Part 6 provides information on the Design-Builder’s overall responsibilities as they relate to existing and/or new Utilities, the manner in which Utilities are to be protected, relocated, upgraded, constructed or incorporated into the construction, and who will be responsible for the Work.

The Design-Builder’s attention is directed to the fact that during the life of this Contract the owners and operators of Utilities may make changes in their facilities. These changes may be made by the Utility employees or by contract within the limits of or adjacent to this Contract and may be both temporary and permanent.

Potential Utility conflicts associated with the preliminary design will be identified and brought to the attention of Utility companies. Reference is made to Section 11-102 of the New York State General Obligations Law which concerns the interference and/or delay of the Design-Builder’s progress of Work by Utilities, Chapter 13 of the New York State Department of Transportation Highway Design Manual, and Contract Documents Part 9, Sections 659-664.

The Design-Builder shall abide by this Part 6. The Design-Builder shall also abide by and fulfill the requirements related to Utility facilities or systems included in other Contract Documents.

Existing Utility location information is shown in Contract Documents Part 7, RFP Plans.

See Contract Documents Part 2, DB Section 104, Appendix 104A, Scope of Project.

2.0 GENERAL

Numerous Utilities have been identified which may be affected by the Project. The Design-Builder shall be responsible for resolving all Utility conflicts on the Project, except as otherwise specified.

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2.1 UTILITY COORDINATION

The Design-Builder shall coordinate its design and construction efforts with Utility Owners who may be performing their own design and construction.

All highway design and construction Work performed by the Design-Builder shall be coordinated with the Utility Owners, and shall be subject to utility regulations and applicable provisions of the Contract Documents.

The Department will provide notification to the Utility Owners regarding their obligations. The Design-Builder shall notify the Department at least two working days in advance of each meeting with a Utility Owner’s representative scheduled by the Design-Builder and shall allow the Department the opportunity to participate in the meeting. The Design-Builder shall also provide to the Department copies of all
correspondence between the Design-Builder and any Utility Owner, within seven (7) days after receipt or sending, as applicable.

2.2 UTILITY RELOCATION DESIGN

The responsibility for the design of Utility Relocations will be specified in the Utility Agreements. If no Agreement exists, the design of Utility Relocations shall be by the Design-Builder in coordination with the Utility Owners and shall be clearly indicated on the Utility Relocation Plans.

2.3 SCHEDULING UTILITY RELOCATION WORK

The Design-Builder shall allow in its Baseline Progress Schedule and monthly updates, the time required for Utility Owners to accomplish the tasks and activities for which they are responsible, as specified in the Utility Agreements.

2.4 UTILITY DESIGN AND CONSTRUCTION CONSTRAINTS

All Utilities (whether designed and/or constructed by the Design-Builder or the Utility Owner) along that are to be newly installed, relocated or upgraded shall be placed in accordance with the Department’s utility regulations and policies, unless otherwise Approved by the Department. See Contract Documents Part 3, Design Requirements.

For each Relocation, or installation, the Design-Builder, in coordination with the Utility Owner, shall be responsible for verifying that the Relocated Utility, as designed and constructed, is compatible with and interfaces properly with the Project.

The Design-Builder is responsible for protecting any and all Utilities that have to be protected in order to permit construction of the Project.

2.5 STANDARD OF CARE APPLICABLE TO UTILITY WORK

The Design-Builder shall be responsible for complying with 16 NYCRR Part 753, and requesting mark outs for Utilities which are not members of the One Call System. The Design-Builder shall carry out its Work carefully, and skillfully, and shall support, and secure Utilities so as to avoid damage and keep them satisfactorily maintained and functional. The Design-Builder shall not move or remove any Utility without the Utility Owner’s written consent unless otherwise directed by the Department. At the completion of the Work, the condition of all Utilities shall be as safe and permanent as before.

If any Utilities are damaged by the Design-Builder, it shall notify the affected Utility Owners, which may cause the damage to be repaired at the Design-Builder’s expense, except to the extent that the existence and/or location of such damaged Utility is considered a Differing Site Condition. All such repairs shall be performed in a good and workmanlike manner. If the Design-Builder fails to make any required payment within 30 days after the repairs have been completed and Design-Builder’s receipt of the Utility Owner’s invoice therefor, the Department shall have the right to pay the Utility Owner from the Department’s funds and deduct an amount sufficient to cover the cost from any moneys due or that may become due the Design-Builder under this Contract.

The Design-Builder shall include provisions for its obligations with respect to Utilities in its Quality Plan.
2.6 FAILURE OF UTILITY OWNERS TO COOPERATE

The Design-Builder shall make diligent effort to obtain the cooperation of each Utility Owner as necessary for the Project. If the Design-Builder becomes aware that a Utility Owner is not cooperating in providing needed Work or approvals, the Design-Builder shall notify the Department immediately of such problem. After such notice, the Design-Builder shall continue to diligently seek to obtain the Utility Owner’s cooperation and shall assist the Department as reasonably requested by the Department with regard to the problem.

3.0 UTILITY GROUPS

Utilities affected by the Project fall into one of two groups based on the extent of Utility information gathered as part of the preliminary design, namely Utility Group A and Utility Group B.

3.1 UTILITY GROUP A

Utility Group A are those Utilities which have been identified with a specific Utility Owner. The Department has collected extensive data for Utility Group A. Utility Group A includes a total of ____ (_) Utility Owners.

The Design-Builder’s responsibilities for Utility Group A shall include:

A) Verifying Utility locations;
B) Locating Utilities and identifying potential conflicts not previously identified;
C) Providing information to the Department to assist in acquiring additional ROW or easements, if necessary; and
D) Coordinating and/or designing/constructing Utility Relocations and/or new Utilities and the protection of existing Utilities in accordance with this Part 6.

3.2 UTILITY GROUP B

Group B Utility Owners include all those Owners of Utilities not yet identified. The Design-Builder’s responsibilities for Utility Group B shall be:

A) To take the lead in identifying the ownership of each facility or line identified which requires either relocation or protection; and
B) All responsibilities listed for Utility Group A.

4.0 COORDINATION REQUIREMENTS

The Design-Builder shall provide information as required and maintain close coordination with the Department and Utility Owners to achieve timely relocations.

4.1 PRIOR DEPARTMENT ACTIONS

The Department has coordinated its efforts with all known Utility Owners and has:

A) Developed a contact list;
B) Identified potential Utility conflicts;
C) Developed a set of existing Utility Plans identifying known existing Utility facilities; and
D) Developed Utility Agreements.

4.2 DESIGN-BUILDER’S COORDINATION REQUIREMENTS

The following requirements identified by the Department are highly important to the Utility Owners. The Design-Builder shall:

A) Keep Utility Owners well informed of construction schedules and notify the Utility Owners at least twenty-four (24) hours in advance of any Work in the vicinity of the Utility Owners’ facilities;

B) Keep Utility Owners well informed of changes that affect their own Utility facilities;

C) Give the Utility Owners forty-eight (48) hour notice of potential impacts to service;

D) Ensuring Utility Owners are involved in making the decisions that affect their own facilities, so Utility Owners are able to provide uninterrupted service to their customers or minimize interruption of services;

E) Cooperate with the Utility Owners to solve relocation/installation issues to the extent that such relocations/installations are consistent with the Design-Builder’s Scope of Work as otherwise set forth in the Contract Documents and without causing the Department to incur any unnecessary expense to the Project, or causing the Utility Owners to incur unnecessary expense;

F) Act diligently in continuing the positive relationship that the Department has developed with the Utility Owners; and

G) Coordinate with those Utility Owners who perform their own Work by scheduling adequate time to accomplish their Work.

4.3 DESIGN REVIEWS

The Design-Builder shall invite affected Utility Owners to participate in all of the Design-Builder’s and the Department’s Design Reviews (see Contract Documents Part 2, DB Section 111).

Some Utility Owners will design and construct any required Utility Relocations/revisions for their Utilities. The Design-Builder shall be required to correlate these Utility designs into its own design prior to the design review.

4.4 TIME FOR UTILITY WORK BY UTILITY OWNERS

See Section 9.1.

4.5 MEETINGS AND COORDINATION

Within 15 days of Notice to Proceed, the Design-Builder shall schedule meetings with each Utility Owner, the Design-Builder and the Department. These meetings are for the purpose of reviewing all items related to the Utility Work, including all items which affect the Baseline Progress Schedule, the time required to procure construction Material and the period of time Utility service may be curtailed. These meetings will also be used to reach concurrence on the number and extent of known affected Utility lines or issues, to discuss the possible elimination of conflicts, to establish the methods to be used at each specific location and procedures for addressing conflicts discovered during design and/or construction.
The Design-Builder shall jointly schedule at least monthly Utility meetings with the Department to discuss Project progress, issues, and planned Work for all phases of Utility Work including design and construction. These meetings shall include the Design-Builder’s and the Department’s Key Personnel with responsibilities for Utilities. The Design-Builder and the Department will jointly develop the agenda for these meetings. The Design-Builder shall be responsible for providing meeting facilities unless otherwise agreed. The Design-Builder shall keep minutes of the coordination meetings and distribute copies of the minutes to participants, including representatives of Utility Owners (even if not present) who have facilities in the areas reviewed, within five (5) working days after the meeting date.

5.0  DESIGN REQUIREMENTS

The design and construction of the Utility Relocations and protections-in-place for the Project assigned to the Design-Builder shall be in accordance with the requirements listed in Section 5.1. The Design-Builder shall obtain clarification of any unresolved ambiguity prior to proceeding with design or construction.

5.1  PRECEDENCE OF UTILITY REQUIREMENTS

Notwithstanding Contract Documents Part 2, DB Section 102-2 in design and construction of Utilities, the following order of precedence shall apply unless otherwise specified:

A) Department Regulations and any other applicable codes and standards;
B) Part 2, Design-Build Section 100;
C) Part 5, Standard Design-Build Special Provisions to the Standard Specifications;
D) Part 4, PS__, Environmental Requirements;
E) Utility Owner requirements;
F) Part 3, Design Requirements; and
G) Part 7, RFP Plans.

6.0  RESPONSIBILITIES

6.1  CONTRACTOR (UTILITY GROUPS A & B)

The Design-Builder shall be responsible for coordinating its design and construction Work with Utility Work as indicated herein and in Contract Documents Part 7, subject to the exclusions set forth in Contract Documents Part 2, DB Section 104.

The Design-Builder shall assist to identify and resolve all Utility conflicts, and shall coordinate the construction, relocation, removal and/or protection of each affected Utility with the applicable Utility Owner. If the Design-Builder discovers Utilities not shown on the preliminary design that are affected by the construction, the Design-Builder shall notify the Department within 24 hours of discovery. The Design-Builder and the Department shall cooperate in identifying and notifying the Utility Owner.

6.1.1  Cost of Temporary Relocations

The Design-Builder shall be responsible for the cost of temporary Utility Relocations including cost of temporary easements, necessary to accommodate its own construction operations and/or methods, except as specified in the Contract Documents.
6.1.2 Relocation Permits

Where the Design-Builder is performing Utility Relocation construction Work, the Design-Builder shall obtain utility permits and comply with all applicable Utility Regulations. If the Design-Builder has reasonable cause to believe that a Utility Owner does not have necessary approvals, or is in violation of the approvals, the Design-Builder shall notify the Department immediately after discovery.

6.1.3 Additional ROW and/or Easements

The Design-Builder shall follow the procedures outlined in Contract Documents Part 2, DB Section 107-22, if additional right-of-way or easements are required for the Relocation of any Utilities.

6.1.4 Point of Contact

The Design-Builder shall coordinate, cooperate and work with the contact person designated by the Utility Owner.

6.1.5 Instructions and Authorizations

The Design-Builder shall be responsible for obtaining specific written instructions and authorization from the Utility Owner, for any design or construction the Design-Builder performs on behalf of the Utility Owner, and for verifying that they are consistent and compatible with the Design-Builder’s design.

6.1.6 Verification of Utility Locations and Marking of Locations in the Field

The Design-Builder shall be responsible for verifying the exact location of each affected Utility on the Project regardless of the information that has been provided by the Department or the Utility Owner.

The Design-Builder shall comply with 16 NYCRR Part 753 to mark Utility locations.

6.1.7 Components of Utilities

The Design-Builder shall consider necessary appurtenances to each Utility facility (such as the Utility source, guide poles, feeder service lines, supports, etc.) as part of the Utility.

6.1.8 Utility Owner’s Right to Inspect

The Utility Owner may have the right to inspect the Work on its facilities that is to be performed by the Design-Builder. The inspection shall be governed by the terms of the Utility Agreements.

6.1.9 Design-Builder-Caused Changes to Utility Owner Work

If the Utility Owner maintains responsibility for the design and/or construction and the Design-Builder revises the conditions, the Design-Builder shall be responsible for the cost, schedule delays, etc., related to the change.

6.1.10 Abandoned Utilities

Unless specifically noted otherwise in the Contract Documents, or directed otherwise in writing by the Department, the Design-Builder will not be required to remove abandoned underground Utilities or pipes.
6.1.11 Quality Control

The Design-Builder shall provide Quality Control for all the Utility Relocation Work, performed by the Design-Builder, in accordance with Contract Documents Part 2, DB Section 112.

6.1.12 Changes to Design

All changes to designs that have received the Department’s Project Manager’s or Utility Owner’s Consultation and Written Comment and/or approval shall be dealt with in accordance with Contract Documents Part 2, DB Section 111, including obtaining the Department’s Project Manager’s and Utility Owner’s Consultation and Written Comment and/or approval for the change.

6.1.13 Utility Data Base

The Utility responsibilities outlined by the Department in Section 9.3 represent current Department thinking and may change as the Project develops.

6.1.14 Design-Builder Design and/or Construction

The Design-Builder shall only be responsible for the Utility Relocation design and/or construction where Section 9.3 indicates that such Work will be performed by the Design-Builder, and shall include the price for such Work in its Price Proposal.

6.1.15 Design Review

The Design-Builder shall submit its Utility Relocation Plans to the Department’s Project Manager and to the Utility Owner for Work performed by the Design-Builder, for Consultation and Written Comment. See also Contract Documents Part 2, DB Section 111.

6.1.16 Construction Record

The Design-Builder shall maintain a record of the design and construction activities of all Utility facilities that have been performed by the Design-Builder, and have been designed and released for construction after Notice to Proceed. Individual files shall include a record of the following information:

A) Design Plans that have been reviewed by the Utility Owner and received Consultation and Written Comment by the Department;
B) Notification of construction dates;
C) Record of meetings with Utility Owner;
D) Signature of Utility Owner inspector on Design Plans (optional);
E) Record of Utility Owner inspector present at any time;
F) Any revisions to the Design Plans;
G) Dates of construction completed;
H) All other as-built requirements stipulated in the Department’s Utility Regulations; and
I) Any Utility Agreements.
6.1.17 Utility Damage Reports

The Design-Builder shall complete a Utility Damage Report within 24 hours of damage and submit it to the Department. The Design-Builder shall report any Utility facilities damaged immediately to the Utility Owner and the Department.

6.1.18 Protection of Utility Facilities

The Design-Builder shall prepare a protection plan for all Utility facilities to be left in place and protected. The Design-Builder shall also obtain written approval of the plan from each Utility Owner of the specific facility to be protected.

6.1.19 Utility Relocation Master Plan

The Design-Builder and the Department shall coordinate with the Utilities to prepare a Utility Relocation Master Plan within 45 days of NTP and shall update the plan at least quarterly throughout the duration of the Contract. Updates shall be submitted to the Department’s Project Manager for Consultation and Written Comment.

6.1.20 Betterments

Some Utility Owners may request betterments to their service lines as a result of required relocations of their lines. The Design-Builder and the Utility Owners may work out an agreement to perform these betterments as separate contracts to which the Department is not a party and has no responsibility, actual or implied, subject to the Department’s permitting process.

7.0 DESIGN AND APPROVAL OF THE UTILITY RELOCATION PLANS

After the Design-Builder has advanced the Project design sufficiently to clearly define Utility impacts, the Utility Relocation Plans shall be prepared by the Design-Builder. If the Utility Owner is preparing the design, the Design-Builder and the Department shall review the Utility Relocation Plans to be sure that they are consistent with the Design-Builder’s design. Upon review by the Utility Owner and the Design-Builder, and Consultation and Written Comment by the Department, the Utility Relocations may be constructed. Any subsequent revisions to the Utility Relocation Plans will require the review of the affected Utility Owner and the Department’s Consultation and Written Comment.

8.0 SUBMITTALS

8.1 DESIGN - UTILITY GROUPS A & B

On design Work which has been performed by the Design-Builder, the Design-Builder shall furnish to the Department prior to the start of construction of each Utility Relocation, Utility Relocation Plans and Project Specifications completed to the levels of design and stages of design development and reviewed and certified per Contract Documents Part 2, DB Section 111. For designs prepared by the Utility Owner, the designs shall be reviewed and approved by the Design-Builder and receive the Department’s Consultation and Written Comment, for consistency and compatibility with the Design-Builder’s design. Prior to construction, the Utility Owner will review all designs, whether by the Design-Builder or the Utility Owner.

8.2 CONSTRUCTION - UTILITY GROUPS A & B
The Design-Builder shall provide two (2) sets of As-Built Utility Plans to the Department and each Utility Owner for Utility Relocation Work constructed by the Design-Builder. The As-Built Utility Plans shall comply with as-built requirements stipulated in the Department’s Utility Regulations and shall be part of the project As-Built Plans.

9.0 ADDITIONAL UTILITY INFORMATION

9.1 UTILITY OWNER DESIGN AND CONSTRUCTION TIME

The following four (4) categories indicate the response the Design-Builder may expect from the Utility Owners.

9.1.1 Category One: Utility Owner to Design and Construct

The Utility Owner will perform all their own design and construction. It is the intent of this Utility Owner to design and relocate their lines out of the Design-Builder’s construction area prior to or coordinated with the Design-Builder’s construction. Design may require from several days to several weeks. The construction process is variable and may be performed in stages. Procedures are planned to process minor design and construction requests on the same day received and give Authorization to Proceed immediately. Some Material may require up to several months delivery schedule while other may be available in stock. The earlier the Utility Owner is involved, the sooner the work may be designed and constructed.

9.1.2 Category Two: Utility Owner to Perform Design and No Construction

There are Utility Owners who will perform design for their own lines. See Section 9.3 for identification of design and construction responsibility. The Design-Builder shall be responsible to coordinate the schedule and construct the Work.

9.1.3 Category Three: Utility Owner to Construct

There are Utility Owner(s) who will construct their Utility Relocations. See Section 9.3. The Design-Builder shall be responsible to perform the design and coordinate its construction schedule with that of the Utilities, so the Utility Owners may know when they can perform their Work.

9.1.4 Category Four: Design-Builder to Perform Design and Construction

There are Utility Owner(s) who will neither design nor construct their Utility Relocations. See Section 9.3. The Design-Builder shall be responsible to coordinate its construction schedule with the Utility Owners, so the Utility Owners may know when their facilities will be impacted by the Design-Builder’s Work.

9.2 UTILITY DAMAGE REPORT

The Design-Builder is responsible for developing a Utility Damage Report form to use in the event a Utility is damaged. The Report will be submitted to the Department’s Project Manager. The following information shall be included:
UTILITY DAMAGE INFORMATION:
Exact Location
Date & Time of Incident
Reported By
Repaired By

UTILITY OWNER INFORMATION:
Utility Owner
Utility Owner Contact
Time Utility Owner Contacted

LOCATOR INFORMATION:
Locator Service
Date of Locate Request
Locate Expiration Date
Locate Log Number
Was Line Marked
Distance from Damage to Mark

CONTRACTOR INFORMATION:
Name of Supervisor
Name of Foreman
Name of Witness

SIGNATURES:
Design-Builder’s Supervisor
Utility Owner
Locator Service

DESCRIPTION

9.3 UTILITY RESPONSIBILITY MATRIX

This Section 9.3 specifies the entity responsible for design and construction of Utility Relocations for each Utility Owner.

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<th>UTILITY NAME</th>
<th>RESPONSIBILITY</th>
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RESPONSIBILITY KEY:

1. Utility Owner will design and construct
2. Utility Owner will perform design and no construction
3. Utility Owner will construct
4. Design-Builder will design and construct

9.4 UTILITY CONTACTS

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9.5 LOCATIONS OF POTENTIAL UTILITY CONFLICTS

The potential Utility conflicts listed below have been identified based on Preliminary Design. The actual number and type of Utility conflicts may not be represented in the table below. The table is not to be considered an inclusive and complete list of all Utility conflicts.

<table>
<thead>
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(Project Name)
DESIGN-BUILD PROJECT

PIN __________

DB CONTRACT DOCUMENTS
PART 6
UTILITY REQUIREMENTS

APPENDIX A
UTILITY AGREEMENTS
(Project Name)
DESIGN-BUILD PROJECT

PIN __________

DB CONTRACT DOCUMENTS
PART 6 - UTILITY REQUIREMENTS

APPENDIX B
UTILITY AGREEMENT STATUS LOG
(Project Name)
DESIGN-BUILD PROJECT

PIN __________

DB CONTRACT DOCUMENTS

PART 7

RFP PLANS
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APPENDIX A – DEPARTMENT PLANS

APPENDIX B – STAKEHOLDER PLANS
1.0 INTRODUCTION

This Part 7 contains RFP Plans created during Preliminary Design and Standard Drawings of the Department and other stakeholders that shall be used for the Project. The RFP Plans also include the applicable CADD files in electronic format on CD ROMs.

The RFP Plan types contained herein are categorized as follows:

• ADMINISTRATIVE;
• DIRECTIVE; AND
• INDICATIVE DRAWINGS.

A) Administrative Plans are those that contain general project or plan information such as cover sheets, index sheets, and similar non-technical information.

B) Directive Plans are those plans that depict required elements and components of the project within specifically defined parameters. The Design-Builder has limited or no latitude to adjust components or details shown on Directive Plans. Examples of Directive Plans include:

1) Basic Project Configuration Plans that depict the Basic Project Configuration within the limits defined in the Contract.

2) Standard Plans, those detailed plans that depict the dimensional requirements of certain features of the project and components;

3) Final Department Plans (see below), signed and sealed by a licensed engineer, that represent the final design of a self-contained component of the project, such as a bridge or drainage structure. The component is essentially a piece of design-bid-build work within the Project. The Design-Builder has no responsibility for the design of the component except for the design of its interface with other components of the Project. The component shown on Final Department Plans is to be constructed as shown; and

4) Right-of-Way Plans that depict the limits of rights-of-way or easements obtained or to be obtained by the Department.

C) Indicative Plans represent the nature and type of work to be designed and constructed as part of the project and reflect items for which the Department has no particular view on the specific configuration or material used in the final product, such as:

1) Structure type (concrete or steel);

2) Pavement type (concrete or asphalt);

3) Drainage material or size; or

4) Pile type.

D) Indicative Plans do not necessarily reflect the final locations, quantities or all elements required to complete the design. The Design-Builder has more latitude in determining the requirements and limits of features illustrated on Indicative Plans. Indicative Plans are used to represent the type of work intended to be designed and constructed. Indicative Plans include:

1) Typical sections;

2) Existing utility and drainage location plans;
3) Planned utility or drainage relocations;
4) Landscaping;
5) Drainage features;
6) Bridge locations;
7) Lighting;
8) Intelligent Transportation System (ITS) installations; and
9) Signing and striping/pavement markings.

2.0 PLAN TYPES AND CATEGORIES

There are numerous types of Plans as shown in this Section 2.0. For each of the types of Plans this Part 7 contains a listing of drawing additions, deletions, changes and/or errata by drawing number and electronic file number. Where there is a discrepancy between the RFP Plans created during Preliminary Design and the drawing addition, deletion, change and/or errata shown herein, the latter shall take precedence.

The Plan types and categories are shown in Table 7-1:

<table>
<thead>
<tr>
<th>Plan Type</th>
<th>Plan Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cover Sheet and Index of Plans</td>
<td>Administrative</td>
</tr>
<tr>
<td>Basic Project Configuration Plans</td>
<td>Directive</td>
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<tr>
<td>Standard Plans</td>
<td>Directive</td>
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<td>Right-of-Way Plans</td>
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<td>Utility Plans</td>
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<tr>
<td>Typical Sections</td>
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<td>Landscaping Plans</td>
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<td>Lighting</td>
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<tr>
<td>Signing and Striping/Pavement Marking Plans</td>
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<tr>
<td>Drainage Plans</td>
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</table>

3.0 DEPARTMENT PLANS

Department Plans are provided in Appendix A.

The CADD files for the RFP Plans are identified by the Drawing Number shown on the Index of Plans.

4.0 STAKEHOLDER PLANS

Plans provided by other stakeholders are provided in Appendix B of this Part 7. These Plans shall be used for the components of those portions of the Project under the jurisdiction of the stakeholder indicated. Deviations from the requirements of the stakeholder Plans will only be permitted upon receipt of written approval by the cognizant stakeholder and upon receipt of Consultation and Written Comment from the Department’s Project Manager.
(Project Name)
DESIGN-BUILD PROJECT

PIN __________

DB CONTRACT DOCUMENTS
PART 7
RFP PLANS

APPENDIX A
DEPARTMENT PLANS
(Project Name)
DESIGN-BUILD PROJECT

PIN ________

DB CONTRACT DOCUMENTS
PART 7
RFP PLANS

APPENDIX B
STAKEHOLDER PLANS
(Project Name)

DESIGN-BUILD PROJECT

PIN ________

DB CONTRACT DOCUMENTS
PART 8

ENGINEERING DATA
1.0 INTRODUCTION

[Part 8 should consist of data, such as:

- Survey Data
- Geotechnical Investigation Data
- Accident Historical Data
- Bridge Condition Survey Data]
- Traffic Counts and Analyses;
- Weather Data;
- Streamflow and Hydrologic Data; and
- Other Project-related Data]
Sections 200 through 700 dated January 2002 and Engineering Instructions

(Note: Provide list of current, applicable Engineering Instructions, as required)
(Project Name)
DESIGN-BUILD PROJECT

PIN __________

DB CONTRACT DOCUMENTS

PART 10

DESIGN-BUILDER’S PROPOSAL

[The DB Proposal will be incorporated into the Contract Documents as Part 10 when the Design-Build Contract is signed and executed.]
(Project Name)
DESIGN-BUILD PROJECT

PIN

INSTRUCTIONS TO PROPOSERS

PRICE CENTERS
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PRICE CENTER EXAMPLE

Sample Project:

Highway/Bridge Design-Build Project including:

- Highway reconstruction;
- Bridge construction;
- Utility relocations;
- New storm drain; and
- Landscaping.

The Project has project-wide activities in the categories of:

- Preliminary and General Requirements, including mobilization;
- Engineering and design; and

The following Price Centers were identified and the Contractor priced the price centers as shown:

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<tr>
<th>Price Center</th>
<th>Description</th>
<th>Price Center Value</th>
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<td>Preliminary and General Requirements</td>
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<td>2</td>
<td>Engineering and Design</td>
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<td>3</td>
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<td>4</td>
<td>Roadway excavation, embankment &amp; drainage</td>
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<td>7</td>
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<td>8</td>
<td>Storm drain</td>
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<td>$200,000</td>
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</table>

Contract Price: $11,780,000

The project has a limit of 18 months from NTP to completion.
The contractor has identified the following milestones at the times (months) from NTP indicated.

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<tr>
<th>PC / Milestone #</th>
<th>Activity</th>
<th>Price Distribution</th>
<th>Start Date (Months from NTP)</th>
<th>Finish Date (Months from NTP)</th>
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The resulting Contract Interim Payment Schedule (IPS-C) is shown below.

Note:

1. For discontinuous activities with a Price Center (for example, excavation & embankment) the start and finish dates represent milestones. If an activity does not start on as scheduled, payment will not commence until the work actually starts.
2. If an activity starts or finishes early or late, it will likely require in an adjustment in the IPS-C for the affected Price Centers and the project as a whole.

Payments would be made as follows:

1. If all milestones are met as scheduled, payment will be made in accordance with the IPS-C as shown.
2. If a milestone is missed, payment in the affected Price Center would be suspended at the previous month’s level for that Price Center. All other payments for other Price Centers would be made as scheduled. For example, if Excavation & Embankment Phase 1 did not start until month 5, the payment for PC4 would be $0 for month 4, not the $150,000 shown on the schedule. If the same activity was not completed by the scheduled date of month 8, cumulative payment for the Price Center would be suspended at the $750,000 (previous month’s) level instead of the $900,000 shown on the schedule. If the milestone were achieved by the following month, the cumulative payment in month 9 would be restored to the $900,000 level.
3. Likewise, if a milestone is achieved early, payment will be made at the level represented at the scheduled milestone date. For example, if the storm drain (PC8) were completed in month 7 instead of the scheduled month 8, cumulative payment at the end of month 7 would be $1,000,000 instead of the scheduled amount of $800,000.
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Planned Payment ($M) - Month after NTP

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**Project**

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Ref Doc – Price Center

[Insert date]
### New York State Department of Transportation

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Identify Price Centers
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INSTRUCTIONS TO PROPOSERS

REFERENCE DOCUMENTS

Typical Reference Documents include:

- As-Built Plans of existing facilities;
- Environmental Documents and Decisions;
- Background or Preliminary Reports;
- Data or reports from other projects in the vicinity;
- Stakeholder Agreements;
- Memoranda of Understanding;
- Historical Data and Information; and
- Other Non-Contractual Information of Potential Interest to Proposers.