



New York State Thruway Authority

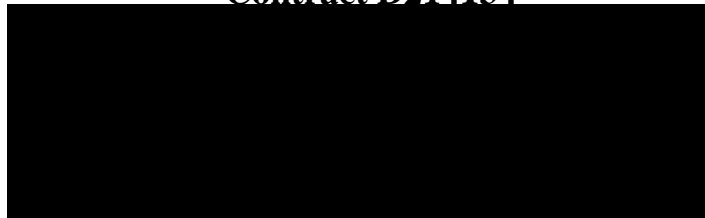
# **TAPPAN ZEE HUDSON RIVER CROSSING PROJECT**

## **DB CONTRACT DOCUMENTS PART 4**

### **UTILITY REQUIREMENTS**

**CONFIRMED  
November 21, 2012**

Contract D214134



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## **PART 4. UTILITY REQUIREMENTS**

### **4.1. Scope**

This *Part 4 – Utility Requirements* 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 Project Limits of or adjacent to this Contract and may be both temporary and permanent.

Potential utility conflicts shall be identified and brought to the attention of utility owners. Reference is made to Chapter 13 of the *New York State Department of Transportation Highway Design Manual*, and *Part 8 – Special Specifications* Sections 659-664 and all applicable NYSTA Standards.

The Design-Builder shall abide by this *Part 4*. The Design-Builder shall also abide by and fulfill the requirements related to utility facilities or systems included in other Contract Documents.

This *Part 4* applies to existing and proposed underground and overhead utilities.

No further third party utilities other than those that are already carried on the existing Governor Malcolm Wilson Tappan Zee Bridge shall be installed by the Design-Builder on the new Crossing without prior consent in writing from the Authority.

### **4.2. General**

Utilities have been identified which may be affected by the Project. These utilities are shown in *Part 7 – Engineering Data – Existing Utilities*. The Design-Builder shall be responsible for resolving all utility conflicts on the Project, except as otherwise specified.

#### **4.2.1. Utility Coordination**

The Design-Builder shall be responsible for obtaining DB Utility Agreements and shall coordinate its design and construction efforts with utility owners as set forth in *Part 2 – General Provisions* of the Contract. All design and construction Work performed by the Design-Builder shall be coordinated with the utility owners, and shall be subject to utility Standards and applicable provisions of the Contract Documents.

The Design-Builder shall notify the Authority 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 Authority the opportunity to participate in the meeting. The Design-Builder shall also provide to the Authority copies of all correspondence between the Design-Builder and any utility owner, within seven days after receipt or sending, as applicable.

#### **4.2.2. Utility Relocation Design**

Responsibility for design of relocations covered by an Authority Utility Agreement shall be as set forth in each such Authority Utility Agreement. The DB Utility Agreements shall allocate responsibility for the design of utility relocations that are subject to such DB Utility Agreements. Design-Builder shall clearly indicate the allocation of responsibility for design of utility relocations on the Utility Relocation Plans.

Attached hereto as Exhibit B are template forms of DB Utility Agreements for relocations managed either by the Design-Builder, or by the Utility. The template forms are provided for Design-Builder's convenience and have not been reviewed by the Utilities; the Authority makes no assurance that any particular Utility will agree to the terms as set forth in the template agreements without modification.

#### **4.2.3. 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, Relocation Plans, and this Part 4.

#### **4.2.4. Utility Design and Construction Constraints**

All utilities (whether designed and/or constructed by the Design-Builder or the utility owner) within the Project Limits that are to be newly installed temporarily or permanently, relocated or upgraded shall be placed in accordance with the Authority's utility regulations and policies, unless otherwise approved by the Authority.

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.

#### **4.2.5. Standard of Care Applicable to Utility Work**

The Design-Builder shall be responsible for complying with 16 NYCRR Part 753("Part 753"), and requesting mark outs for utilities which are not members of the One Call System as defined in Part 753. 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 Authority. At the completion of the Work, the condition of all utilities shall be as safe and permanent as before.

Design-Builder shall be responsible for the cost of repair of any utilities damaged by Design-Builder. In the event of any such damage, Design-Builder shall notify the affected utility owners, and shall enter into an agreement with such utility owner allocating responsibility for design and construction of any such repairs, and the schedule for completing the repairs. All such repairs made by Design-Builder shall be performed in a good and workmanlike manner. If the utility owner undertakes the repairs and 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 therefore, the Authority will have the right to pay the utility owner from the Authority'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.

#### **4.2.6. Coordination with Utility Owners**

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 Authority immediately of such problem. After such notice, the Design-Builder shall continue to diligently seek to obtain the utility owner's cooperation, and the Authority and Design-Builder each shall assist the other party as reasonably requested by such other party with regard to the problem.

### **4.3. Affected Utilities**

#### **4.3.1. Design-Builder's Responsibilities**

With respect to utilities for which Authority has identified a specific utility owner, the Design-Builder's responsibilities shall include:

- A. Verifying utility locations;
- B. Identifying potential conflicts not previously identified;

- C. Providing information to the Authority to assist in acquiring additional ROW or easements, if necessary (refer to *Part 3 – Project Requirement 7 – Right of Way*); and
- D. Coordinating and/or designing/constructing utility Relocations and/or new utilities and the protection of existing utilities in accordance with this *Part 4* and any additional requirements of the utility owner as set forth in the relevant Authority Utility Agreement .

With respect to utilities for which no utility owner has been identified, as well as any unknown utilities that are subsequently identified by Design-Builder, Design-Builder shall be responsible for identifying the ownership of each facility or line identified which requires either relocation or protection, and for all those responsibilities set forth in A through D, above; provided, however, that with respect to item D, Design-Builder shall be responsible for negotiating and entering into a DB Utility Agreement for such unknown utilities and/or utilities for which no owner has been identified, and Design-Builder's responsibilities in item D shall apply with respect to each such DB Utility Agreement.

#### **4.3.2. Authorities' Responsibilities for Utilities with Identified Utility Owner**

The Authority shall perform Authority's obligations with respect to relocation of utilities at River Road (Piermont Avenue) as specified in the Summary of Key Terms of Authority Utility Agreements attached hereto as Exhibit A and incorporated herein by reference, which the Authority expects to be executed prior to award of Contract. If any Authority Utility Agreement is not executed prior to award of Contract, the Authority shall notify the Design-Builder when any Authority Utility Agreement is executed, and provide a copy to the Design-Builder promptly following execution of the same.

#### **4.3.3. Overall Level of Accuracy**

The data received from the utility owners and the Authority has been used to set the approximate locations of utility facilities on the project base mapping. The accuracy and quality level (QLA) applied at this stage correspond to quality level D (per NYSDOT *Highway Design Manual* Chapter 13-6 E Subsurface Utility Engineering and Quality Levels). Quality level D is the lowest degree of accuracy. The information shown on the Existing Utility Sheets included in *Part 7 – Engineering Data* was derived solely from existing NYSTA, NYSDOT and utility company records or recollections.

#### **4.3.4. Companies/Agencies and Confidentiality**

#### **4.3.5. (Not used)**

### **4.4. Coordination Requirements**

The Design-Builder shall provide information as required and maintain close coordination with the Authority and utility owners to achieve timely relocations, new installations and new service connections necessary as part of the Design-Builder's design and construction.

#### **4.4.1. Prior Authority Actions**

The Authority 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 sheets identifying known existing utility facilities; and
- D. Established key terms and initiated negotiations to obtain Authority Utility Agreements as set forth in the Summary of Key Terms of Authority Utility Agreements set forth in Exhibit A hereto.

#### **4.4.2. Design Builder's Coordination Requirements**

The Design-Builder shall be responsible for coordination with utility owners. It is important that Utility Owners be kept informed of Design-Builder's activities and schedule. In addition to satisfying any requirements set forth in applicable Governmental Rules and Standards, including but not limited to Part 753, the One-Call notification requirements referenced in *DB § 107-15(A)*, the Authority Utility Agreements, and in the DB Utility Agreements, Design-Builder shall undertake the following activities, which have been identified by the Authority as important to utility owners, including:

- A. Keep utility owners well informed of construction schedules and notify the utility owners at least twenty-four hours in advance of any Work in the vicinity of the utility owners' facilities, that will not impact service;
- B. Keep utility owners well informed of changes that affect their facilities;
- C. In addition to any required notice, give the utility owners 48 hours' notice of potential impacts to service;
- D. Ensure utility owners are involved in making the decisions that affect their own facilities and 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 Authority 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 Authority 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.

#### **4.4.3. Design Reviews**

The Design-Builder shall invite affected utility owners to participate in all pertinent Design-Builder's and Authority's Design Reviews (see *DB §111*).

Some utility owners will design and/or construct any required utility Relocations and revisions for their utilities. The Design-Builder shall be required to incorporate these utility designs into its own design prior to the Design Review.

#### **4.4.4. Meetings and Coordination**

The Design-Builder shall schedule meetings with each utility owner, the Design-Builder and the Authority. 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 Authority 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 Authority's personnel with responsibilities for utilities. The Design-Builder and the Authority 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 working days after the meeting date.

#### **4.5. Standards and References**

The Design-Builder shall perform the utility work in accordance with this *Part 4* and the relevant requirements of the Standards listed in this Section 4.5, unless otherwise stipulated in this Project Requirement. Standards specifically cited in the body of this *Part 4* 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.

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 Standards listed in Section 4.5.1 herein. The Design-Builder shall obtain clarification of any unresolved ambiguity prior to proceeding with design or construction.

##### **4.5.1. Standards and Precedence of Utility Requirements**

Notwithstanding the order of precedence of Contract Documents listed in *DB §102-2*, in design and construction of utilities, unless otherwise specified, Standards shall apply to Utility Work based on the following order of precedence:



##### **4.5.2. References**



#### **4.6. Design-Builder Responsibilities**

The Design-Builder shall be responsible for coordinating its design and construction Work with utility work as indicated herein and in *Part 6 – RFP Plans*, consistent with and subject to the terms and conditions set forth in *DB §104*.

The Design-Builder shall 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 immediately suspend construction operations at the site affected by such utility as provided in *DB § 102-5.6* and shall notify the Authority within 24 hours of discovery of such previously unknown utilities. The Design-Builder and the Authority shall cooperate in identifying and notifying the utility owner.

#### **4.6.1. 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.

#### **4.6.2. Relocation Permits**

Where the Design-Builder is performing utility Relocation construction Work, the Design-Builder shall obtain utility permits, roadway permits and work 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 Authority immediately after discovery.

#### **4.6.3. Additional ROW and/or Easements**

The Design-Builder shall follow the procedures outlined in *DB §107-22*, if additional right-of-way or easements are required for the Relocation of any utilities. See also *Part 3 – Project Requirement 7 – Right of Way*.

#### **4.6.4. Point of Contact**

The Design-Builder shall coordinate, cooperate and work with the contact person designated by the utility owner. Section 4.9.3 herein presents contact details by utility owner.

#### **4.6.5. 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.

#### **4.6.6. 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 Authority or the utility owner.

#### **4.6.7. 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.

#### **4.6.8. 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.

#### **4.6.9. 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 costs and schedule delays related to the change.

#### **4.6.10. Abandoned Utilities**

Unless otherwise directed by the Authority, the Design-Builder shall remove abandoned utilities and utilities proposed for abandonment within the New York State Thruway Right Of Way pursuant to the requirements set forth in DB § 104-4.2.6(E)(3), (5) and (6).

#### **4.6.11. Quality Control**

The Design-Builder shall provide Quality Control for all the utility Relocation Work, performed by the Design-Builder, in accordance with *DB §112*.

#### **4.6.12. Changes to Design**

All changes to designs that have received the Authority's or utility owner's consultation and written comment and/or approval shall be dealt with in accordance with *DB §111*, including obtaining the Authority's and utility owner's consultation and written comment and/or approval for the change.

#### **4.6.13. Design-Builder Design and/or Construction**

The Design-Builder shall be responsible for the utility Relocation design and/or construction as provided in *Part 2 – General Provisions*. The Summary of Key Terms of Authority Utility Agreements set forth in Exhibit A hereto indicates the allocation of responsibility between Design-Builder and the identified utility owners for relocation design and/or construction of the utility facilities covered by such agreements. The DB Utility Agreements shall allocate responsibility for relocation design and construction for utility facilities that are not subject to an Authority Utility Agreement. Subject to *Part 2 – General Provisions*, Design-Builder is responsible for all relocation costs and the Contract Price includes the price for such Work.

#### **4.6.14. Design Review**

The Design-Builder shall submit its Utility Relocation Plans to the Authority's Project Manager and to the utility owner for Work performed by the Design-Builder, for consultation and written comment. See also *DB §111*.

#### **4.6.15. 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 Authority;
- 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 this Part 4;
- I. Any Utility Agreements.

#### **4.6.16. Utility Damage Reports**

In the event that the Design Builder damages an existing utility, the Design-Builder shall complete a utility damage report within 24 hours of damage and submit it to the Authority. The Design-Builder shall report any

utility facilities damaged immediately to the utility owner and the Authority. 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 Authority's Project Manager. The following information shall be included:

- A. Utility damage information:
  - 1. Exact location;
  - 2. Date and time of incident;
  - 3. Date and time reported;
  - 4. Who the damage was reported to ;
  - 5. Who the damage was repaired by;
  - 6. Representative digital color photographs.
- B. Utility owner information:
  - 1. Utility owner;
  - 2. Utility owner contact;
  - 3. Time utility owner was contacted.
- C. Locator information:
  - 1. Locator service;
  - 2. Date of locate request;
  - 3. Locate expiration date;
  - 4. Locate log number;
  - 5. If damaged utility line was marked;
  - 6. Distance from damage to mark.
- D. Contractor information:
  - 1. Name of supervisor;
  - 2. Name of foreman;
  - 3. Name of witness.
- E. Signatures:
  - 1. Design-Builder's supervisor;
  - 2. Utility owner;
  - 3. Locator service.

#### **4.6.17. 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.

#### **4.6.18. Utility Relocation Master Plan**

The Design-Builder shall coordinate with the utilities to prepare a utility relocation master plan after the Design builder has advanced the Project design sufficiently to clearly define utility impacts. The Design builder shall update the plan at least quarterly throughout the duration of the Contract. Updates shall be submitted to the Authority for consultation and written comment.

#### **4.6.19. Betterments**

The Summary of Key Terms of Authority Utility Agreements set forth in Exhibit A addresses any Betterments that it is anticipated will be agreed to by Authority and utility owners whose facilities are subject to such Authority Utility Agreements. If any utility owners whose facilities are subject to an Authority Utility Agreement request that Design-Builder design or construct Betterments that are not addressed in the relevant Authority Utility Agreement, Design-Builder shall be solely responsible for any Betterments that Design-Builder agrees to provide that are not addressed in the relevant Authority Utility Agreement. Some utility owners with whom Design-Builder is responsible for entering into a DB Utility Agreement may request Betterments to their facilities as a result of required relocations of their lines. The costs of any such Betterments shall be resolved between the Design-Builder and the utility owners in their respective DB Utility Agreements. The forms of DB Utility Agreements attached hereto as Exhibit B provide a template provision addressing agreed upon Betterments. Authority shall have no responsibility, actual or implied, with respect to any Betterments, and all Betterments shall be subject to the Authority's permitting process.

#### **4.7. 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 Authority 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 Authority, 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 Authority's consultation and written comment.

#### **4.8. Submittals**

##### **4.8.1. Design**

On design Work which has been performed by the Design-Builder, the Design-Builder shall furnish to the Authority 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 *DB §111*.

Designs prepared by the utility owner shall be reviewed and approved by the Design-Builder and receive the Authority's consultation and written comment, for consistency and compatibility with the Design-Builder's design. Prior to construction, the Authority will review all designs, whether by the Design-Builder or the utility owner.

##### **4.8.2. Construction**

The Design-Builder shall provide two sets of As-Built Utility Relocation Plans to the Authority and each utility owner for utility Relocation Work constructed by the Design-Builder. The As-Built Utility Relocation Plans shall comply with as-built requirements stipulated in the Authority's Utility Standards and shall include any utilities abandoned and not removed. The As-Built Utility Relocation Plans shall be part of the project As-Built Plans.

#### **4.9. Additional Utility Information**

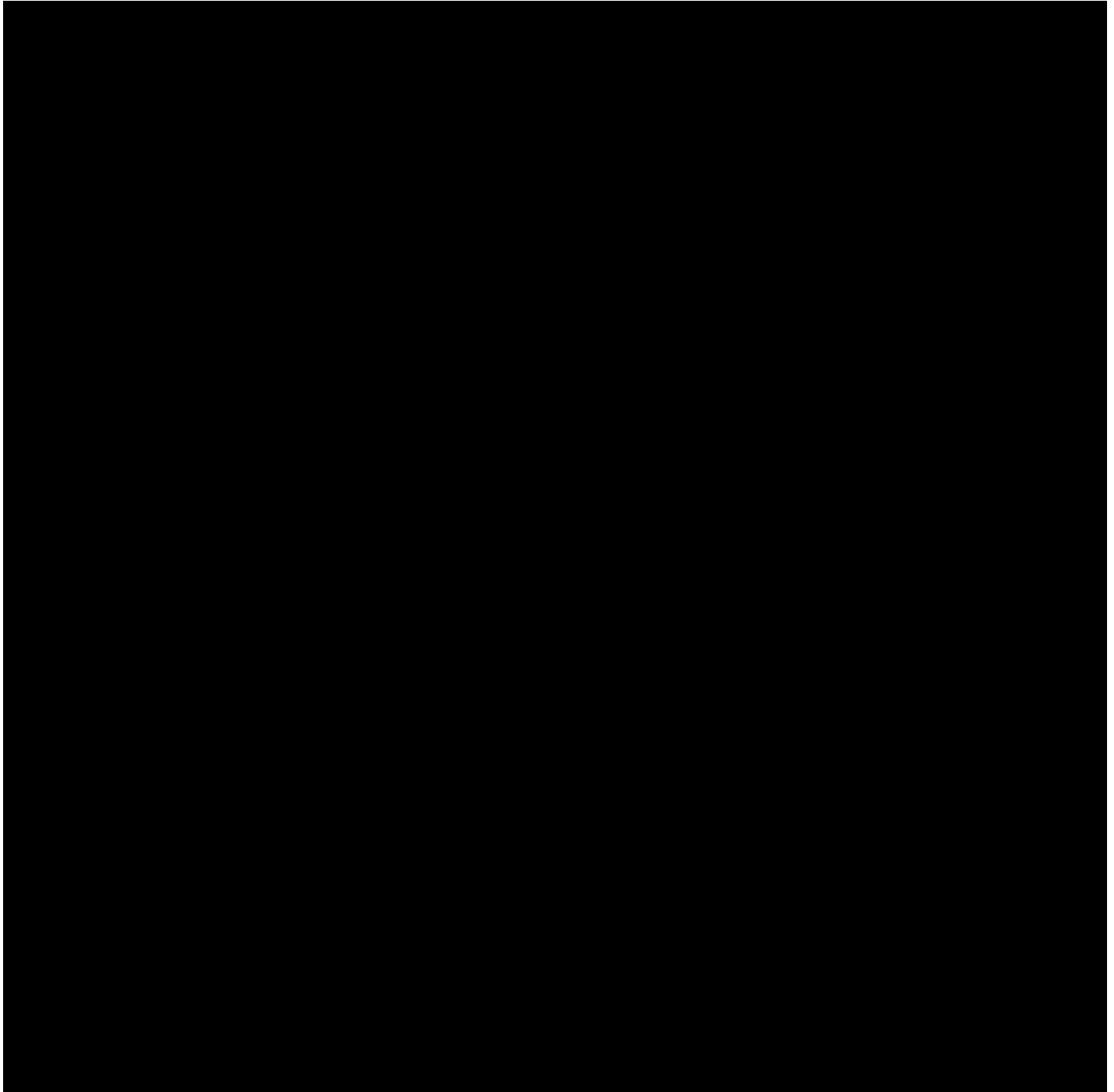
##### **4.9.1. (Not used)**

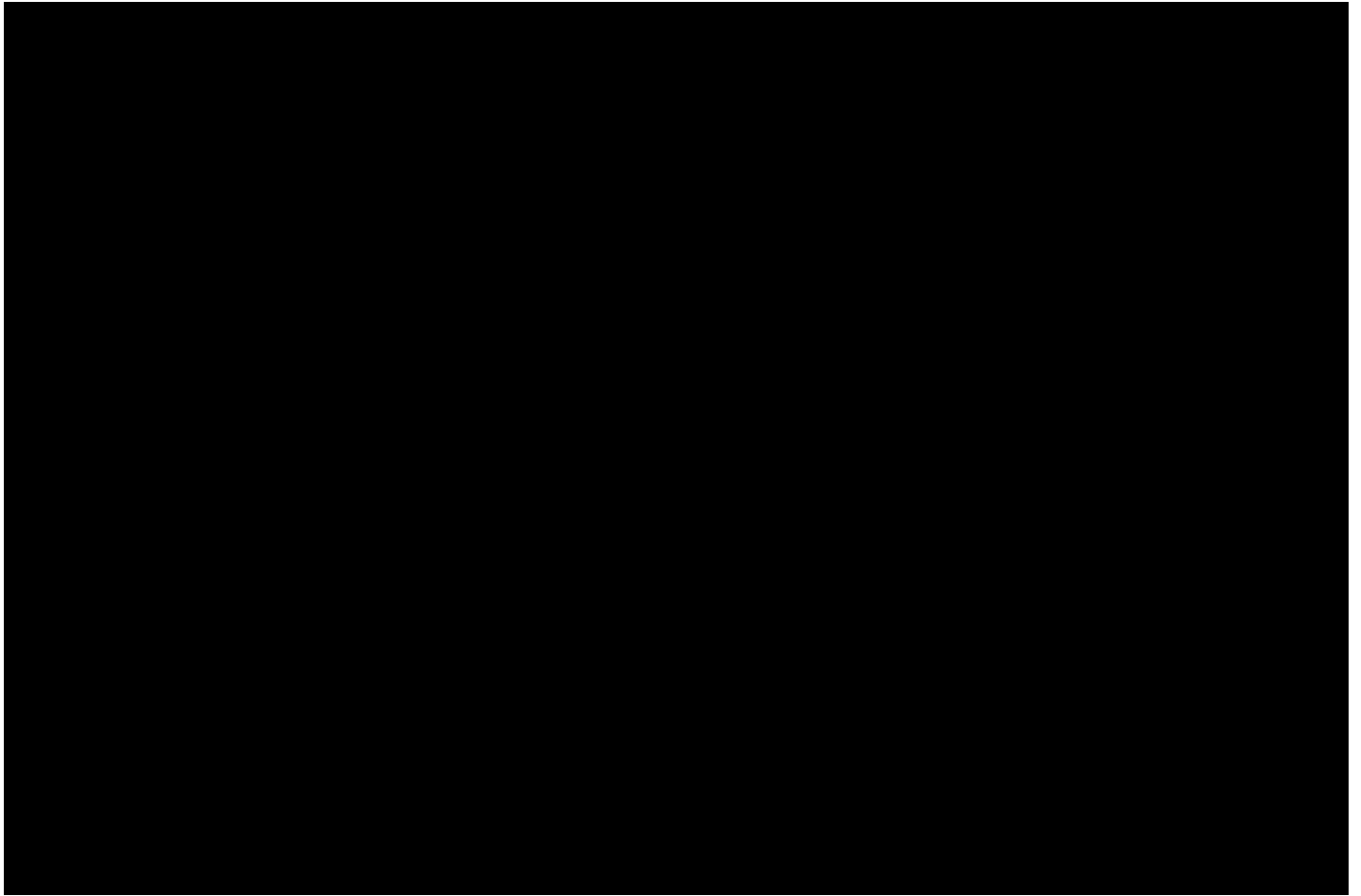
##### **4.9.2. (Not used)**

#### **4.9.3. Utility and Stormwater Contacts**

Table 4.9.3-1 presents the contact details for utility owners, current as of the date of issue of the RFP.

Note: Stormwater facilities contact information is provided for Design-Builder's convenience; stormwater facilities are not considered to be Utilities for purposes of the Contract Documents. See the definition of Utility in DB §102-2





#### **4.10. Deliverables**

Unless otherwise indicated, all deliverables shall be submitted in both electronic format and hardcopy format. Acceptable electronic formats include Microsoft Word®, Microsoft Excel®, Bentley MicroStation, or searchable portable document format (PDF) files, unless otherwise indicated.

At a minimum, the Design-Builder shall submit the items listed in Table 4.10-1 to the Authority.

**New York State Thruway Authority**

**Table 4.10-1: Deliverables**

Deliverable	Number of Copies		Submittal Schedule
	Hardcopy	Electronic	
Utility Tracking Report	3	1 (PDF)	Weekly until Physical Completion.
Utility Design Sheet	3	1 (PDF)	Two days prior to initial meeting with utility owner
Design Approval Letter	3	1 (PDF)	At Readiness for Construction Review
Construction Inspection Approval Letter	3	1 (PDF)	Seven days after construction of the utility identified in the Utility Design Sheet.
Updated Utility Plan	nil	1 (DGN)	Monthly
Utility Protection Plan	1	1 (DGN)	Weekly until Physical Completion




**PART 4 – UTILITIES**  
**EXHIBIT A**  
**AUTHORITY UTILITY AGREEMENTS**

Part 4 Exhibit A presents a summary of the key terms of the utility relocation agreements.

PART 4 UTILITIES  
EXHIBIT A

SUMMARY OF KEY TERMS OF AUTHORITY UTILITY AGREEMENTS

The Work described in this Exhibit A includes known relocation and other utility work required to remove known interference with Project elements shown in *Part 6 RFP Plans – Directive Drawings*.



The Design-Builder shall include in its Baseline Project Schedule appropriate time as required for all utilities Work.

KEY AGREEMENT TERMS

ITEM 4-A-1 Utility Owner [REDACTED]

Scope of Work:

Relocation of existing [REDACTED] ("the utility") electric services including removal [REDACTED]

Schedule Requirements:

Written notification to the utility notifying the completion of the [REDACTED]

[REDACTED] Upon receipt of the written notification of completion of the utility's switchover, the Design-Builder shall:

- Schedule 90 days for the utility to order materials and schedule work operations.
- Schedule an additional 14 days for the utility to pull conductor wire/cables and make all required connections and switchovers.

Design-Builder Supplied Materials:

Conduits, risers, manholes and all other materials necessary to complete the Work except for the material listed under Utility Supplied Material in Item 4-A-1 herein.

Design-Builder Responsibilities:

Utility Supplied Materials:

Utility Poles, conductor wire/cabling, frames and covers.

Utility Responsibilities:

Removal of existing poles, installation of new poles, removal of existing conductor wires/cabling, installation of new conductor wires/cabling, frames, covers, and perform switchover. The utility shall provide written notification to the Authority upon completion of the switchover.

Betterment:

None

Restrictions:

Power shall not be turned off from June 1st through September 30th. An Orange & Rockland inspector shall be present during conduit installation at no cost to the Design-Builder. The Inspector shall observe installation operations only, as any communication shall be through the Authority only. Once [REDACTED] has completed the installation and switchover of the service, the Design-Builder may notify additional utilities to be relocated on the same poles and/or trench.

KEY AGREEMENT TERMS  
ITEM 4-A-2 Utility Owner [REDACTED]

Work Location:

[REDACTED]

Scope of

[REDACTED]

Schedule Requirements:

Written notification to the utility upon the completion of the proposed [REDACTED]

[REDACTED] Upon receipt of the written notification of completion of the switchover by [REDACTED] the Design-Builder shall:

- Schedule 30 days for the utility to order materials and schedule work operations.
- Schedule an additional 56 days for the utility to pull conductor wire/cables and make all required connections and switchovers.

Design-Builder Supplied Materials:

Conduits, risers and all other materials necessary to complete the Work except for the material listed under Utility Supplied Material in Item 4-A-2 herein.

Design-Builder Responsibilities:

[REDACTED]

Utility Supplied Materials:

Conductor wire/cabling.

Utility Responsibilities:

Removal of existing conductor wires/cabling, installation of new conductor wires/cabling, and performance of switchover. The utility shall provide written notification to the Authority upon completion of the switchover.

Betterment:

Yes. The Design-Builder shall keep force account records related to Design-Builder's work associated with this utility and provide it to the Authority.

Restrictions:

The Design-Builder shall not interrupt service unless authorized by the utility.

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KEY AGREEMENT TERM  
ITEM 4-A-3 Utility Owner: [REDACTED]

Work Location:

[REDACTED]

Scope of Work:

Relocation existing [REDACTED] ("the utility") services including removal and relocation of existing [REDACTED]

Schedule Requirements:

Written notification to the utility upon the completion of the proposed [REDACTED]

[REDACTED] Upon receipt of the written notification of completion of the switchover [REDACTED] Electric), the Design-Builder shall:

- Schedule 90 days for the utility to order materials and schedule work operations.
- Schedule an additional 14 days for the utility to pull conductor wire/cables and make all required connections and switchovers.

Design-Builder Supplied Materials:

Conduits, risers, manholes and all other materials to complete the necessary Work except for the material listed under Utility Supplied Material in Item 4-A-3 herein.

Design-Builder Responsibilities:

[REDACTED]

Utility Supplied Materials:

Utility poles, conductor wire/cabling, frames and covers.

Utility Responsibilities:

Removal of existing poles, installation of new poles, removal of existing conductor wires/cabling, installation of new conductor wires/cabling, frames, covers, and perform switchover. The utility shall provide written notification to the Authority upon completion of the switchover.

Betterment:

None

Restrictions:

The Design-Builder shall not interrupt service unless authorized by the utility.

KEY AGREEMENT TERMS

ITEM 4-A-4 Utility Owner: [REDACTED]

Work Location:

[REDACTED]

Scope of Work:

[REDACTED]

Schedule Requirements:

[REDACTED]

- Written notification to the utility upon the completion of the proposed [REDACTED] [REDACTED]. Upon receipt of the written notification r, the Design-Builder shall:
  - Schedule 90 days for the utility to order materials and schedule work operations.
  - Schedule an additional 14 days for the utility to make all required connections.

Design-Builder Supplied Materials:

Sewer line, [REDACTED], manholes and all other materials necessary to complete the Work.

Design-Builder Responsibilities:

[REDACTED]

Utility Supplied Materials:

None

Utility Responsibilities:

Perform connections of the installed sewer line to the existing system.

Betterment:

[REDACTED]

Design-Builder shall keep force account records related to Design-Builder's work associated with this utility and provide to the Authority.

Restrictions:

None

**PART 4 – UTILITIES  
EXHIBIT B**

**EXAMPLE FORMS OF DB UTILITY AGREEMENT**

**Exhibit B-1: Design-Builder Managed  
Exhibit B-2: Utility Managed**

**TAPPAN ZEE HUDSON RIVER CROSSING PROJECT**

**AGREEMENT FOR UTILITY WORK**

**(Design-Builder Managed)**

This AGREEMENT ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between \_\_\_\_\_ (the "DESIGN-BUILDER"), a \_\_\_\_\_, having its principal office at \_\_\_\_\_, and \_\_\_\_\_ (the "UTILITY"), a corporation duly organized and existing under the laws of the State of \_\_\_\_\_, having its principal office at \_\_\_\_\_.

WITNESSETH:

WHEREAS, the UTILITY is the owner of certain utility facilities presently located on \_\_\_\_\_ in \_\_\_\_\_ County, State of New York; and

WHEREAS, the NEW YORK STATE THRUWAY AUTHORITY (the "AUTHORITY") has awarded Contract Number \_\_\_\_ (the "Contract") to the DESIGN-BUILDER for the bridge replacement of the Tappan Zee Hudson River Crossing Project), in Rockland and Westchester Counties ("PROJECT") ; and

WHEREAS, the Contract requires the DESIGN-BUILDER to enter into agreements with utility companies as may be necessary in order to facilitate the progress and completion of the PROJECT; and

WHEREAS, the DESIGN-BUILDER has notified the UTILITY that certain of its facilities and appurtenances are in locational conflict with the PROJECT, and the UTILITY has requested that the DESIGN-BUILDER undertake the relocation of the UTILITY'S facilities as necessary to accommodate the PROJECT; and

WHEREAS, the DESIGN-BUILDER and the UTILITY desire to implement the relocation of the UTILITY'S facilities by entering into this Agreement.

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows:



**Article 1 - Scope of Work.** The work to be performed pursuant to this Agreement consists generally of \_\_\_\_\_, as more particularly described in Appendix A - Scope of Adjustment, in accordance with the Plans described in Article 4.

**Article 2 - Consent to Entry/Work.** The UTILITY does hereby give its authorization and consent to the DESIGN-BUILDER, its representatives and subcontractors, to work on and with the UTILITY'S facilities for the purpose of relocating such facilities to enable construction of the PROJECT. Such consent shall be valid only for the duration of the work to be performed.

**Article 3 - Time of Performance.** The work to be performed pursuant to this Agreement shall be undertaken and completed in accordance with the Time Schedule attached hereto as Exhibit 1. The parties shall coordinate their activities with each other so as to avoid delay. The UTILITY agrees and understands that adherence to such time frames is required for orderly progress of the PROJECT, and acknowledges that the work to be performed pursuant to this Agreement must be complete as a condition precedent to the AUTHORITY'S determination under the Contract that the PROJECT is ready for operation and use by the public.

**Article 4 – Plans.** As used in this Article 4, the term “Design Standards” shall mean the following

- ☐ The DESIGN-BUILDER has hired engineering firm(s) acceptable to the UTILITY to perform all engineering services needed for the preparation of plans, required specifications, and cost estimates, attached hereto as Appendix B (collectively, the “Plans”), for the proposed relocation of the UTILITY'S facilities. The DESIGN-BUILDER represents and warrants that the Plans conform to the Design Standards. By its execution of this Agreement or by the signing of the Plans, the UTILITY hereby approves

- ☐ The UTILITY has provided plans, required specifications and cost estimates, attached hereto as Appendix B (collectively, the “Plans”), for the proposed relocation of the UTILITY'S facilities. The UTILITY represents and warrants that the Plans conform to the Design Standards. By execution of this Agreement, the DESIGN-BUILDER and the UTILITY hereby approve the Plans. The UTILITY also has provided to the DESIGN-BUILDER a utility plan view map illustrating the location of existing and proposed utility facilities on the DESIGN-BUILDER'S right of way map of the PROJECT. With regard to its preparation of the Plans, the UTILITY represents as follows *[check one box that applies]*:

- ☐ The UTILITY'S employees were utilized to prepare the Plans, and the charges therefore do not exceed the UTILITY'S typical costs for such work.
- ☐ The UTILITY utilized consulting engineers to prepare the Plans, and the fees for such work are not based upon a percentage of construction costs. Further, such fees encompass only the work necessary to prepare the Plans for relocation of the UTILITY'S facilities described herein, and do not include fees for work done on any other project. The fees of the consulting engineers are reasonable and are comparable to the fees typically charged by consulting engineers in the locale of the PROJECT for comparable work for the UTILITY.
- ☐ OTHER (UTILITY and DESIGN-BUILDER to provide)

**Article 5 – Review by the DESIGN BUILDER and the AUTHORITY.** The parties hereto acknowledge and agree as follows:

(a) Upon execution of this Agreement by the DESIGN-BUILDER and the UTILITY, the DESIGN-BUILDER shall submit this Agreement to the AUTHORITY for its reference, and, if the relocation will be on PROJECT right of way ("ROW"), the DESIGN-BUILDER shall submit the attached Plans to the AUTHORITY for approval. Said documents are referred to as a "Utility Assembly." The parties agree to cooperate in good faith to modify the Plans, as necessary and mutually acceptable to all parties, to respond to any comments made by the AUTHORITY thereon. Without limiting the generality of the foregoing, (i) the UTILITY agrees to respond (with comment and/or acceptance) to any modified Plans prepared by the DESIGN-BUILDER in response to the AUTHORITY comments within 14 business days after receipt of such modifications; and (ii) if the UTILITY originally prepared the Plans, the UTILITY agrees to modify the Plans in response to the DESIGN-BUILDER and the AUTHORITY comments and to submit such modified Plans to the DESIGN-BUILDER for its comment and/or approval (and re-submittal to the AUTHORITY for its comment and/or approval) within 14 business days after receipt of the DESIGN-BUILDER'S comments. The UTILITY'S failure to timely respond to any modified Plans submitted by the DESIGN-BUILDER pursuant to this Article shall be deemed the UTILITY'S approval of the same. If the UTILITY fails to timely prepare modified Plans which are its responsibility hereunder, then the DESIGN-BUILDER shall have the right to modify the Plans for the UTILITY'S approval as if the DESIGN-BUILDER had originally prepared the Plans. The process set forth in this Article 5 will be repeated until each of the UTILITY, DESIGN-BUILDER and AUTHORITY have approved the Plans.

(b) The parties acknowledge and agree that each of the UTILITY'S, DESIGN-BUILDER'S, and AUTHORITY'S, review, comments, and/or approval of a Utility Assembly or any component thereof shall constitute the UTILITY'S and DESIGN-BUILDER'S, and when required, the AUTHORITY'S, approval of the location and manner in which a Utility Assembly will be installed, adjusted, or relocated within the PROJECT ROW, subject to the DESIGN-BUILDER'S satisfactory performance of the relocation work in accordance with the approved Plans. The DESIGN-BUILDER has no duty to review the UTILITY'S facilities or components for their quality or adequacy to provide the intended utility service.

**Article 6 - Performance of Installation and Construction Work.** The UTILITY hereby requests that the DESIGN-BUILDER perform the construction necessary to install and relocate the UTILITY'S facilities and the DESIGN-BUILDER hereby agrees to perform such work. All work hereunder shall be performed in a good and workmanlike manner, and in accordance with the Plans (as such Plans may be modified as provided herein by the DESIGN-BUILDER, the UTILITY or the AUTHORITY). The DESIGN-BUILDER shall ensure that all work hereunder is performed with due regard to the protection and maintenance of the property, traffic and operations of the AUTHORITY, Utility(s) and any affected locality, and in such a manner as to cause no damage to, or unreasonable interference with, such traffic or operations.

**Article 7 - Responsibility for Costs of Relocation Work.** With the exception of any Betterment (hereinafter defined), the parties shall allocate the cost of any relocations between themselves as identified in Appendix C and in accordance with the requirements of the Blue Book. An allocation percentage may be determined by application of an eligibility ratio, if appropriate, as detailed in Appendix C.

**Article 8 – Maintenance of Facilities.** The DESIGN-BUILDER hereby agrees that it shall have sole responsibility to maintain the facilities during performance of the work. The UTILITY agrees that upon satisfactory completion of the work performed pursuant to this Agreement and approval of the work by the AUTHORITY with respect to the work completed within the AUTHORITY ROW, the UTILITY shall have sole responsibility for such relocated or replaced facilities and shall continue to operate and maintain the same for so long as such facilities shall remain in existence. Each of the DESIGN-BUILDER and the UTILITY shall fulfill its respective responsibility to maintain such facilities in accordance with all applicable laws, regulations, codes and standards, including, but not limited to, the AUTHORITY’S policies and procedures governing accommodation of utilities on the New York State Thruway System, applicable sections or requirements of the Federal Highway Administration, Federal-Aid Policy Guide and/or the NYS Utility Reimbursement Procedure Manual. Further, each of the DESIGN-BUILDER and the UTILITY shall have a continuing obligation to adjust or remove any or all of the facilities at the request of the AUTHORITY.

**Article 9 – Liability and Workers’ Compensation Insurance.** The DESIGN-BUILDER, or any subcontractor the DESIGN-BUILDER engages to perform work hereunder, shall procure and maintain, until the work covered by this Agreement has been completed as specified herein, insurance for liability for damages imposed by law, of the kinds and in the amounts hereinafter provided, with insurance companies authorized to do such business in the State of New York, covering all work performed pursuant to this Agreement. Before commencing the work, the DESIGN-BUILDER shall furnish to the UTILITY a certificate of insurance on the form attached hereto as Exhibit 2, showing that the DESIGN-BUILDER or its subcontractor has complied with this Article, which certificate shall provide that the policies shall not be changed or cancelled until 30 days’ written notice has been given to the UTILITY. The kinds and amounts of insurance are as follows:

- (a) Liability and property damage insurance policies, each with limits of not less than:

Single limit of \$2,000,000 combined bodily injury and/or property damage liability for each occurrence with a \$2,000,000 aggregate limit for the term of the policy, in the types specified, viz.:

(1) Contractor’s liability insurance issued to and covering liability for damages imposed by law upon the DESIGN-BUILDER, or its subcontractors, with respect to all work performed under this Agreement, with endorsement providing coverage for damages arising out of the PROJECT to property owned by the DESIGN-BUILDER or in its care, custody and control.

(2) Contractor’s liability insurance issued to and covering liability for damages imposed by law upon the DESIGN-BUILDER and each Subcontractor with respect to all work performed by said entity under this Agreement.

(3) Protective liability insurance issued to and covering liability for damages imposed by law upon the DESIGN-BUILDER with respect to all work performed for the DESIGN-BUILDER by its subcontractors pursuant to this Agreement.

(4) Protective liability insurance for the benefit of the UTILITY, its officers, agents and employees, both officially and personally, with respect to all operations conducted by the DESIGN-BUILDER or its subcontractors pursuant to this Agreement, including in such coverage any omissions and supervisory acts of the UTILITY, its officers, agents and employees.

(5) Completed operations liability insurance issued to and covering liability for damages imposed by law upon the DESIGN-BUILDER and its subcontractors arising between the date of final cessation of work and the date of final acceptance thereof, out of that part of the work performed by each.

(6) Automobile liability and property damage insurance covering the use in connection with the work covered by this Agreement of all owned, non-owned, and hired vehicles bearing, or under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear license plates.

(b) This Agreement will be void and of no force and effect unless the DESIGN-BUILDER, or any subcontractor performing work pursuant to this Agreement, shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the Workers' Compensation/Disability Benefits Law. If employees will be working on, near or over navigable waters, a U.S. Longshore and Harbor Workers' Compensation Act endorsement must be included. The DESIGN-BUILDER or any subcontractor performing work pursuant to this Agreement, must provide proof of exemption, certified by the Workers' Compensation Board, to obtain a waiver from the requirements of this provision.

**Article 10 – Damages for Delay.** The UTILITY'S failure to adhere to the Time Schedule set forth in Exhibit 1 will delay the DESIGN-BUILDER'S ability to proceed with work required for the PROJECT and may result in damages to the DESIGN-BUILDER, including, but not limited to DESIGN-BUILDER liability to the AUTHORITY; and additional overhead, administrative and other personnel costs suffered by the DESIGN-BUILDER as a result of the delay in the PROJECT. In the event that the UTILITY'S failure to adhere to the Time Schedule set forth in Exhibit 1 results in damages to the DESIGN-BUILDER, the UTILITY shall reimburse the DESIGN-BUILDER for the cost of such damages.

**Article 11 – Design and Construction Standards.**

(a) All design and construction performed for the relocation work which is the subject of this Agreement, including the use of all property under the jurisdiction of the AUTHORITY ("Authority Property") whereon such work is performed, shall comply with and conform to the following:

(2) The design and construction requirements for the installation, modification, relocation, maintenance, operation and repair of all permitted facilities located over, under, along and on Authority Property, as set forth in the AUTHORITY'S TAP-421 publication series, as the same may be amended from time to time (the foregoing may be obtained from the NYSTA Division Permit Coordinator or the Real Property section of the AUTHORITY'S website: [www.thruway.ny.gov](http://www.thruway.ny.gov));

(3) All Federal laws, regulations, decrees, ordinances and policies applicable to projects receiving Federal funding, financing and/or credit assistance, including without limitation 23 CFR 645 Subparts A and B;

(4) The terms of all governmental permits or other approvals, as well as any private approvals of third parties necessary for such work; and

(5) The standard specifications, standards of practice, and construction methods (collectively, "Standards") which the UTILITY customarily applies to utility facilities comparable to the UTILITY'S facilities that are constructed by the UTILITY or for the UTILITY by its contractors at the UTILITY'S expense, which Standards are current at the time this Agreement is signed by the UTILITY, and which the UTILITY has submitted to the DESIGN-BUILDER in writing.

(6) The UTILITY acknowledges that all service meters must be placed outside of the AUTHORITY ROW.

(b) Such design and construction also shall be consistent and compatible with design and construction of the PROJECT and any other utilities being installed in the same vicinity. The UTILITY acknowledges receipt from the DESIGN-BUILDER of project plans as necessary to comply with the foregoing. In case of any inconsistency among any of the standards referenced in this Agreement, the most stringent standard shall apply.

(c) The plans, specifications, and cost estimates contained in Appendix B shall identify and detail all UTILITY facilities that the UTILITY intends to abandon in place rather than remove, including material type, quantity, size, age, and condition. No facilities containing hazardous or contaminated materials may be abandoned, but shall be specifically identified and removed in accordance with the requirements of subparagraph (a). It is understood and agreed that the DESIGN-BUILDER shall not pay for the assessment and remediation or other corrective action relating to soil and ground water contamination caused by the UTILITY facility prior to the removal.

Article 12 – Permits. The DESIGN-BUILDER shall obtain all permits necessary for the construction to be performed by the DESIGN-BUILDER hereunder, and the UTILITY shall cooperate in that process as needed.

#### **Article 13 – Reimbursement of the UTILITY'S Indirect Costs.**

(a) The DESIGN-BUILDER agrees to reimburse the UTILITY for its share of the UTILITY'S indirect costs (e.g., engineering, inspection, testing, ROW) as identified in Appendix B, if any; provided, however, that the DESIGN-BUILDER shall not reimburse the UTILITY for any costs (direct or indirect) related to the identified Betterment. When requested by the UTILITY, monthly progress payments will be made. The monthly payment will not exceed 80% of the estimated indirect work done to date. Once the indirect work is complete, final payment of the eligible indirect costs will be made. Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.

(b) The UTILITY'S indirect costs associated with relocation of the UTILITY'S facilities shall be developed pursuant to the method checked and described below [check only one box]:

☐ (1) Actual related indirect costs accumulated in accordance with (i) a work order accounting procedure prescribed by the applicable Federal or State regulatory body, or (ii) established accounting procedure developed by the UTILITY and which the UTILITY uses in its regular operations (either (i) or (ii) referred to as "Actual Cost") or,



☐ (2) The agreed sum of \$ (‘‘Agreed Sum’’) as supported by the analysis of the UTILITY’S estimated costs attached hereto as part of Appendix C.

(c) All indirect costs charged to the DESIGN-BUILDER by the UTILITY shall be reasonable and shall be computed using rates and schedules not exceeding those applicable to similar work performed by or for the UTILITY at the UTILITY’S expense. The DESIGN-BUILDER’S performance of the relocation work hereunder and payment of the DESIGN-BUILDER’S share of the UTILITY’S costs pursuant to this Agreement, if applicable, shall be full compensation to the UTILITY for all costs incurred by the UTILITY in relocating the UTILITY’S facilities (including without limitation costs of relinquishing and/or acquiring ROW).

**Article 14 – Advancement of Funds by UTILITY for Construction Costs.**

(a) Advancement of the UTILITY’S share, if any, of estimated costs

Appendix C identifies all estimated engineering and construction-related costs, including labor, material, equipment and other miscellaneous construction items. Appendix C also identifies the UTILITY’S and the DESIGN-BUILDER’S respective shares of the estimated costs.

The UTILITY shall advance to the DESIGN-BUILDER its allocated share, if any, of the estimated costs for construction and engineering work to be performed by the DESIGN-BUILDER, in accordance with the following terms:

☐ The relocation of the UTILITY’S facilities does not require advancement of funds.

☐ The relocation of the UTILITY’S facilities does require advancement of funds and the terms agreed to between the DESIGN-BUILDER and the UTILITY are listed below.

[Insert terms of advance funding to be agreed between DESIGN-BUILDER and UTILITY.]

(b) Relocations Based on Actual Costs or Agreed Sum

[Check the one appropriate provision, if advancement of funds is required]:

☐ The UTILITY is responsible for its share of the DESIGN-BUILDER’S Actual Cost for the relocation, including the identified Betterment. Accordingly, upon completion of all relocation work to be performed by both parties pursuant to this Amendment, (i) the UTILITY shall pay to the DESIGN-BUILDER the amount, if any, by which the Actual Cost of the Betterment (as determined in Article 16(b)) plus the Actual Cost of UTILITY’S share of the relocation (based on the allocation set forth in Appendix C) exceeds the estimated cost advanced by the UTILITY, or (ii) the DESIGN-BUILDER shall refund to the UTILITY the amount, if any, by which such advance exceeds such Actual Cost, as applicable.

☐ The Agreed Sum is the agreed and final amount due for the relocation, including any Betterment, under this Amendment. Accordingly, no adjustment (either up or down) of such amount shall be made based on Actual Costs.

Article 15 – Invoices. On invoices prepared by either the UTILITY or the DESIGN-BUILDER, all costs developed using the "Actual Cost" method described in Article 13(b)(1) shall be itemized in a format allowing for comparisons to the approved estimates, including listing each of the services performed, the amount of time spent and the date on which the service was performed. The original and three copies of each invoice, together with (1) such supporting information to substantiate all invoices as reasonably requested, and (2) such waivers and releases of liens as the other party may reasonably require, shall be submitted to the other party at the address for notices set forth in Article 24 of this Agreement or such other address specified in writing by the party to whom the notice is being sent. The UTILITY and the DESIGN-BUILDER shall make commercially reasonable efforts to submit final invoices not later than 120 days after completion of work. The UTILITY and the DESIGN-BUILDER hereby acknowledge and agree that any costs not submitted to the other party within 19 months following completion of all relocation work to be performed by the parties pursuant to this Agreement shall be deemed to have been abandoned and waived.

**[Article 16 – Betterment and Salvage**

(a) For purposes of this Agreement, the term “Betterment” means any upgrading of a utility facility being adjusted that is not attributable to the construction of the PROJECT and is made solely for the benefit of and at the election of the UTILITY, including but not limited to an increase in the capacity, capability, efficiency or function of the adjusted utility facility over that provided by the existing UTILITY facility or an expansion of the existing utility facility; provided, however, that the following are not considered Betterments:

- (1) any upgrading which is required for accommodation of the PROJECT;
- (2) replacement devices or materials that are of equivalent standards although not identical;
- (3) replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
- (4) any upgrading required by applicable laws, regulations or ordinances; or
- (5) replacement devices or materials which are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase).

Any upgrading required by the UTILITY’S written Standards meeting the requirements of Article 11(a)(4) shall be deemed to be of direct benefit to the PROJECT.

(b) It is understood and agreed that the DESIGN-BUILDER shall not pay for any Betterments and that the UTILITY shall be solely responsible therefor. No Betterment may be performed hereunder which is incompatible with the PROJECT or which cannot be performed within the other constraints of the Contract (including, without limitation, the scheduling requirements thereunder), applicable law and any applicable governmental approvals. Accordingly, the parties agree as follows [check one box that applies, and complete if appropriate]:

☐ The relocation of the UTILITY’S facilities pursuant to the Plans does not include any Betterment.

☐ The relocation of the UTILITY’S facilities pursuant to the Plans includes Betterment to the UTILITY’S facilities by reason of [insert explanation, e.g. “replacing 12” pipe with 24” pipe”]: \_\_\_\_\_. The DESIGN-BUILDER has provided to the UTILITY comparative estimates for (i) all work to be performed by the DESIGN-BUILDER pursuant to this Agreement, including work attributable to the Betterment, and (ii) the cost to perform such work without the Betterment, which estimates are hereby approved by the UTILITY. The estimated cost of the DESIGN-BUILDER’S work hereunder which is attributable to Betterment is \$ \_\_\_\_\_, calculated by subtracting (ii) from (i). The percentage of the total cost of the DESIGN-BUILDER’S work hereunder which is attributable to Betterment is \_\_\_\_\_ %, calculated by subtracting (ii) from (i), which remainder is divided by (i).

(c) If Article 16(b) identifies Betterment, the UTILITY shall advance to the DESIGN-BUILDER, at least 14 business days prior to the date scheduled for commencement of construction for relocation of the UTILITY’S facilities, the estimated cost attributable to Betterment as set forth in Article 16(b). Should the UTILITY fail to advance payment to the DESIGN-BUILDER 14 business days prior to commencement of the relocation construction, the DESIGN-BUILDER shall have the option of commencing and completing (without delay) the relocation work without installation of the applicable Betterment. [If Article 16(b) identifies Betterment, check the one appropriate provision]:

☐ The estimated cost stated in Article 16(b) is the agreed and final amount due for Betterment hereunder, and accordingly no adjustment (either up or down) of such amount shall be made based on actual costs.

☐ The UTILITY is responsible for the DESIGN-BUILDER'S actual cost for the identified Betterment. Accordingly, upon completion of all relocation work to be performed by both parties pursuant to this Agreement, (i) the UTILITY shall pay to the DESIGN-BUILDER the amount, if any, by which the actual cost of the Betterment (determined as provided below in this paragraph) exceeds the estimated cost advanced by the UTILITY, or (ii) the DESIGN-BUILDER shall refund to the UTILITY the amount, if any, by which such advance exceeds such actual cost, as applicable. Any additional payment by the UTILITY shall be due within 60 calendar days of the UTILITY'S receipt of the DESIGN-BUILDER'S invoice therefor, together with supporting documentation; any refund shall be due within 60 calendar days after completion of the relocation work hereunder. The actual cost of Betterment incurred by the DESIGN-BUILDER shall be calculated by multiplying (i) the Betterment percentage stated in Article 16(b), by (ii) the actual cost of all work performed by the DESIGN-BUILDER pursuant to this Agreement (including work attributable to the Betterment), as invoiced by the DESIGN-BUILDER to the UTILITY.

(d) If Article 16(b) identifies a Betterment, the amount allocable to the Betterment in the UTILITY'S indirect costs shall be determined by applying the percentage of the Betterment calculated in Article 16(b) to the UTILITY'S indirect costs. The UTILITY'S invoice to the DESIGN-BUILDER for the DESIGN-BUILDER'S share of the UTILITY'S indirect costs shall credit the DESIGN-BUILDER with any Betterment amount determined pursuant to this Article 16(d).

(e) For any relocation from which the UTILITY recovers any materials and/or parts and retains or sells the same, after application of any applicable Betterment credit, the UTILITY'S invoice to the DESIGN-BUILDER for its costs shall credit the DESIGN-BUILDER with the salvage value for such materials and/or parts.

(f) The determinations and calculations of Betterment described in this Article 16 shall exclude real property acquisition costs. Betterments requiring real property acquisitions are addressed in Article 21.]

**Article 17 – Utility Investigations.** At the DESIGN-BUILDER'S request, the UTILITY shall assist the DESIGN-BUILDER in locating any utility facilities (including appurtenances) which are owned and/or operated by the UTILITY and may be impacted by the PROJECT. Without limiting the generality of the foregoing, the UTILITY shall mark in the field the location of all of Utility's facilities horizontally on the ground in advance of PROJECT construction in the immediate area of such utilities in accordance with Official Compilation of Codes, Rules and Regulations of the State of New York Part 753, Subpart 753-4.

**Article 18 – Inspection and Acceptance by the UTILITY.**

(a) Throughout the relocation construction hereunder, the UTILITY shall provide adequate inspector(s) for such construction. The work shall be inspected by the UTILITY'S inspector(s) at least once each working day, and more often if such inspections are deemed necessary by the UTILITY. Further, upon request by the DESIGN-BUILDER or its contractors, the UTILITY shall furnish an inspector at any reasonable time in which construction is underway pursuant to this Agreement, including occasions when construction is underway in excess of the usual 40 hour work week and at such other times as reasonably required. The UTILITY agrees to promptly notify the DESIGN-BUILDER of any concerns resulting from any such inspection.

(b) The UTILITY shall perform a final inspection of the relocated facilities, including conducting any tests as are necessary or appropriate, within five business days after completion of construction hereunder. The UTILITY shall accept such construction if it is consistent with the performance standards described in Article 11, by giving written notice of such acceptance to the DESIGN-BUILDER within said five-day period. If the UTILITY does not accept the construction, then the UTILITY shall, not later than the expiration of said five-day period, notify the DESIGN-BUILDER in writing of its grounds for non-acceptance and suggestions for correcting the problem, and if the suggested corrections are justified, the DESIGN-BUILDER will comply. The UTILITY shall re-inspect any revised construction (and re-test if appropriate) and give notice of acceptance, not later than five business days after completion of corrective work. The UTILITY'S failure to inspect and/or to give any required notice of acceptance or non-acceptance within the specified time period shall be deemed acceptance.



(c) From and after the UTILITY'S acceptance (or deemed acceptance) of a relocated UTILITY facility, the UTILITY agrees to accept ownership of, and full operation and maintenance responsibility for, such UTILITY facility.

**Article 19 – Design Changes.** The DESIGN-BUILDER will be responsible for additional relocation design and construction costs necessitated by design changes to the PROJECT, upon the terms specified herein.

**Article 20 – Field Modifications.** The DESIGN-BUILDER shall provide the UTILITY with documentation of any field modifications occurring in the relocation of the UTILITY'S facilities.

**[Article 21 – Real Property Interests.**

(a) The UTILITY has provided, or upon execution of this Agreement shall promptly provide to the DESIGN-BUILDER, documentation identifying the UTILITY'S claimed interest in the real property where its existing facilities are located. Such claims are subject to the AUTHORITY'S approval as part of its review of Utility Assembly as described in Article 5. Claims approved by the AUTHORITY as to rights or interests are referred to herein as "Existing Interests."

(b) If acquisition of any new easement or other interest in real property ("New Interest") is necessary for the relocation of any facilities, then the UTILITY work with the AUTHORITY and DESIGN-BUILDER to define such necessary New Interest. If the New Interest is to be located in the AUTHORITY'S right of way, the UTILITY and the AUTHORITY shall cooperate in documenting the New Interest. If the New Interest is outside the AUTHORITY right of way, the AUTHORITY shall be responsible for undertaking such acquisition. The UTILITY shall cooperate with and assist the AUTHORITY to facilitate the AUTHORITY'S expeditious acquisition of the New Interest. The DESIGN-BUILDER and the UTILITY each shall be responsible for their respective share (as specified in Article 10) of the actual and reasonable acquisition costs of any such New Interest (including without limitation the UTILITY'S reasonable overhead charges and reasonable legal costs as well as compensation paid to the landowner); provided, however, that DESIGN-BUILDER'S share shall exclude any costs attributable to Betterment as described in Article 21(c).

(c) The DESIGN-BUILDER shall pay its share only for a replacement in kind of an Existing Interest (e.g., in width and type), unless a New Interest exceeding such standard (i) is required in order to accommodate the PROJECT or by compliance with applicable law, or (ii) is called for by the DESIGN-BUILDER in the interest of overall PROJECT economy. Any New Interest which is not the DESIGN-BUILDER'S responsibility pursuant to the preceding sentence shall be considered a Betterment to the extent that it upgrades the Existing Interest which it replaces, or in its entirety if the related UTILITY facility was not installed pursuant to an Existing Interest. Betterment costs shall be solely the UTILITY'S responsibility.

(d) For each Existing Interest located within the final PROJECT ROW, upon completion of the related relocation work and its acceptance by the UTILITY, the UTILITY agrees to execute a quitclaim deed or other appropriate documentation relinquishing such Existing Interest to the AUTHORITY, unless the affected UTILITY facility will remain in its original location or is being reinstalled in a new location within the area subject to such Existing Interest. All quitclaim deeds or other relinquishment documents shall be subject to the AUTHORITY'S approval as part of its review of the Utility Assembly as described in Article 10. For each such Existing Interest relinquished by the UTILITY, the DESIGN-BUILDER shall do one of the following to compensate the UTILITY for such Existing Interest, as appropriate:

(1) If a New Interest is acquired for the affected UTILITY facility, the DESIGN-BUILDER shall reimburse the UTILITY for the DESIGN-BUILDER'S share of the UTILITY'S actual and reasonable acquisition costs in accordance with Article 21(b), subject to Article 21(c); or

(2) If no New Interest is acquired for the affected UTILITY facility, the DESIGN-BUILDER shall compensate the UTILITY for the DESIGN-BUILDER'S share of the fair market value of such relinquished Existing Interest, as mutually agreed between the UTILITY and the DESIGN-BUILDER and supported by a written valuation.

The compensation provided to the UTILITY pursuant to either subparagraph (1) or subparagraph (2) above shall constitute complete compensation to the UTILITY for the relinquished Existing Interest and any New Interest, and no further compensation shall be due to the UTILITY from the DESIGN-BUILDER or the AUTHORITY on account of such Existing Interest or New Interest(s).

**Article 22 – Breach by the Parties.**

(a) If the UTILITY claims that the DESIGN-BUILDER has breached any of its obligations under this Agreement, the UTILITY shall notify the DESIGN-BUILDER and the AUTHORITY in writing of such breach, and the DESIGN-BUILDER shall have 30 days following receipt of such notice in which to cure such breach, before the UTILITY may invoke any remedies which may be available to it as a result of such breach; provided, however, that both during and after such period the AUTHORITY shall have the right, but not the obligation, to cure any breach by the DESIGN-BUILDER. Without limiting the generality of the foregoing, (a) the DESIGN-BUILDER shall have no liability to the UTILITY for any act or omission committed by the UTILITY in connection with this Agreement, including without limitation any claimed defect in any design or construction work supplied by the UTILITY or by its contractors, and (b) in no event shall the DESIGN-BUILDER be responsible for any repairs or maintenance to the UTILITY'S facilities relocated pursuant to this Agreement.

(b) If the DESIGN-BUILDER claims that the UTILITY has breached any of its obligations under this Agreement, the DESIGN-BUILDER will notify the UTILITY in writing of such breach, and the UTILITY shall have 30 days following receipt of such notice in which to cure such breach, before the DESIGN-BUILDER may invoke any remedies which may be available to it as a result of such breach.

Article 23 – Traffic Control. The DESIGN-BUILDER shall provide traffic control or shall reimburse the UTILITY for the DESIGN-BUILDER'S share (if any, as specified in Article 7) of the costs for traffic control made necessary by the relocation work performed by either the DESIGN-BUILDER or the UTILITY pursuant to this Agreement. Betterment percentages calculated in Article 16 shall also apply to traffic control costs.

**Article 24 – Notices.** Except as otherwise expressly provided in this Agreement, all notices or communications pursuant to this Agreement shall be sent or delivered to the following:

UTILITY:

Phone:

Fax:

DESIGN-BUILDER:

Phone:

Fax:

A party sending a notice of default of this Agreement to another party shall also send a copy of such notice to the AUTHORITY and the [\_\_\_\_\_] at the following addresses:

AUTHORITY: New York Thruway Authority

Attention: [\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Phone: [\_\_\_\_\_]

[\_\_\_\_\_]: [\_\_\_\_\_]

Attention: [\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Phone: [\_\_\_\_\_]

Any notice or demand required herein shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by telefacsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the appropriate address set forth above. Notices shall be deemed delivered when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile after 4:00 p.m. Eastern Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. on a business day or at any time on a non-business day shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m. on a business day). Any party may from time to time designate any other address for this purpose by written notice to all other parties; the AUTHORITY may designate another address by written notice to all parties.

**Article 25 – Approvals.** Any acceptance, approval, or any other like action (collectively "Approval") required or permitted to be given by the DESIGN-BUILDER, the UTILITY or the AUTHORITY pursuant to this Agreement:

- (a) Must be in writing to be effective (except if deemed granted pursuant hereto);
- (b) Shall not be unreasonably withheld or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the reason for withholding such Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval; and
- (c) Shall be deemed granted if no response is provided to the party requesting an Approval within the time period prescribed by this Agreement (or if no time period is prescribed, then 14 calendar days), commencing upon actual receipt by the party from which an Approval is requested or required, of a request for Approval from the requesting party, provided that the foregoing shall not apply to Approvals by the AUTHORITY or to any other Approval for which a different approach is specifically provided otherwise in this Agreement.

**Article 26 – Time.**

- (a) Time is of the essence in the performance of this Agreement.
- (b) All references to "days" herein shall be construed to refer to calendar days, unless otherwise stated.
- (c) No party shall be liable to another party for any delay in performance under this Agreement from any cause beyond its control and without its fault or negligence ("Force Majeure"), such as acts of God, acts of civil or military authority, fire, earthquake, strike, unusually severe weather, floods or power blackouts.

**Article 27 – Continuing Performance.** In the event of a dispute, the UTILITY and the DESIGN-BUILDER agree to continue their respective performance hereunder to the extent feasible in light of the

dispute, including paying billings, and such continuation of efforts and payment of billings shall not be construed as a waiver of any legal right.

**Article 28 – Equitable Relief.** The DESIGN-BUILDER and the UTILITY acknowledge and agree that delays in relocation of the UTILITY’S facilities will impact the public convenience, safety and welfare, and that (without limiting the parties’ remedies hereunder) monetary damages would be inadequate to compensate for delays in the construction of the PROJECT. Consequently, the parties hereto (and the AUTHORITY as well, as a third party beneficiary) shall be entitled to specific performance or other equitable relief in the event of any breach of this Agreement which threatens to delay construction of the PROJECT; provided, however, that the fact that specific performance or other equitable relief may be granted shall not prejudice any claims for payment or otherwise related to performance of the relocation work hereunder.

**Article 29 – Authority.** The UTILITY and the DESIGN-BUILDER each represent and warrant to the other party that the warranting party possesses the legal authority to enter into this Agreement and that it has taken all actions necessary to exercise that authority and to lawfully authorize its undersigned signatory to execute this Agreement and to bind such party to its terms. Each person executing this Agreement on behalf of a party warrants that he or she is duly authorized to enter into this Agreement on behalf of such party and to bind it to the terms hereof.

**Article 30 – Cooperation.** The parties acknowledge that the timely completion of the PROJECT will be influenced by the ability of the UTILITY (and its contractors) and the DESIGN-BUILDER to coordinate their activities, communicate with each other, and respond promptly to reasonable requests. Subject to the terms and conditions of this Agreement, the UTILITY and the DESIGN-BUILDER agree to take all steps reasonably required to coordinate their respective duties hereunder in a manner consistent with the DESIGN-BUILDER’S current and future construction schedules for the PROJECT.

**Article 31 – Termination.** If the PROJECT is canceled or modified so as to eliminate the necessity of the relocation work described herein, then the DESIGN-BUILDER shall notify the UTILITY in writing and the DESIGN-BUILDER reserves the right to thereupon terminate this Agreement. Upon such termination, the parties shall negotiate in good faith an amendment that shall provide mutually acceptable terms and conditions for handling the respective rights and liabilities of the parties relating to such termination.

**Article 32 – Waiver of Consequential Damages.** No party hereto shall be liable to any other party to this Agreement, whether in contract, tort, equity, or otherwise (including negligence, warranty, indemnity, strict liability, or otherwise,) for any punitive, exemplary, special, indirect, incidental, or consequential damages, including, without limitation, loss of profits or revenues, loss of use, claims of customers, or loss of business opportunity.

**Article 33 – Captions.** The captions and headings of the various paragraphs of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the content of their respective paragraphs.

**Article 34 – Counterparts.** This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one and the same instrument.

**Article 35 – Entire Agreement.** This Agreement, including any appendices, attachments, schedules or exhibits thereto, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This Contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.

**Article 36 – Non-Assignment.** This Agreement may not be assigned by the UTILITY or the DESIGN-BUILDER nor may either party’s right, title or interest herein be assigned, transferred, conveyed, subcontracted, sublet or otherwise disposed of without the previous consent, in writing, of the AUTHORITY and any attempts to assign the Contract without the AUTHORITY’S written consent are null and void.

**Article 37 – Nondiscrimination.** To the extent required by Article 15 of the New York State Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, neither the DESIGN-BUILDER nor the UTILITY shall discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, military status, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with State Labor Law Section 220-e, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, each of the DESIGN-BUILDER and the UTILITY agrees that neither it nor its subcontractors shall by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service contract as defined in State Labor Law Section 230, then, in accordance with Section 239 thereof, each of the DESIGN-BUILDER and the UTILITY agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. Each of the DESIGN-BUILDER and the UTILITY is subject to fines of \$50 per person per day for any violation of State Labor Law Section 220-e or 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**Article 38 – Applicable Law.** This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**Article 39 – Appendices, Schedules and Exhibits Incorporated by Reference.** The UTILITY agrees to comply with all of the terms and conditions set forth in Appendices A, B, and C, and Exhibits 1 and 2, which are attached hereto and expressly made a part of this Agreement as fully as if set forth at length herein.

**Appendix A – Scope of Adjustment**

**Appendix B – Plans**

**Appendix C – Summary Cost Estimate Sheet**

**Exhibit 1 – Time Schedule**

**Exhibit 2 – Insurance Certification**



**APPENDIX A**

**SCOPE OF ADJUSTMENT**

[To be attached.]

**APPENDIX B**

**PLANS**

[To be attached.]



**APPENDIX C**

**SUMMARY COST SHEET ESTIMATE**

[To be attached.]

**EXHIBIT 1**

**TIME SCHEDULE**

[To be attached.]

**EXHIBIT 2**

**FORM OF CERTIFICATE OF INSURANCE**

[To be inserted.]

**TAPPAN ZEE HUDSON RIVER CROSSING PROJECT**

**AGREEMENT FOR UTILITY WORK**

**(Design-Builder Managed)**

This AGREEMENT ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between \_\_\_\_\_ (the "DESIGN-BUILDER"), a \_\_\_\_\_, having its principal office at \_\_\_\_\_, and \_\_\_\_\_ (the "UTILITY"), a corporation duly organized and existing under the laws of the State of \_\_\_\_\_, having its principal office at \_\_\_\_\_.

WITNESSETH:

WHEREAS, the UTILITY is the owner of certain utility facilities presently located on \_\_\_\_\_ in \_\_\_\_\_ County, State of New York; and

WHEREAS, the NEW YORK STATE THRUWAY AUTHORITY (the "AUTHORITY") has awarded Contract Number \_\_\_\_ (the "Contract") to the DESIGN-BUILDER for the bridge replacement of the Tappan Zee Hudson River Crossing Project), in Rockland and Westchester Counties ("PROJECT") ; and

WHEREAS, the Contract requires the DESIGN-BUILDER to enter into agreements with utility companies as may be necessary in order to facilitate the progress and completion of the PROJECT; and

WHEREAS, the DESIGN-BUILDER has notified the UTILITY that certain of its facilities and appurtenances are in locational conflict with the PROJECT, and the UTILITY has requested that the DESIGN-BUILDER undertake the relocation of the UTILITY'S facilities as necessary to accommodate the PROJECT; and

WHEREAS, the DESIGN-BUILDER and the UTILITY desire to implement the relocation of the UTILITY'S facilities by entering into this Agreement.

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows:

**Article 1 - Scope of Work.** The work to be performed pursuant to this Agreement consists generally of \_\_\_\_\_, as more particularly described in Appendix A - Scope of Adjustment, in accordance with the Plans described in Article 4.

**Article 2 - Consent to Entry/Work.** The UTILITY does hereby give its authorization and consent to the DESIGN-BUILDER, its representatives and subcontractors, to work on and with the UTILITY'S facilities for the purpose of relocating such facilities to enable construction of the PROJECT. Such consent shall be valid only for the duration of the work to be performed.

**Article 3 - Time of Performance.** The work to be performed pursuant to this Agreement shall be undertaken and completed in accordance with the Time Schedule attached hereto as Exhibit 1. The parties shall coordinate their activities with each other so as to avoid delay. The UTILITY agrees and understands that adherence to such time frames is required for orderly progress of the PROJECT, and acknowledges that the work to be performed pursuant to this Agreement must be complete as a condition precedent to the AUTHORITY'S determination under the Contract that the PROJECT is ready for operation and use by the public.

**Article 4 – Plans.** As used in this Article 4, the term “Design Standards” shall mean the following

- 
- ☐ The DESIGN-BUILDER has hired engineering firm(s) acceptable to the UTILITY to perform all engineering services needed for the preparation of plans, required specifications, and cost estimates, attached hereto as Appendix B (collectively, the “Plans”), for the proposed relocation of the UTILITY'S facilities. The DESIGN-BUILDER represents and warrants that the Plans conform to the Design Standards. By its execution of this Agreement or by the signing of the Plans, the UTILITY hereby approves the Plans and confirms that the Plans are in compliance with the “Standards” described in Article 11(a)(5).
  - ☐ The UTILITY has provided plans, required specifications and cost estimates, attached hereto as Appendix B (collectively, the “Plans”), for the proposed relocation of the UTILITY'S facilities. The UTILITY represents and warrants that the Plans conform to the Design Standards. By execution of this Agreement, the DESIGN-BUILDER and the UTILITY hereby approve the Plans. The UTILITY also has provided to the DESIGN-BUILDER a utility plan view map illustrating the location of existing and proposed utility facilities on the DESIGN-BUILDER'S right of way map of the PROJECT. With regard to its preparation of the Plans, the UTILITY represents as follows *[check one box that applies]*:

- ☐ The UTILITY'S employees were utilized to prepare the Plans, and the charges therefore do not exceed the UTILITY'S typical costs for such work.
- ☐ The UTILITY utilized consulting engineers to prepare the Plans, and the fees for such work are not based upon a percentage of construction costs. Further, such fees encompass only the work necessary to prepare the Plans for relocation of the UTILITY'S facilities described herein, and do not include fees for work done on any other project. The fees of the consulting engineers are reasonable and are comparable to the fees typically charged by consulting engineers in the locale of the PROJECT for comparable work for the UTILITY.
- ☐ OTHER (UTILITY and DESIGN-BUILDER to provide)

Article 5 – Review by the DESIGN BUILDER and the AUTHORITY. The parties hereto acknowledge and agree as follows:

(a) Upon execution of this Agreement by the DESIGN-BUILDER and the UTILITY, the DESIGN-BUILDER shall submit this Agreement to the AUTHORITY for its reference, and, if the relocation will be on PROJECT right of way ("ROW"), the DESIGN-BUILDER shall submit the attached Plans to the AUTHORITY for approval. Said documents are referred to as a "Utility Assembly." The parties agree to cooperate in good faith to modify the Plans, as necessary and mutually acceptable to all parties, to respond to any comments made by the AUTHORITY thereon. Without limiting the generality of the foregoing, (i) the UTILITY agrees to respond (with comment and/or acceptance) to any modified Plans prepared by the DESIGN-BUILDER in response to the AUTHORITY comments within 14 business days after receipt of such modifications; and (ii) if the UTILITY originally prepared the Plans, the UTILITY agrees to modify the Plans in response to the DESIGN-BUILDER and the AUTHORITY comments and to submit such modified Plans to the DESIGN-BUILDER for its comment and/or approval (and re-submittal to the AUTHORITY for its comment and/or approval) within 14 business days after receipt of the DESIGN-BUILDER'S comments. The UTILITY'S failure to timely respond to any modified Plans submitted by the DESIGN-BUILDER pursuant to this Article shall be deemed the UTILITY'S approval of the same. If the UTILITY fails to timely prepare modified Plans which are its responsibility hereunder, then the DESIGN-BUILDER shall have the right to modify the Plans for the UTILITY'S approval as if the DESIGN-BUILDER had originally prepared the Plans. The process set forth in this Article 5 will be repeated until each of the UTILITY, DESIGN-BUILDER and AUTHORITY have approved the Plans.

(b) The parties acknowledge and agree that each of the UTILITY'S, DESIGN-BUILDER'S, and AUTHORITY'S, review, comments, and/or approval of a Utility Assembly or any component thereof shall constitute the UTILITY'S and DESIGN-BUILDER'S, and when required, the AUTHORITY'S, approval of the location and manner in which a Utility Assembly will be installed, adjusted, or relocated within the PROJECT ROW, subject to the DESIGN-BUILDER'S satisfactory performance of the relocation work in accordance with the approved Plans. The DESIGN-BUILDER has no duty to review the UTILITY'S facilities or components for their quality or adequacy to provide the intended utility service.

Article 6 - Performance of Installation and Construction Work. The UTILITY hereby requests that the DESIGN-BUILDER perform the construction necessary to install and relocate the UTILITY'S facilities and the DESIGN-BUILDER hereby agrees to perform such work. All work hereunder shall be performed in a good and workmanlike manner, and in accordance with the Plans (as such Plans may be modified as provided herein by the DESIGN-BUILDER, the UTILITY or the AUTHORITY). The DESIGN-BUILDER shall ensure that all work hereunder is performed with due regard to the protection and maintenance of the property, traffic and operations of the AUTHORITY, Utility(s) and any affected locality, and in such a manner as to cause no damage to, or unreasonable interference with, such traffic or operations.

Article 7 - Responsibility for Costs of Relocation Work. With the exception of any Betterment (hereinafter defined), the parties shall allocate the cost of any relocations between themselves as identified in Appendix C and in accordance with the requirements of the Blue Book. An allocation percentage may be determined by application of an eligibility ratio, if appropriate, as detailed in Appendix C.

Article 8 – Maintenance of Facilities. The DESIGN-BUILDER hereby agrees that it shall have sole responsibility to maintain the facilities during performance of the work. The UTILITY agrees that upon satisfactory completion of the work performed pursuant to this Agreement and approval of the work by the AUTHORITY with respect to the work completed within the AUTHORITY ROW, the UTILITY shall have sole responsibility for such relocated or replaced facilities and shall continue to operate and maintain the same for so long as such facilities shall remain in existence. Each of the DESIGN-BUILDER and the UTILITY shall fulfill its respective responsibility to maintain such facilities in accordance with all applicable laws, regulations, codes and standards, including, but not limited to, the AUTHORITY’S policies and procedures governing accommodation of utilities on the New York State Thruway System, applicable sections or requirements of the Federal Highway Administration, Federal-Aid Policy Guide and/or the NYS Utility Reimbursement Procedure Manual. Further, each of the DESIGN-BUILDER and the UTILITY shall have a continuing obligation to adjust or remove any or all of the facilities at the request of the AUTHORITY.

Article 9 – Liability and Workers’ Compensation Insurance. The DESIGN-BUILDER, or any subcontractor the DESIGN-BUILDER engages to perform work hereunder, shall procure and maintain, until the work covered by this Agreement has been completed as specified herein, insurance for liability for damages imposed by law, of the kinds and in the amounts hereinafter provided, with insurance companies authorized to do such business in the State of New York, covering all work performed pursuant to this Agreement. Before commencing the work, the DESIGN-BUILDER shall furnish to the UTILITY a certificate of insurance on the form attached hereto as Exhibit 2, showing that the DESIGN-BUILDER or its subcontractor has complied with this Article, which certificate shall provide that the policies shall not be changed or cancelled until 30 days’ written notice has been given to the UTILITY. The kinds and amounts of insurance are as follows:

- (a) Liability and property damage insurance policies, each with limits of not less than:

Single limit of \$2,000,000 combined bodily injury and/or property damage liability for each occurrence with a \$2,000,000 aggregate limit for the term of the policy, in the types specified, viz.:

(1) Contractor’s liability insurance issued to and covering liability for damages imposed by law upon the DESIGN-BUILDER, or its subcontractors, with respect to all work performed under this Agreement, with endorsement providing coverage for damages arising out of the PROJECT to property owned by the DESIGN-BUILDER or in its care, custody and control.

(2) Contractor’s liability insurance issued to and covering liability for damages imposed by law upon the DESIGN-BUILDER and each Subcontractor with respect to all work performed by said entity under this Agreement.

(3) Protective liability insurance issued to and covering liability for damages imposed by law upon the DESIGN-BUILDER with respect to all work performed for the DESIGN-BUILDER by its subcontractors pursuant to this Agreement.

(4) Protective liability insurance for the benefit of the UTILITY, its officers, agents and employees, both officially and personally, with respect to all operations conducted by the DESIGN-BUILDER or its subcontractors pursuant to this Agreement, including in such coverage any omissions and supervisory acts of the UTILITY, its officers, agents and employees.

(5) Completed operations liability insurance issued to and covering liability for damages imposed by law upon the DESIGN-BUILDER and its subcontractors arising between the date of final cessation of work and the date of final acceptance thereof, out of that part of the work performed by each.

(6) Automobile liability and property damage insurance covering the use in connection with the work covered by this Agreement of all owned, non-owned, and hired vehicles bearing, or under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear license plates.

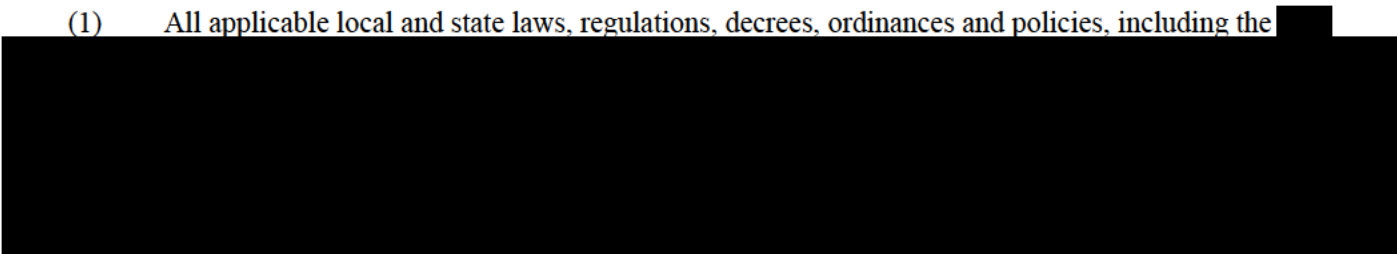
(b) This Agreement will be void and of no force and effect unless the DESIGN-BUILDER, or any subcontractor performing work pursuant to this Agreement, shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the Workers' Compensation/Disability Benefits Law. If employees will be working on, near or over navigable waters, a U.S. Longshore and Harbor Workers' Compensation Act endorsement must be included. The DESIGN-BUILDER or any subcontractor performing work pursuant to this Agreement, must provide proof of exemption, certified by the Workers' Compensation Board, to obtain a waiver from the requirements of this provision.

Article 10 – Damages for Delay. The UTILITY'S failure to adhere to the Time Schedule set forth in Exhibit 1 will delay the DESIGN-BUILDER'S ability to proceed with work required for the PROJECT and may result in damages to the DESIGN-BUILDER, including, but not limited to DESIGN-BUILDER liability to the AUTHORITY; and additional overhead, administrative and other personnel costs suffered by the DESIGN-BUILDER as a result of the delay in the PROJECT. In the event that the UTILITY'S failure to adhere to the Time Schedule set forth in Exhibit 1 results in damages to the DESIGN-BUILDER, the UTILITY shall reimburse the DESIGN-BUILDER for the cost of such damages.

Article 11 – Design and Construction Standards.

(a) All design and construction performed for the relocation work which is the subject of this Agreement, including the use of all property under the jurisdiction of the AUTHORITY ("Authority Property") whereon such work is performed, shall comply with and conform to the following:

(1) All applicable local and state laws, regulations, decrees, ordinances and policies, including the





(2) The design and construction requirements for the installation, modification, relocation, maintenance, operation and repair of all permitted facilities located over, under, along and on Authority Property, as set forth in the AUTHORITY'S TAP-421 publication series, as the same may be amended from time to time (the foregoing may be obtained from the NYSTA Division Permit Coordinator or the Real Property section of the AUTHORITY'S website: [www.thruway.ny.gov](http://www.thruway.ny.gov));

(3) All Federal laws, regulations, decrees, ordinances and policies applicable to projects receiving Federal funding, financing and/or credit assistance, including without limitation 23 CFR 645 Subparts A and B;

(4) The terms of all governmental permits or other approvals, as well as any private approvals of third parties necessary for such work; and

(5) The standard specifications, standards of practice, and construction methods (collectively, "Standards") which the UTILITY customarily applies to utility facilities comparable to the UTILITY'S facilities that are constructed by the UTILITY or for the UTILITY by its contractors at the UTILITY'S expense, which Standards are current at the time this Agreement is signed by the UTILITY, and which the UTILITY has submitted to the DESIGN-BUILDER in writing.

(6) The UTILITY acknowledges that all service meters must be placed outside of the AUTHORITY ROW.

(b) Such design and construction also shall be consistent and compatible with design and construction of the PROJECT and any other utilities being installed in the same vicinity. The UTILITY acknowledges receipt from the DESIGN-BUILDER of project plans as necessary to comply with the foregoing. In case of any inconsistency among any of the standards referenced in this Agreement, the most stringent standard shall apply.

(c) The plans, specifications, and cost estimates contained in Appendix B shall identify and detail all UTILITY facilities that the UTILITY intends to abandon in place rather than remove, including material type, quantity, size, age, and condition. No facilities containing hazardous or contaminated materials may be abandoned, but shall be specifically identified and removed in accordance with the requirements of subparagraph (a). It is understood and agreed that the DESIGN-BUILDER shall not pay for the assessment and remediation or other corrective action relating to soil and ground water contamination caused by the UTILITY facility prior to the removal.

Article 12 – Permits. The DESIGN-BUILDER shall obtain all permits necessary for the construction to be performed by the DESIGN-BUILDER hereunder, and the UTILITY shall cooperate in that process as needed.

Article 13 – Reimbursement of the UTILITY'S Indirect Costs.

(a) The DESIGN-BUILDER agrees to reimburse the UTILITY for its share of the UTILITY'S indirect costs (e.g., engineering, inspection, testing, ROW) as identified in Appendix B, if any; provided, however, that the DESIGN-BUILDER shall not reimburse the UTILITY for any costs (direct or indirect) related to the identified Betterment. When requested by the UTILITY, monthly progress payments will be made. The monthly payment will not exceed 80% of the estimated indirect work done to date. Once the indirect work is complete, final payment of the eligible indirect costs will be made. Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.

(b) The UTILITY'S indirect costs associated with relocation of the UTILITY'S facilities shall be developed pursuant to the method checked and described below [check only one box]:

☐ (1) Actual related indirect costs accumulated in accordance with (i) a work order accounting procedure prescribed by the applicable Federal or State regulatory body, or (ii) established accounting procedure developed by the UTILITY and which the UTILITY uses in its regular operations (either (i) or (ii) referred to as "Actual Cost") or,

☐ (2) The agreed sum of \$ (‘‘Agreed Sum’’) as supported by the analysis of the UTILITY’S estimated costs attached hereto as part of Appendix C.

(c) All indirect costs charged to the DESIGN-BUILDER by the UTILITY shall be reasonable and shall be computed using rates and schedules not exceeding those applicable to similar work performed by or for the UTILITY at the UTILITY’S expense. The DESIGN-BUILDER’S performance of the relocation work hereunder and payment of the DESIGN-BUILDER’S share of the UTILITY’S costs pursuant to this Agreement, if applicable, shall be full compensation to the UTILITY for all costs incurred by the UTILITY in relocating the UTILITY’S facilities (including without limitation costs of relinquishing and/or acquiring ROW).

**Article 14 – Advancement of Funds by UTILITY for Construction Costs.**

(a) Advancement of the UTILITY’S share, if any, of estimated costs

Appendix C identifies all estimated engineering and construction-related costs, including labor, material, equipment and other miscellaneous construction items. Appendix C also identifies the UTILITY’S and the DESIGN-BUILDER’S respective shares of the estimated costs.

The UTILITY shall advance to the DESIGN-BUILDER its allocated share, if any, of the estimated costs for construction and engineering work to be performed by the DESIGN-BUILDER, in accordance with the following terms:

☐ The relocation of the UTILITY’S facilities does not require advancement of funds.

☐ The relocation of the UTILITY’S facilities does require advancement of funds and the terms agreed to between the DESIGN-BUILDER and the UTILITY are listed below.

[Insert terms of advance funding to be agreed between DESIGN-BUILDER and UTILITY.]

(b) Relocations Based on Actual Costs or Agreed Sum

[Check the one appropriate provision, if advancement of funds is required]:

☐ The UTILITY is responsible for its share of the DESIGN-BUILDER’S Actual Cost for the relocation, including the identified Betterment. Accordingly, upon completion of all relocation work to be performed by both parties pursuant to this Amendment, (i) the UTILITY shall pay to the DESIGN-BUILDER the amount, if any, by which the Actual Cost of the Betterment (as determined in Article 16(b)) plus the Actual Cost of UTILITY’S share of the relocation (based on the allocation set forth in Appendix C) exceeds the estimated cost advanced by the UTILITY, or (ii) the DESIGN-BUILDER shall refund to the UTILITY the amount, if any, by which such advance exceeds such Actual Cost, as applicable.

☐ The Agreed Sum is the agreed and final amount due for the relocation, including any Betterment, under this Amendment. Accordingly, no adjustment (either up or down) of such amount shall be made based on Actual Costs.

**Article 15 – Invoices.** On invoices prepared by either the UTILITY or the DESIGN-BUILDER, all costs developed using the ‘‘Actual Cost’’ method described in Article 13(b)(1) shall be itemized in a format allowing for comparisons to the approved estimates, including listing each of the services performed, the amount of time spent and the date on which the service was performed. The original and three copies of each invoice, together with (1) such supporting information to substantiate all invoices as reasonably requested, and (2) such waivers and releases of liens as the other party may reasonably require, shall be submitted to the other party at the address for notices set forth in Article 24 of this Agreement or such other address specified in writing by the party to whom the notice is being sent. The UTILITY and the DESIGN-BUILDER shall make commercially reasonable efforts to submit final invoices not later than 120 days after completion of work. The UTILITY and the DESIGN-BUILDER hereby acknowledge and agree that any costs not submitted to the other party within 19 months following completion of all relocation work to be performed by the parties pursuant to this Agreement shall be deemed to have been abandoned and waived.

[Article 16 – Betterment and Salvage

(a) For purposes of this Agreement, the term “Betterment” means any upgrading of a utility facility being adjusted that is not attributable to the construction of the PROJECT and is made solely for the benefit of and at the election of the UTILITY, including but not limited to an increase in the capacity, capability, efficiency or function of the adjusted utility facility over that provided by the existing UTILITY facility or an expansion of the existing utility facility; provided, however, that the following are not considered Betterments:

- (1) any upgrading which is required for accommodation of the PROJECT;
- (2) replacement devices or materials that are of equivalent standards although not identical;
- (3) replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
- (4) any upgrading required by applicable laws, regulations or ordinances; or
- (5) replacement devices or materials which are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase).

Any upgrading required by the UTILITY’S written Standards meeting the requirements of Article 11(a)(4) shall be deemed to be of direct benefit to the PROJECT.

(b) It is understood and agreed that the DESIGN-BUILDER shall not pay for any Betterments and that the UTILITY shall be solely responsible therefor. No Betterment may be performed hereunder which is incompatible with the PROJECT or which cannot be performed within the other constraints of the Contract (including, without limitation, the scheduling requirements thereunder), applicable law and any applicable governmental approvals. Accordingly, the parties agree as follows [check one box that applies, and complete if appropriate]:

☐ The relocation of the UTILITY’S facilities pursuant to the Plans does not include any Betterment.

☐ The relocation of the UTILITY’S facilities pursuant to the Plans includes Betterment to the UTILITY’S facilities by reason of [insert explanation, e.g. “replacing 12” pipe with 24” pipe”]: \_\_\_\_\_. The DESIGN-BUILDER has provided to the UTILITY comparative estimates for (i) all work to be performed by the DESIGN-BUILDER pursuant to this Agreement, including work attributable to the Betterment, and (ii) the cost to perform such work without the Betterment, which estimates are hereby approved by the UTILITY. The estimated cost of the DESIGN-BUILDER’S work hereunder which is attributable to Betterment is \$ \_\_\_\_\_, calculated by subtracting (ii) from (i). The percentage of the total cost of the DESIGN-BUILDER’S work hereunder which is attributable to Betterment is \_\_\_\_\_ %, calculated by subtracting (ii) from (i), which remainder is divided by (i).

(c) If Article 16(b) identifies Betterment, the UTILITY shall advance to the DESIGN-BUILDER, at least 14 business days prior to the date scheduled for commencement of construction for relocation of the UTILITY’S facilities, the estimated cost attributable to Betterment as set forth in Article 16(b). Should the UTILITY fail to advance payment to the DESIGN-BUILDER 14 business days prior to commencement of the relocation construction, the DESIGN-BUILDER shall have the option of commencing and completing (without delay) the relocation work without installation of the applicable Betterment. [If Article 16(b) identifies Betterment, check the one appropriate provision]:

☐ The estimated cost stated in Article 16(b) is the agreed and final amount due for Betterment hereunder, and accordingly no adjustment (either up or down) of such amount shall be made based on actual costs.

☐ The UTILITY is responsible for the DESIGN-BUILDER'S actual cost for the identified Betterment. Accordingly, upon completion of all relocation work to be performed by both parties pursuant to this Agreement, (i) the UTILITY shall pay to the DESIGN-BUILDER the amount, if any, by which the actual cost of the Betterment (determined as provided below in this paragraph) exceeds the estimated cost advanced by the UTILITY, or (ii) the DESIGN-BUILDER shall refund to the UTILITY the amount, if any, by which such advance exceeds such actual cost, as applicable. Any additional payment by the UTILITY shall be due within 60 calendar days of the UTILITY'S receipt of the DESIGN-BUILDER'S invoice therefor, together with supporting documentation; any refund shall be due within 60 calendar days after completion of the relocation work hereunder. The actual cost of Betterment incurred by the DESIGN-BUILDER shall be calculated by multiplying (i) the Betterment percentage stated in Article 16(b), by (ii) the actual cost of all work performed by the DESIGN-BUILDER pursuant to this Agreement (including work attributable to the Betterment), as invoiced by the DESIGN-BUILDER to the UTILITY.

(d) If Article 16(b) identifies a Betterment, the amount allocable to the Betterment in the UTILITY'S indirect costs shall be determined by applying the percentage of the Betterment calculated in Article 16(b) to the UTILITY'S indirect costs. The UTILITY'S invoice to the DESIGN-BUILDER for the DESIGN-BUILDER'S share of the UTILITY'S indirect costs shall credit the DESIGN-BUILDER with any Betterment amount determined pursuant to this Article 16(d).

(e) For any relocation from which the UTILITY recovers any materials and/or parts and retains or sells the same, after application of any applicable Betterment credit, the UTILITY'S invoice to the DESIGN-BUILDER for its costs shall credit the DESIGN-BUILDER with the salvage value for such materials and/or parts.

(f) The determinations and calculations of Betterment described in this Article 16 shall exclude real property acquisition costs. Betterments requiring real property acquisitions are addressed in Article 21.]

Article 17 – Utility Investigations. At the DESIGN-BUILDER'S request, the UTILITY shall assist the DESIGN-BUILDER in locating any utility facilities (including appurtenances) which are owned and/or operated by the UTILITY and may be impacted by the PROJECT. Without limiting the generality of the foregoing, the UTILITY shall mark in the field the location of all of Utility's facilities horizontally on the ground in advance of PROJECT construction in the immediate area of such utilities in accordance with Official Compilation of Codes, Rules and Regulations of the State of New York Part 753, Subpart 753-4.

Article 18 – Inspection and Acceptance by the UTILITY.

(a) Throughout the relocation construction hereunder, the UTILITY shall provide adequate inspector(s) for such construction. The work shall be inspected by the UTILITY'S inspector(s) at least once each working day, and more often if such inspections are deemed necessary by the UTILITY. Further, upon request by the DESIGN-BUILDER or its contractors, the UTILITY shall furnish an inspector at any reasonable time in which construction is underway pursuant to this Agreement, including occasions when construction is underway in excess of the usual 40 hour work week and at such other times as reasonably required. The UTILITY agrees to promptly notify the DESIGN-BUILDER of any concerns resulting from any such inspection.

(b) The UTILITY shall perform a final inspection of the relocated facilities, including conducting any tests as are necessary or appropriate, within five business days after completion of construction hereunder. The UTILITY shall accept such construction if it is consistent with the performance standards described in Article 11, by giving written notice of such acceptance to the DESIGN-BUILDER within said five-day period. If the UTILITY does not accept the construction, then the UTILITY shall, not later than the expiration of said five-day period, notify the DESIGN-BUILDER in writing of its grounds for non-acceptance and suggestions for correcting the problem, and if the suggested corrections are justified, the DESIGN-BUILDER will comply. The UTILITY shall re-inspect any revised construction (and re-test if appropriate) and give notice of acceptance, not later than five business days after completion of corrective work. The UTILITY'S failure to inspect and/or to give any required notice of acceptance or non-acceptance within the specified time period shall be deemed acceptance.



(c) From and after the UTILITY'S acceptance (or deemed acceptance) of a relocated UTILITY facility, the UTILITY agrees to accept ownership of, and full operation and maintenance responsibility for, such UTILITY facility.

Article 19 – Design Changes. The DESIGN-BUILDER will be responsible for additional relocation design and construction costs necessitated by design changes to the PROJECT, upon the terms specified herein.

Article 20 – Field Modifications. The DESIGN-BUILDER shall provide the UTILITY with documentation of any field modifications occurring in the relocation of the UTILITY'S facilities.

[Article 21 – Real Property Interests.

(a) The UTILITY has provided, or upon execution of this Agreement shall promptly provide to the DESIGN-BUILDER, documentation identifying the UTILITY'S claimed interest in the real property where its existing facilities are located. Such claims are subject to the AUTHORITY'S approval as part of its review of Utility Assembly as described in Article 5. Claims approved by the AUTHORITY as to rights or interests are referred to herein as "Existing Interests."

(b) If acquisition of any new easement or other interest in real property ("New Interest") is necessary for the relocation of any facilities, then the UTILITY work with the AUTHORITY and DESIGN-BUILDER to define such necessary New Interest. If the New Interest is to be located in the AUTHORITY'S right of way, the UTILITY and the AUTHORITY shall cooperate in documenting the New Interest. If the New Interest is outside the AUTHORITY right of way, the AUTHORITY shall be responsible for undertaking such acquisition. The UTILITY shall cooperate with and assist the AUTHORITY to facilitate the AUTHORITY'S expeditious acquisition of the New Interest. The DESIGN-BUILDER and the UTILITY each shall be responsible for their respective share (as specified in Article 10) of the actual and reasonable acquisition costs of any such New Interest (including without limitation the UTILITY'S reasonable overhead charges and reasonable legal costs as well as compensation paid to the landowner); provided, however, that DESIGN-BUILDER'S share shall exclude any costs attributable to Betterment as described in Article 21(c).

(c) The DESIGN-BUILDER shall pay its share only for a replacement in kind of an Existing Interest (e.g., in width and type), unless a New Interest exceeding such standard (i) is required in order to accommodate the PROJECT or by compliance with applicable law, or (ii) is called for by the DESIGN-BUILDER in the interest of overall PROJECT economy. Any New Interest which is not the DESIGN-BUILDER'S responsibility pursuant to the preceding sentence shall be considered a Betterment to the extent that it upgrades the Existing Interest which it replaces, or in its entirety if the related UTILITY facility was not installed pursuant to an Existing Interest. Betterment costs shall be solely the UTILITY'S responsibility.

(d) For each Existing Interest located within the final PROJECT ROW, upon completion of the related relocation work and its acceptance by the UTILITY, the UTILITY agrees to execute a quitclaim deed or other appropriate documentation relinquishing such Existing Interest to the AUTHORITY, unless the affected UTILITY facility will remain in its original location or is being reinstalled in a new location within the area subject to such Existing Interest. All quitclaim deeds or other relinquishment documents shall be subject to the AUTHORITY'S approval as part of its review of the Utility Assembly as described in Article 10. For each such Existing Interest relinquished by the UTILITY, the DESIGN-BUILDER shall do one of the following to compensate the UTILITY for such Existing Interest, as appropriate:

(1) If a New Interest is acquired for the affected UTILITY facility, the DESIGN-BUILDER shall reimburse the UTILITY for the DESIGN-BUILDER'S share of the UTILITY'S actual and reasonable acquisition costs in accordance with Article 21(b), subject to Article 21(c); or

(2) If no New Interest is acquired for the affected UTILITY facility, the DESIGN-BUILDER shall compensate the UTILITY for the DESIGN-BUILDER'S share of the fair market value of such relinquished Existing Interest, as mutually agreed between the UTILITY and the DESIGN-BUILDER and supported by a written valuation.

The compensation provided to the UTILITY pursuant to either subparagraph (1) or subparagraph (2) above shall constitute complete compensation to the UTILITY for the relinquished Existing Interest and any New Interest, and no further compensation shall be due to the UTILITY from the DESIGN-BUILDER or the AUTHORITY on account of such Existing Interest or New Interest(s).

**Article 22 – Breach by the Parties.**

(a) If the UTILITY claims that the DESIGN-BUILDER has breached any of its obligations under this Agreement, the UTILITY shall notify the DESIGN-BUILDER and the AUTHORITY in writing of such breach, and the DESIGN-BUILDER shall have 30 days following receipt of such notice in which to cure such breach, before the UTILITY may invoke any remedies which may be available to it as a result of such breach; provided, however, that both during and after such period the AUTHORITY shall have the right, but not the obligation, to cure any breach by the DESIGN-BUILDER. Without limiting the generality of the foregoing, (a) the DESIGN-BUILDER shall have no liability to the UTILITY for any act or omission committed by the UTILITY in connection with this Agreement, including without limitation any claimed defect in any design or construction work supplied by the UTILITY or by its contractors, and (b) in no event shall the DESIGN-BUILDER be responsible for any repairs or maintenance to the UTILITY'S facilities relocated pursuant to this Agreement.

(b) If the DESIGN-BUILDER claims that the UTILITY has breached any of its obligations under this Agreement, the DESIGN-BUILDER will notify the UTILITY in writing of such breach, and the UTILITY shall have 30 days following receipt of such notice in which to cure such breach, before the DESIGN-BUILDER may invoke any remedies which may be available to it as a result of such breach.

**Article 23 – Traffic Control.** The DESIGN-BUILDER shall provide traffic control or shall reimburse the UTILITY for the DESIGN-BUILDER'S share (if any, as specified in Article 7) of the costs for traffic control made necessary by the relocation work performed by either the DESIGN-BUILDER or the UTILITY pursuant to this Agreement. Betterment percentages calculated in Article 16 shall also apply to traffic control costs.

**Article 24 – Notices.** Except as otherwise expressly provided in this Agreement, all notices or communications pursuant to this Agreement shall be sent or delivered to the following:

UTILITY:

Phone:

Fax:

DESIGN-BUILDER:

Phone:

Fax:

A party sending a notice of default of this Agreement to another party shall also send a copy of such notice to the AUTHORITY and the [\_\_\_\_\_] at the following addresses:

AUTHORITY: New York Thruway Authority

Attention: [\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Phone: [\_\_\_\_\_]

[\_\_\_\_\_]: [\_\_\_\_\_]

Attention: [\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Phone: [\_\_\_\_\_]

Any notice or demand required herein shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by telefacsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the appropriate address set forth above. Notices shall be deemed delivered when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile after 4:00 p.m. Eastern Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. on a business day or at any time on a non-business day shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m. on a business day). Any party may from time to time designate any other address for this purpose by written notice to all other parties; the AUTHORITY may designate another address by written notice to all parties.

Article 25 – Approvals. Any acceptance, approval, or any other like action (collectively "Approval") required or permitted to be given by the DESIGN-BUILDER, the UTILITY or the AUTHORITY pursuant to this Agreement:

- (a) Must be in writing to be effective (except if deemed granted pursuant hereto);
- (b) Shall not be unreasonably withheld or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the reason for withholding such Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval; and
- (c) Shall be deemed granted if no response is provided to the party requesting an Approval within the time period prescribed by this Agreement (or if no time period is prescribed, then 14 calendar days), commencing upon actual receipt by the party from which an Approval is requested or required, of a request for Approval from the requesting party, provided that the foregoing shall not apply to Approvals by the AUTHORITY or to any other Approval for which a different approach is specifically provided otherwise in this Agreement.

Article 26 – Time.

- (a) Time is of the essence in the performance of this Agreement.
- (b) All references to “days” herein shall be construed to refer to calendar days, unless otherwise stated.
- (c) No party shall be liable to another party for any delay in performance under this Agreement from any cause beyond its control and without its fault or negligence (“Force Majeure”), such as acts of God, acts of civil or military authority, fire, earthquake, strike, unusually severe weather, floods or power blackouts.

Article 27 – Continuing Performance. In the event of a dispute, the UTILITY and the DESIGN-BUILDER agree to continue their respective performance hereunder to the extent feasible in light of the dispute,

including paying billings, and such continuation of efforts and payment of billings shall not be construed as a waiver of any legal right.

Article 28 – Equitable Relief. The DESIGN-BUILDER and the UTILITY acknowledge and agree that delays in relocation of the UTILITY’S facilities will impact the public convenience, safety and welfare, and that (without limiting the parties’ remedies hereunder) monetary damages would be inadequate to compensate for delays in the construction of the PROJECT. Consequently, the parties hereto (and the AUTHORITY as well, as a third party beneficiary) shall be entitled to specific performance or other equitable relief in the event of any breach of this Agreement which threatens to delay construction of the PROJECT; provided, however, that the fact that specific performance or other equitable relief may be granted shall not prejudice any claims for payment or otherwise related to performance of the relocation work hereunder.

Article 29 – Authority. The UTILITY and the DESIGN-BUILDER each represent and warrant to the other party that the warranting party possesses the legal authority to enter into this Agreement and that it has taken all actions necessary to exercise that authority and to lawfully authorize its undersigned signatory to execute this Agreement and to bind such party to its terms. Each person executing this Agreement on behalf of a party warrants that he or she is duly authorized to enter into this Agreement on behalf of such party and to bind it to the terms hereof.

Article 30 – Cooperation. The parties acknowledge that the timely completion of the PROJECT will be influenced by the ability of the UTILITY (and its contractors) and the DESIGN-BUILDER to coordinate their activities, communicate with each other, and respond promptly to reasonable requests. Subject to the terms and conditions of this Agreement, the UTILITY and the DESIGN-BUILDER agree to take all steps reasonably required to coordinate their respective duties hereunder in a manner consistent with the DESIGN-BUILDER’S current and future construction schedules for the PROJECT.

Article 31 – Termination. If the PROJECT is canceled or modified so as to eliminate the necessity of the relocation work described herein, then the DESIGN-BUILDER shall notify the UTILITY in writing and the DESIGN-BUILDER reserves the right to thereupon terminate this Agreement. Upon such termination, the parties shall negotiate in good faith an amendment that shall provide mutually acceptable terms and conditions for handling the respective rights and liabilities of the parties relating to such termination.

Article 32 – Waiver of Consequential Damages. No party hereto shall be liable to any other party to this Agreement, whether in contract, tort, equity, or otherwise (including negligence, warranty, indemnity, strict liability, or otherwise,) for any punitive, exemplary, special, indirect, incidental, or consequential damages, including, without limitation, loss of profits or revenues, loss of use, claims of customers, or loss of business opportunity.

Article 33 – Captions. The captions and headings of the various paragraphs of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the content of their respective paragraphs.

Article 34 – Counterparts. This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one and the same instrument.

Article 35 – Entire Agreement. This Agreement, including any appendices, attachments, schedules or exhibits thereto, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This Contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.

Article 36 – Non-Assignment. This Agreement may not be assigned by the UTILITY or the DESIGN-BUILDER nor may either party’s right, title or interest herein be assigned, transferred, conveyed, subcontracted, sublet or otherwise disposed of without the previous consent, in writing, of the AUTHORITY and any attempts to assign the Contract without the AUTHORITY’S written consent are null and void.



Article 37 – Nondiscrimination. To the extent required by Article 15 of the New York State Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, neither the DESIGN-BUILDER nor the UTILITY shall discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, military status, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with State Labor Law Section 220-e, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, each of the DESIGN-BUILDER and the UTILITY agrees that neither it nor its subcontractors shall by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service contract as defined in State Labor Law Section 230, then, in accordance with Section 239 thereof, each of the DESIGN-BUILDER and the UTILITY agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. Each of the DESIGN-BUILDER and the UTILITY is subject to fines of \$50 per person per day for any violation of State Labor Law Section 220-e or 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

Article 38 – Applicable Law. This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**Article 39 – Appendices, Schedules and Exhibits Incorporated by Reference.** The UTILITY agrees to comply with all of the terms and conditions set forth in Appendices A, B, and C, and Exhibits 1 and 2, which are attached hereto and expressly made a part of this Agreement as fully as if set forth at length herein.

**Appendix A – Scope of Adjustment**

**Appendix B – Plans**

**Appendix C – Summary Cost Estimate Sheet**

**Exhibit 1 – Time Schedule**

**Exhibit 2 – Insurance Certification**



**APPENDIX A**

**SCOPE OF ADJUSTMENT**

[To be attached.]

**APPENDIX B**

**PLANS**

[To be attached.]

**APPENDIX C**

**SUMMARY COST SHEET ESTIMATE**

[To be attached.]

**EXHIBIT 1**

**TIME SCHEDULE**

[To be attached.]

**EXHIBIT 2**

**FORM OF CERTIFICATE OF INSURANCE**

[To be inserted.]