

COUNTY OF ROCKLAND FACILITIES MANAGEMENT BLDG. A., 2 nd FLOOR, 50 SANATORIUM RD, POMONA, NY 10970 PHONE: 845-364-2958 / FAX: 845-364-3810		PAGE: 1
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RECEIPT CONFIRMATION

Complete and return this confirmation form within three (3) Days to:

Mr. Robert H. Gruffi, P.E., LEED AP
Director, Facilities Management
County of Rockland
Sanatorium Road, Bldg. A
Pomona, NY 10970
Tel: 845-364-2958 Fax: 845-364-3810

Company Name:_____

Address:_____

Contact Person:_____ Phone No:_____

Fax No:_____ E-Mail:_____

_____ We will be submitting a Bid

_____ We will not be submitting a Bid. No additional Bid information will be sent to you.

If a Pre-Bid meeting has been scheduled for this Bid, please indicate if you plan to attend: **Yes / No**

It is the potential Bidder's responsibility to ensure that the County receives the Receipt of Confirmation form. Bidders should obtain a facsimile receipt of successful transmission or send by certified or overnight mail.

Dated:_____, 202__

<p style="text-align: center;">COUNTY OF ROCKLAND FACILITIES MANAGEMENT BLDG. A., 2nd FLOOR, 50 SANATORIUM RD, POMONA, NY 10970 PHONE: 845-364-2958 / FAX: 845-364-3810</p>		PAGE: 2
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INSTRUCTIONS TO BIDDERS

SECTION 1 DEFINITIONS FOR ADVERTISEMENT

- 1.1 **“Addenda”** means written or graphic instruments issued by the County before the execution of the Contract, which modifies or interprets the Bidding Documents by additions, deletions, clarifications, or corrections.
- 1.2 **“Alternate Bid”** means an amount stated in the Bid to be added to or deducted from the Base Bid amount if the corresponding change in the Work, as described in the Bidding Documents, is accepted.
- 1.3 **“Base Bid”** means the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sum stated in Alternate Bid.
- 1.4 **“Bid”** means a complete and properly executed proposal to do the Work for the sums stated therein, submitted in accordance with the Bidding Documents.
- 1.5 **“Bidder”** means a person or entity who submits a Bid and who meets the requirements stated in the Bidding Documents.
- 1.6 **“Sub-Bidder”** means a person or entity who submits a Bid to a Bidder for materials, equipment, or labor for a portion of the Work.
- 1.7 **“Bidding Documents”** means the Bidding Requirements, plans and specifications and the Contract Documents. The Bidding Requirements may consist of the Advertisement or Notice to Bidders, Instructions to Bidders, Supplementary Instructions to Bidders, Bid form(s) and other Contract forms.
- 1.8 **“Contract Documents”** means the Bidding Documents, Notice to Bidders, Conditions of the Contract (including general and supplementary), drawings, specifications, modifications after execution of the Contract, Addenda issued before the Award of Bid, Advertisement or Notice to Bidders, the Contractor’s Bid Addenda or portions of Addenda relating to any Bidding Documents, and any amendments to the Contract.
- 1.9 **“Day”** means a calendar day unless otherwise explicitly stated.
- 1.10 **“Project”** means the public improvement to which this Contract relates.
- 1.11 **“Site”** means the area upon or in which the Contractor’s Work is carried on, such other areas adjacent as may be designated by the Architect/Engineer.
- 1.12 **“Unit Price”** means an amount stated in the Bid as a price per unit of measurement for materials, equipment or services, or a portion of the Work as described in the Bidding Documents.
- 1.13 **“Work”** means all services required to complete the Project in accordance with the Contract Documents including, without limitation, labor, material, superintendence, management, administration, equipment, and incidentals, and obtaining all permits, certifications and licenses necessary and required to complete the Project.

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SECTION 2 BIDDER'S REPRESENTATIONS

2.1 The Bidder by submitting a Bid represents that.

- 2.1.1 The Bidder has read and understands the Bidding Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of this Project, if any, being Bid concurrently or presently under construction.
- 2.1.2 The Bid is made in compliance with the Bidding Documents.
- 2.1.3 The Bidder has visited the Site, become familiar with local conditions under which the Work is to be performed and has correlated the Bidder's observations with the requirements of the proposed Contract Documents.
- 2.1.4 The Bid is based upon the materials, equipment and systems required by the Bidding Documents without exception.

SECTION 3 BIDDING DOCUMENTS

3.1 COPIES

- 3.1.1 Bidders shall obtain complete sets of the Bidding Documents from the Empire State Purchasing Group's Bid Notification System at www.empirestatebidsystem.com.
- 3.1.2 Bidding Documents will not be issued directly to Sub-Bidders unless offered explicitly in the Advertisement or Notice to Bidders, or in supplementary instructions to Bidders.
- 3.1.3 Bidders shall use complete sets of Bidding Documents in preparing Bids; neither the County nor Architect/Engineer assumes responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS

- 3.2.1 The Bidder shall carefully study and compare the Bidding Documents, and with other work being bid concurrently or presently under construction for this Project to the extent that it relates to the Work for which the Bid is submitted, shall examine the Site and local conditions, and shall at once report to the County errors, inconsistencies or ambiguities discovered.
- 3.2.2 Bidders and Sub-Bidders requiring clarification or interpretation of the Bidding Documents shall make a **written request**, on the form provided in the Appendix A Bid Proposal Forms, which shall reach the Director, Facilities Management, 50 Sanatorium Road, Pomona, NY 10970 at least seven (7) days before the date for receipt of Bids.

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3.2.3 Interpretations, corrections and changes of the Bidding Documents will be made by Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely on them. **Potential Bidders are required to complete and submit the RECEIPT CONFIRMATION FORM upon receipt of the Bidding Documents. Failure to return this form and notify the County of your intention to submit a Bid can result in no further communication with the potential Bidder including the distribution of Addenda regarding this Bid.**

3.3 SUBSTITUTIONS

3.2.4 The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

3.2.5 The County's decision of approval or disapproval of a proposed substitution shall be final.

3.2.6 If the County approves a proposed substitution before the receipt of Bids, such approval will be stated in an Addendum. Bidders shall not rely on approvals made in any other manner.

3.2.7 Before submitting a Bid, each Bidder shall ascertain that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt on the appropriate form submitted with their Bid.

SECTION 4 BIDDING PROCEDURES

4.1 PREPARATION OF BIDS

4.1.1 Bids shall be submitted on the forms included in the Bidding Documents.

4.1.2 All blanks on the Bid form shall be legibly executed in a non-erasable medium.

4.1.3 Sums shall be expressed in both words and figures. In case of discrepancy, the amount written in words shall govern.

4.1.4 The signer of the Bid must initial interlineations, alterations, and erasures.

4.1.5 All requested Alternate Bids shall be Bid. If no change in the Base Bid is required, enter "No Change".

4.1.6 Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the Bid security, state the Bidder's refusal to accept an award of less than the combination of Bids stipulated by the Bidder. The Bidder shall make no additional stipulations on the Bid form nor qualify the Bid in any other manner.

4.1.7 Each copy of the Bid shall state the legal name of the Bidder and the nature of the legal form of the Bidder. The Bidder shall provide evidence of legal authority to perform the Work within the County. Each copy shall be signed by the person (s) legally authorized to bind the Bidder to the Contract. A Bid by a corporation shall further give the state of incorporation and have the corporate seal attached. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Bidder.

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4.2 BID SECURITY

4.2.1 Each Bid shall be accompanied by Bid security in the form and amount required in the Notice to Bidders. The Bidder pledges to enter into the Contract on the terms stated in the Bidding Documents and Contract Documents and shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Should the Bidder refuse to enter into the Contract or fails to furnish such bonds if required, the Bid security amount shall be forfeited to the County as liquidated damages, not as a penalty. The payee shall be: Commissioner of Finance, County of Rockland, 50 Sanatorium Road, Building A, 8th Floor, Pomona, NY 10970.

4.2.2 A Surety bond is required and shall be written on AIA Document A310, Bid Bond, unless otherwise provided in the Bidding Documents, and the attorney-in-fact that executes the bond on behalf of the surety shall affix to the bond a certified and current copy of a power of attorney. Said bond shall be in the total amount of this Contract issued by an A-or-better-rated surety licensed to do business in the State of New York in a form satisfactory to the County.

4.2.3 The County shall have the right to retain the Bid security of Bidders to whom an award is being considered until either (a) the Contract has been executed and bonds have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn or (c) all Bids have been rejected.

4.3 PERFORMANCE AND PAYMENT BOND REQUIREMENTS

4.3.1 The Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations with the Contract. Bonds shall be provided from a Bonding Company licensed to do business by the State of New York and acceptable to the County.

4.3.2 The County reserves its right to approve the form, sufficiency, or manner of execution, of surety bonds and contracts of insurance furnished by the Surety Company selected by the Bidder to underwrite such bonds or contracts. All such surety companies shall be licensed by the State of New York and have a Best's rating on bonds and contracts of insurance of an A-or-better.

4.3.3 In addition, the County reserves the right to reject the Bidder's proposed surety company. The County shall notify potential Bidders as part of the Bid solicitation of any Surety Company deemed unacceptable to the County.

4.3.4 Bond costs shall be included in the Bid.

4.3.5 If the County requires that bonds be secured from other than the Bidder's usual sources, no changes in the Bid or Contract price shall be permitted.

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4.4 TIME AND DELIVERY OF BONDS

- 4.4.1 The Bidder shall deliver the required bonds to the County at the time of Contract execution.
- 4.4.2 Unless otherwise provided, the bonds shall be written on AIA Document A312, Performance Bond and Payment Bond. Both bonds shall be written in the amount equal to one hundred percent (100%) of the Contract Sum. Payee to be: Commissioner of Finance, County of Rockland, 50 Sanatorium Road, Building A, 8th Floor, Pomona, New York 10970.
- 4.4.3 The bonds shall be dated on the date of the Contract. The Bidder shall require the attorney-in-fact that executes the required bonds on behalf of the surety to affix to it a certified and current copy of a power of attorney.

4.5 SUBMISSION OF BIDS

- 4.5.1 All copies of the Bidding Documents, the Bid Form, the Bid Security, if any, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The Bid Form containing the actual prices Bid, shall be enclosed in a separate envelope. The envelope shall be addressed to the Clerk to the Legislature, County of Rockland, 11 New Hempstead Road, New City, NY 10956; and shall be identified with the Project name, the Bidder's name and address and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelopes shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.
- 4.5.2 Each Bidder on a public work contract, where the preparation of separate specification is not required, shall submit with its Bid a separate sealed list that names each Subcontractor that the Bidder will use to perform the Work, and the agreed-upon amount to be paid to each, for: (a) plumbing and gas fitting, (b) steam heating, hot water heating, ventilating and air conditioning apparatus and (c) electric wiring and standard illuminating fixtures. After the low Bid is announced, the sealed list of Subcontractors submitted with the low Bid shall be opened and the names of such Subcontractors shall be revealed. After that, any change of Subcontractor or agreed-upon amount to be paid to each shall require the approval of the public Owner, upon a showing presented to the public Owner of legitimate construction need for such change, which shall be open to the public inspection. Legitimate construction need shall include, but not be limited to, a change in Project specifications, a change in construction material costs, a change to Subcontractor status as determined in accordance with paragraph (e) of subdivision two of Section 222 of the New York State Labor Law, or the Subcontractor has become otherwise unwilling, unable or unavailable to perform the subcontract. The sealed lists of Subcontractors submitted by all other Bidders shall be returned to them unopened after the Contract award.
- 4.5.3 Bids shall be received at the address noted in Sub-section 4.5.1 before the time and date for receipt of Bids. Bids received after the deadline will be returned unopened.
- 4.5.4 The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.
- 4.5.5 Oral, telephonic, telegraphic, facsimile or other electronically transmitted Bids will not be considered.

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4.6 MODIFICATION OR WITHDRAWAL OF BID

- 4.6.1 A Bid may not be modified, withdrawn or cancelled by a Bidder for forty-five (45) days from the date designated for the Bid due date.
- 4.6.2 Before the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder. A change shall be worded as not to reveal the amount of the original Bid.
- 4.6.3 Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids, provided that they are then entirely in conformance with these Instructions to Bidders.
- 4.6.4 Bid security, if required, shall be in an amount sufficient for the Bid as resubmitted.

SECTION 5 CONSIDERATION OF BIDS

5.1 OPENING OF BIDS

- 5.1.1 Bids will be received up to the "Bid Due Date and Time" stipulated in the Notice to Bidders. Bidding Documents shall be submitted in one sealed envelope, clearly marked with the Bid Number, Opening Date and Time. The County shall open the Bidding Documents at the time and place indicated in the Notice to Bidders to Bid.

5.2 REJECTION OF BIDS

- 5.2.1 The County shall have the right to reject any or all Bids. A Bid not accompanied by required Bid security or by other data required by the Bidding Documents, or a Bid, which is in any way incomplete or irregular, is subject to rejection.

5.3 ACCEPTANCE OF BID (AWARD)

- 5.3.1 The County intends to award a Contract to the lowest responsible Bidder providing the Bid has been submitted per the requirements of the Bidding Documents and does not exceed the funds available. The County shall have the right to waive informalities and irregularities in a Bid received and accept the Bid which, in the County's judgement, is in the County's best interest.
- 5.3.2 The County shall have the right to accept Alternates Bids in any order or combination, unless otherwise explicitly provided in the Bidding Documents, and determine the low Bidder based on the Base Bid and Alternate Bids accepted sum.

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SECTION 6 POST-BID INFORMATION

6.1 BIDDER'S FINANCIAL CAPABILITY

6.1.1 At the County's request, the Bidder shall, no later than seven (7) days from the date of the request, furnish any additional financial information requested by the County, including evidence that financial arrangements have been made to fulfill the Bidder's obligation under the Contract. Unless such reasonable proof is furnished, the County may deem the Bidder as non-responsive.

6.2 SUBMITTALS

6.2.1 The Bidder shall, as soon as practicable or as stipulated in the Bidding Documents, after notification of selection for the award of a Contract, furnish to the County in writing:

- a. a designation of the Work to be performed with the Bidder's forces;
- b. names of manufacturers, products, and the suppliers of principal items or systems of materials and equipment proposed for the Work; and
- c. names of persons or entities (including those who are to furnish materials or equipment fabricated to a particular design) proposed for the principal portions of the Work.

6.2.2 The Bidder will be required to establish to the satisfaction of the County the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

6.2.3 Before execution of the Contract, the County will notify the Bidder in writing if the County, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the County has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1) withdraw the Bid or (2) submit an acceptable substitute person or entity with no adjustment in the Base Bid or Alternate Bid allowed.

6.2.4 Persons and entities proposed by the Bidder and to whom the County has made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the County.

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SECTION 7 FORM OF AGREEMENT BETWEEN COUNTY AND CONTRACTOR

7.1 CONTRACT EXECUTION

- 7.1.1 Upon the completing all required approvals a Contract shall be deemed executed and created with the successful Bidder; upon the mailing or electronic communication to the address on the Bid of an Acceptance of Offer authorized and signed by the County Executive.

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**COUNTY OF ROCKLAND
FACILITIES MANAGEMENT**

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SECTION 8

BIDDING FORMS

Your response to this Solicitation will be deemed non-responsive if any of the following forms are not completed and included in your Bid. See Appendix A for Bid Proposal Forms.

- ☒ 8.1 - Statement of Required Disclosures, Representations and Certifications
- ☒ 8.2 - Affidavit of Non-Collusion
- ☒ 8.3 - Disclosure of Political Contributions in accordance with Chapter 323 of the County of Rockland Code
- ☒ 8.4 - Disclosure of Supplier Responsibility Statement
- ☒ 8.5 - Certification of Affirmative Action Plan
- ☒ 8.6 - Business Dealings in Northern Ireland – MacBride Principles
- ☒ 8.7 - Certification of Compliance with the Iran Divestment Act
- ☒ 8.8 - Certification Regarding Boycott, Divest and Sanctions (BDS) Activities
- ☒ 8.9 - Acknowledgement of Insurance Requirements
- ☒ 8.10 - Notary Form for Sections 8.1 through 8.9
- ☒ 8.11 - Apprentice Training Agreement
- ☒ 8.12 - Certification of Compliance Labor Regulations
- ☒ 8.13 - Certification of Experience
- ☒ 8.14 - Certificate of Equipment
- ☒ 8.15 - Acceptance of Offer
- ☐ 8.16 - Project Labor Agreement Signatory Form (If applicable)

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SECTION 8.1

**STATEMENT OF REQUIRED
DISCLOSURES, REPRESENTATIONS AND CERTIFICATIONS**

Name of the Reporting Entity (Company, Corporation, etc.):

Address: _____

FID No.: _____

Name of Individual Completing this form: _____

Title/Position: _____

Telephone Number: (____) _____ Fax Number: (____) _____

Email address: _____

How many years has your organization been in business as a contractor? _____

How many years has your organization been in business under its present business name? _____

Under what other former names has your organization operated?

SIGNATORY FIRST AND LAST NAME _____

SIGNATORY TITLE _____

***Note:** All Sections on the following pages must be completed, and this Statement must be appropriately signed before a Notary.

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SECTION 8.2

AFFIDAVIT OF NON-COLLUSION

I hereby attest that I am the person responsible within my firm for the final decision as to the prices(s) and amount of this Bid or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on their behalf and behalf of my firm.

I further attest that:

1. The price(s) and amount of this Bid have been arrived at independently, without consultation, communication or agreement to restrict competition with any other contractor, Bidder or potential Bidder.
2. Neither the price(s), nor the amount of this Bid, has been disclosed to any other firm or person who is a Bidder or potential Bidder on this Project, and will not be disclosed before Bid opening.
3. No attempt has been made or will be made to solicit, cause or induce any firm or person to refrain from Bidding on this Project, submit a Bid higher than the Bid of this firm, or any intentionally high or non-competitive Bid or another form of complementary Bid.
4. The Bid of my firm is made in good faith and not in accordance with any agreement or discussion with, or inducement from any firm or person to submit a complementary Bid on this Project.
5. My firm has not offered or entered into a subcontract or agreement regarding the purchase of materials or services from any other firm or person, or offered, promised, or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by firm or person to refrain from Bidding or to submit a complementary Bid on this Project.
6. My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any project, in consideration for my firm's submitting a complementary Bid, or agreeing to do so, on this Project.
7. I have made a diligent inquiry of all members, officers, employees, and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's Bid on this Project and have been advised by each of them that they have not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in this affidavit.

The person signing this Bid, under the penalties of perjury, affirms the truth of this Bid.

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SECTION 8.3

**DISCLOSURE OF POLITICAL CONTRIBUTIONS IN ACCORDANCE WITH
CHAPTER 323 OF THE ROCKLAND COUNTY CODE**

1. The reporting Entity is (*Check One*):
☐ An Individual ☐ A Partnership ☐ A Corporation
2. The reporting Entity (*Check One*):
☐ Will enter into a contract with the County of Rockland, in excess of Ten Thousand Dollars (\$10,000.00), which did /did not (circle one) result from Public Bidding.
☐ Is currently under a contract with the County of Rockland in excess of Ten Thousand Dollars (\$10,000.00)
3. The reporting entity, its members, directors, policymaking officers, or majority shareholders, have directly or indirectly made the following contributions to the persons or organizations listed below.
(list all contributions having a value in excess of two hundred dollars (\$200.00) per year made to any political party or any individual or any committee for an individual running for public office in the County of Rockland or a district within the County of Rockland, for a period of three (3) years before the date of subscribed below.):

Note: Answer “None” or list each contribution separately (use additional sheets if necessary)

Name of Contributor	Relationship to Reporting Entity	Contribution Made to	Date of Contribution	Value and Nature of Contribution

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SECTION 8.4

DISCLOSURE OF SUPPLIER RESPONSIBILITY STATEMENT

Note: Answer “None” or detail each separately (use additional sheets if necessary)

1. List any convictions of any person, subsidiary, or affiliate of the company, arising out or relating to obtaining, or attempting to obtain a public or private contract, or subcontract, or in the performance of such contract or subcontract.

2. List any convictions of any person, subsidiary, or affiliate of this company for offenses including embezzlement, theft, fraudulent schemes, or any other offense indicating a lack of business integrity or business honesty that affect the Contractor’s responsibility.

3. List any convictions or civil judgments under state or federal antitrust statutes.

4. List any violations of contract provisions such as knowingly (without good cause) to perform, or unsatisfactory performance, in accordance with the specifications of the Contract.

5. List any prior suspensions or debarments by any government agency.

6. List any contracts not completed on time.

7. List any documented violations of federal or state labor laws, regulations or standards, or occupational safety and health rules.

**COUNTY OF ROCKLAND
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SECTION 8.5

CERTIFICATION OF AFFIRMATIVE ACTION PLAN

1. The subscriber below, authorized on behalf of the Reporting Entity in the title/position indicated hereinabove, states the following: (check one box in both (a) and (b))
 - a.) The Reporting Entity ☐ DOES or ☐ DOES NOT employ fifteen (15) or more employees AND
 - b.) The Reporting Entity
 - ☐ DOES transact a minimum of \$50,000.00 per annum business with the County of Rockland.
 - (i) IF SO, based on this above information, a copy of the Reporting Entity's Affirmative Action Plan OR EEO (Equal Employment Opportunity) Policy is attached to this Form.
 - ☐ DOES NOT transact a minimum of \$50,000.00 per annum business with the County of Rockland.

SECTION 8.6

BUSINESS DEALINGS IN NORTHERN IRELAND - MACBRIDE PRINCIPLES

1. The subscriber below, authorized on behalf of the Reporting Entity in the title/position indicated hereinabove, certifies the following, in accordance with Article 5 of the County of Rockland Procurement Policy: *(check one)*
 - a.) The Reporting Entity and any individual or legal entity in which the Reporting Entity holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership in the Contract, either: *(check, as applicable)*
 - (i) ☐ has NO business operations in Northern Ireland
 - OR**
 - (ii) ☐ shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to the nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their companies with such Principles.

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SECTION 8.7

CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT

In accordance with State Finance Law §165-a, on August 10, 2012, the Commissioner of the Office of General Services (OGS) posted a prohibited entities list of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law) on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

By submitting a Bid in response to a County solicitation or by assuming the responsibility of a Contract awarded hereunder, each Bidder/Contractor, any person signing on behalf of any Bidder/Contractor and any assignee or Subcontractor and, in the case of a joint Bid, each party to it, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the OGS website, that to the best of its knowledge and belief, that each Bidder/Contractor and any Subcontractor or assignee is not identified on the Prohibited Entities List created in accordance with SFL § 165-a(3)(b).

Additionally, Bidder/Contractor is advised that once the Prohibited Entities List is posted on the OGS Website, any Bidder/Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a Bidder/Contractor is in violation of the above- referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he/she/it has ceased engagement in the investment which is in violation of the Act within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Bidder/Contractor in default.

The County reserves the right to reject any Bid or request for assignment for a Bidder/Contractor that appears on the Prohibited Entities List before the award of a contract and to pursue a responsibility review concerning any Bidder/Contractor that is awarded a contract and subsequently appears on the Prohibited Entities List.

(Check box if applicable)

1. ☐ The subscriber below, authorized on behalf of the Reporting Entity in the title/position indicated hereinabove, certifies that they are *neither the Bidder/Contractor nor any proposed Subcontractor identified on the Prohibited Entities List.*

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TITLE:

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SECTION 8.8

CERTIFICATION REGARDING BOYCOTT, DIVEST AND SANCTIONS (BDS) ACTIVITIES

The subscriber below, authorized on behalf of the Reporting Entity in the title/position indicated hereinabove, certifies the following, in accordance with Article 5 of the County of Rockland Procurement Policy:

(check box)

☐ The Reporting Entity/Contractor and any individual or legal entity in which the Contractor/reporting entity holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership in the contract DO NOT engage in any Boycott, Divest and sanctions (BDS) activities *[which activities are defined as advocating for the boycott of Israel, divestment from Israel and international sanctions against Israel, and otherwise engaging in, promoting or supporting the global campaign to increase economic and political pressure in Israel to comply with the stated goals of the BDS movement].*

SECTION 8.9

ACKNOWLEDGEMENT OF INSURANCE REQUIREMENTS

The Contractor acknowledges that it has examined Article 11 – Insurance and Bonds of the General Conditions.

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SECTION 8.10

NOTARY

This Notary is inclusive for Sections 8.1 through 8.9

State of _____)
) ss:
County of _____)

All statements, disclosures and representations stated hereinabove this *Statement Required Disclosures, Representations and Certifications*, comprised of the preceding seven pages and this page, are based upon my personal review of the books and records of the reporting entity. Under oath or affirmation, I declare that all of the foregoing information, and any supplemental responses and statements that may be attached hereto are true to the best of my knowledge. Under the penalty of perjury, I make these statements in my position/title held at the Reporting Entity.

BY: _____
(Signature)

(Print Name and Title/Position)

Sworn to before me this

_____ day of _____, 20

Notary Public

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SECTION 8.11

**COUNTY OF ROCKLAND
FACILITIES MANAGEMENT**

**CERTIFICATION OF COMPLIANCE TO LOCAL LAW NO. 5 OF 2003 REGARDING
APPRENTICESHIP TRAINING AGREEMENTS**

Submit this certification only if the bid is more than \$250,000.00

NAME OF REPORTING ENTITY: _____

ADDRESS: _____

TELEPHONE NO.: _____ EMAIL ADDRESS.: _____

THE REPORTING ENTITY IS (Check one of the following):

_____ AN INDIVIDUAL _____ A PARTNERSHIP _____ A CORPORATION

THE REPORTING ENTITY: (Check One)

_____ Will enter into a construction contract with the County of Rockland in excess of \$250,000.00

_____ Will be a Subcontractor, to a prime contractor who holds a County of Rockland Construction contract of \$250,000.00 or more; and will receive in excess of \$25,000.00 from the prime contractor.

I am the _____ (Title or Office) of the reporting entity listed above.

I make this affirmation that _____ (Reporting Entity) will comply with Local Law No. 5 of 2003 that requires any contractor, before entering into a construction contract in excess of \$250,000.00 with the County of Rockland or any Subcontractor entering into a contract, with a contractor who has a County of Rockland construction contract, in excess of \$25,000.00, to have apprenticeship agreements appropriate for the type and scope of work to be performed, which have been registered with, and approved by the New York State Commissioner of Labor in accordance with Article 23 of the New York State Labor Law. As part of this certification, I have attached a copy of apprenticeship agreements from the New York State Commissioner of Labor and or Trade Unions for the type and scope of work to be performed. All of the foregoing information is true to the best of my knowledge, after inquiry. I make these statements under penalty of perjury.

SIGNATURE: _____

PRINT NAME AND TITLE: _____

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TITLE:**

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SECTION 8.12

CERTIFICATION OF COMPLIANCE LABOR REGULATIONS

The Contractor named below certifies compliance with all applicable labor laws and regulations of the State of New York and the United States of America, including the following:

1. Prevailing Wage Rate

The Contractor agrees to comply with the schedule of wages applicable to the performance of the said contract and the statutory requirements and rules of the State of New York.

- The Contractor agrees to comply with Article 8-Public Work, of the NYS Labor Law and the most current prevailing wage schedule, where delivery and installation of material is required.
- Where delivery in place is required, the Contractor agrees to comply with Article 9, Prevailing Wages for Building Service Employees, of the NYS Labor Law and its current prevailing wage schedule.
- The Contractor acknowledges their obligation and agrees to furnish Certified Payrolls with each invoice requesting payment to the County Department that utilized the Contractor's services. Filing of the required Certified Payrolls is a condition of payment. No payment will be made to the Contractor without receipt of the necessary Certified Payrolls.
- On each pay stub, the Contractor and all Subcontractors agree to provide written notice to all laborers, workers, or mechanics of the prevailing wage rate for their particular job classification*. The Contractor and Subcontractors also agree to post a notice at the beginning of the performance of every public work contract on each job site that includes the telephone number and address for the New York State Department of Labor and a statement informing laborers, workers, or mechanics of their right to contact the Department of Labor if they are not receiving proper prevailing wage rates or supplements for their particular job classification.

**If the required information does not fit on the pay stub, an accompanying sheet or attachment of the information may be included.*

2. Social Security Taxes

The Contractor promises and agrees to pay the taxes measured by the wages of their employees required by the Federal Social Security Act and all amendments to it, and to accept the exclusive liability for said taxes.

3. Labor Laws

The Contractor certifies compliance with all the State of New York and the United States of America laws, which affect municipalities and municipal contracts, and more particularly the Labor Law, the Immigration and Naturalization Laws and Regulations, the General Municipal Law, the Workers Compensation Law, the Lien Law, Personal Property Law, State Unemployment Insurance Law, Federal Social Security Law, State, Local and Municipal Health Laws, and all regulations promulgated by the State of New York, insofar as the same shall apply to the contract awarded to the Contractor.

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SECTION 8.13

CERTIFICATION OF EXPERIENCE

I _____ HEREBY CERTIFY THAT (COMPANY) _____
_____ HAS PERFORMED THE FOLLOWING WORK WITHIN THE LAST THREE
YEARS:

NAME OF BUSINESS: _____ CONTACT NAME: _____

ADDRESS: _____

AMOUNT OF CONTRACT: _____ TELEPHONE NO.: _____

TYPE OF WORK: _____ FAX NUMBER: _____

NAME OF BUSINESS: _____ CONTACT NAME: _____

ADDRESS: _____

AMOUNT OF CONTRACT: _____ TELEPHONE NO.: _____

TYPE OF WORK: _____ FAX NUMBER: _____

NAME OF BUSINESS: _____ CONTACT NAME: _____

ADDRESS: _____

AMOUNT OF CONTRACT: _____ TELEPHONE NO.: _____

TYPE OF WORK: _____ FAX NUMBER: _____

SECTION 8.14

CERTIFICATE OF EQUIPMENT

The Contractor hereby certifies that: _____
are the owner or lessee of the equipment necessary for the execution of this Contract, and further
certifies that _____
are fully prepared with the necessary capital, material and machinery to conduct this work as herein specified.

THIS FORM MUST BE SUBMITTED IN ENVELOPE MARKED BIDDING DOCUMENTS

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SECTION 8.15

ACCEPTANCE OF OFFER

BID NO. _____

TO:

Your offer in the amount of _____ as submitted for the above noted Bid is hereby accepted, having been approved by action of the action of the Legislature of the County of Rockland on _____ by Resolution No. _____.

The Contractor is now bound to furnish the labor, materials and services contained in the Contract Documents and based upon the Bidding Documents, including all terms, conditions, specification, the scope of work, amendments, the Contractor's Offer, as accepted by the County of Rockland and in accordance with the terms stated in the Bidding Documents including the General Conditions.

Henceforth, this contract shall be referred to as a contract with the same number as the Notice to Bidders. The Contractor is cautioned not to commence any billable work or to furnish the labor, materials or services under this Contract until the Contractor receives a written Notice to Proceed from the County of Rockland. In accordance with the Contract Documents, the Contract time from the issuance of the Notice to Proceed until complete closeout of the Project shall be _____ days. The Contract time to perform the construction work shall be _____ days from the issuance of the Notice to Proceed to the Substantial Completion.

County of Rockland, a municipal corporation

Award Recommended this _____ day of _____, 202_.

**DEPARTMENT OF GENERAL SERVICES –
FACILITIES MANAGEMENT**

(Approved for the signature of the County Executive)

By _____
Robert H. Gruffi, P.E., LEED AP
Director, Facilities Management

**Award Approved this _____ day of
_____, 202_.**

DEPARTMENT OF LAW

(Approved for the signature of
County Executive)

BY: _____
Eugene Bondar
Principal Assistant County Attorney

COUNTY OF ROCKLAND

BY: _____
Edwin J. Day
County Executive

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SECTION 8.16

PROJECT LABOR AGREEMENT
SIGNATORY FORM

(If Applicable)

By its signature hereto, the undersigned Contractor agrees to be bound on this (date)_____ to the Scope and Work described in the Contract and Project Labor Agreement covering specific construction work at the _____. The Contractor agrees to comply with all terms and conditions of the Project Labor Agreement applicable to it for its Scope of Work under the Contract at the Project. The Contractor understands and agrees that this signature page shall become a part of the Project Labor Agreement signifying the Contractor’s agreement to be bound by it.

Company Name:_____

CORPORATE SEAL

Company Officer: _____
(Print Name)

Signature of Company Officer: _____

Title: _____

Date: _____

THIS FORM MUST BE SUBMITTED IN THE ENVELOPE MARKED BIDDING DOCUMENTS

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SECTION 9 - APPRENTICESHIP TRAINING PROGRAMS – CONSTRUCTION CONTRACTS

The County of Rockland hereby requires any contractor, before entering into a construction contract in excess of \$250,000.00 with the County of Rockland or any Subcontractor entering into a contract, with a Contractor who has a County construction contract, in excess of \$25,000.00, to have apprenticeship agreements appropriate for the type and scope of work to be performed, which have been registered with, and approved by the New York State commissioner of labor in accordance with Article 23 of the New York Labor Law.

Bidders are required to submit, with their Bid, a completed Certification of Compliance to Local Law No. 5 of 2003 form when submitting a Bid for construction in excess of \$250,000.00. As part of this certification, the Contractor shall attach and submit proof of apprenticeship agreements from the New York State Commissioner of Labor and/or Trade Unions to perform the work.

It shall be the responsibility of the Contractor to obtain certified copies of this certification from for all Subcontractors, receiving in excess of \$25,000.00, hired by the Contractor regarding this Project and to provide the County with copies of this certification and proof of apprenticeship agreements for each Subcontractor before the Subcontractor performing any work in connection with this Contract.

Rules and Regulations have been promulgated by the Director of Purchasing to implement and enforce this local law. A copy of the rules and regulations can be obtained by visiting the Purchasing Division's Website at www.rcpurchasing.com, selecting the Vendor Information link and then the Apprenticeship Rules. It is recommended that all Bidders review the Rules and Regulations pertaining to Local Law No. 5 of 2003 before submitting a Bid.

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SECTION 10 – LABOR LAW 220 – TRAINING REQUIREMENT

The New York State Department of Labor, Chapter 282 of the Laws of 2007, codified as Labor Law 220-h, requires that every worker employed in the performance of a public work contract of at least \$250,000.00 shall be certified as having completed an OSHA 10 Safety Training Course. The clear intent of this provision is to require that all employees of public contractors receive such training “before the performing of any work on the project.”

The Contractors and all Sub-contractors must attach a copy of proof of completion of the OSHA 10 Safety Training Course to the first certified payroll submitted to the contracting agency and on each succeeding payroll where any new or additional employee is listed.

Rules and regulations are promulgated and posted on the NYSDOL website – www.labor.state.ny.us

The Contractor and all Sub-contractors are responsible for adhering to the law.

CAPITAL PROJECT NUMBER:
TITLE:

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GENERAL CONDITIONS

GENERAL CONDITIONS APPLY TO ALL TRADES

ARTICLE 1 - GENERAL PROVISIONS

- 1.1 **GENERAL:** That the Owner and the Contractor, for the consideration stated in the Award of Bid, have agreed as follows:
- 1.1.1 **CONTRACT DOCUMENTS, SCOPE OF WORK:** The Owner hereby retains the Contractor to perform the services described in the Contract Documents, on the terms and conditions specified therein, and the Contractor hereby agrees to serve so. In so doing, the Contractor affirms that: (1) it is familiar with the terms of this Contract; (2) it has inspected the physical condition of the Site of the Project to be constructed and knows the intended use of the Project upon completion of construction; (3) it is familiar with local and other conditions which may be critical to the Contractor's performance under this Contract (including the availability of (a) access for transportation, (b) requirements and facilities for handling and storage of materials, and (c) availability of disposal equipment, utilities and labor), and (4) it is familiar with applicable laws and safety standards. The Contractor hereby certifies that it has the necessary experience, expertise, personnel, equipment and resources to fulfill its obligations under this Contract competently and efficiently. The Contractor agrees to use its best efforts to complete this Project within all Project constraints, in a manner meeting the highest professional standards. The Contractor shall furnish all materials, labor, transportation and equipment and shall perform all Work as required by and in accordance with the Bidding Documents identified for construction, reconstruction, renovation or repair of the Project as identified in the Bidding Documents, and as prepared by the design architects and engineers of record. The Contract Documents are part of this Contract.
- 1.1.2 **COMMENCEMENT OF WORK:** The date of commencement of the Work shall be the date of the Award of Bid, unless otherwise indicated in the Contract Documents or fixed in a Notice to Proceed issued by the Owner.
- 1.1.3 **COMPLETION OF WORK:** The Contractor shall achieve Substantial Completion of the Work within the established Contract Time after the Commencement of the Work and in accordance with the approved schedule, subject to adjustments as provided in the Contract Documents. The Contract Time for this Project is indicated in the Notice to Bidders.
- 1.1.4 **CONTRACT SUM:** The Owner shall pay the Contractor for the performance of the Work the sum stated in the Award of Bid. The breakdown of the total Bid price attached to the Bidding Documents is hereby made a part of this Contract.
- 1.2 **DEFINITIONS:** The following terms, used throughout this document, are hereby given the definitions indicated. Where the definition references a document, the Contractor hereby acknowledges that it has read and reviewed such document.

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1.2.1 **CONTRACT** shall mean the Contract Documents forming this construction contract. The Award of Bid represents the entire and integrated agreement between the parties hereto, and supersedes prior negotiations, representations, or written or oral agreements. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than between the Owner and Contractor.

1.2.2 **CONTRACT DOCUMENTS** means the compilation of the Bidding Documents, Notice to Bidders, Conditions of the Contract (General, Supplementary and other Conditions). Drawings, Specifications, Modifications after execution of the Contract and Addenda issued before the Award of Bid. The Contract Documents also include other Bidding Documents, including, but not limited to, Advertisement or Notice to Bidders, the Contractor's Bid Addenda, or portions of Addenda relating to any Bidding Documents. Qualifications or exclusions in the Bidding Documents are not accepted or agreed to by the Owner or Architect/Engineer unless expressly incorporated into the Award of Bid by written Addenda.

The Contractor acknowledges and warrants that it has examined all Contract Documents; that they are suitable and sufficient to enable the Contractor to complete the Work in a timely manner for the contract sum, and that they include all Work, whether or not known or described, which may be reasonably inferred to be required to complete the Work in full compliance with applicable codes and regulations. The Contractor agrees that it is fully informed regarding all of the conditions affecting the Work to be done and labor and materials to be furnished for the completion of its Work under this Contract. Any Modifications to the Contract Documents proposed by the Contractor that have been agreed to by the Owner and the Architect/Engineer shall be enumerated in a written addendum at the time of the Award of Bid.

1.2.3 **CONTRACT TIME** Unless otherwise provided shall mean the timeframe, including authorized adjustments, allotted in the Contract Documents for substantial completion of the Work. The date of commencement of the Work is the date established in this Contract, and if such date is not otherwise specified, the date that the Owner directs the Work to commence. The date of substantial completion is the date certified by the Architect/Engineer in accordance herewith.

1.2.4 **DRAWINGS** shall mean the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the Work's design, location and dimensions, generally including plans, elevations, sections, details, schedules, diagrams and sketches.

1.2.5 **EQUAL EMPLOYMENT OPPORTUNITY POLICY** shall mean the document setting forth the County's requirements to ensure unbiased contractual relations among persons and businesses doing business with the County.

1.2.6 **PROJECT** shall mean the total construction of which the Work performed under the Contract Documents may be whole or a part, including construction by the Owner or by separate contractors.

1.2.7 **PROJECT MANUAL** shall consist of volume(s) usually assembled for the Work, including the Bidding Requirements, sample forms, conditions of the Contract and specifications.

1.2.8 **SAFETY MANUAL** shall mean the volume prepared by the Owner governing the safety methods and procedures the Contractor must comply with. Those methods and procedures are in addition to such methods or procedures as may be required by law and regulations. Where there is a conflict between the Owner's safety methods and procedures and any laws and regulations, the latter shall control.

1.2.9 **SPECIFICATIONS** shall mean the portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.2.10 **WORK** shall mean the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or part of the Project. The Work shall include the Contractor's responsibility to visit the Site before submitting a proposal to familiarize with existing conditions

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and the character of the operations to be conducted under the Contract Documents, including existing Site conditions, Site access, and Site's physical characteristics, including surrounding areas.

1.2.11 **MODIFICATION** shall mean either (1) a written amendment to the Contract, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor Change in the Work.

1.2.12 **MISCELLANEOUS** Where the word "equal" or "equivalent" is used, each shall be construed to mean being in value, measure, force, effect or significance and corresponding in position and function, subject to the approval of the Architect/ Engineer and Owner. The terms "approved" or "approval" means Architect/Engineer and Owner's written approval. The word "project manual" or "specification" shall mean all matter contained in the bound volume so entitled and related documents to it. The terms "directed", "required", "permitted", "ordered", "designated", "prescribed", and words of like import shall imply the direction, requirements, permissions, order designation or prescription of the Architect/Engineer and "Owner; and "approved", "acceptable", "satisfactory" and words of like import shall mean approved by, acceptable, or satisfactory to the Architect/Engineer and Owner; and "necessary", "reasonable", "proper", "correct", and words of like import shall mean necessary, reasonable, proper or correct in the judgment of the Architect/Engineer and Owner. The term "installer" shall define the party whom the Contractor has designated or charged with the erection or installation of any item of Work. The "Item of Work" is used in the specification to refer to a specific task of application, installation or erection of a specific material or equipment. The term "installer" shall in no way be construed by the Contractor as waiving any of its obligations under the Contract Documents.

1.2.13 Unless otherwise stated in the Contract Documents, words with well-known technical or construction industry meanings are used in the Contract Documents according to such recognized meanings.

1.3 **INTERPRETATION OF CONTRACT DOCUMENTS**

1.3.1 By Bidding, the Contractor represents that the Contractor has visited the Site, is familiar with local conditions under which the Work is to be performed and has correlated the Contractor's observations with requirements of the Contract Documents. Claims for additional compensation or extensions of time, due to Contractor failure to familiarize itself with the conditions of the Contract and conditions at the Site that might affect the Work, shall not be allowed.

1.3.2 The Contract Documents intend to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Work not explicitly covered in the Contract Documents will be required only to the extent such Work is consistent with the Contract Documents and reasonably inferable from the Contract Documents as necessary to produce the intended results. Upon the Contractor's written request, the Owner may issue written interpretation of drawings consistent with and reasonably inferable from the Contract Documents and essential for the proper execution or progress of the Work.

1.3.3 If, during the performance of the Work, the Contractor identifies a conflict in the Contract Documents, the Contractor shall promptly notify the Owner in writing of the conflict and advise of the course of action the Contractor proposes to follow. The Owner shall promptly acknowledge the notification in writing and notify the Contractor as to the interpretation to be followed in the performance of the Work. In the event of conflicting provisions, specifications will take precedence over the drawings, and the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive. On all drawings, figures take precedence over scaled dimensions. Scaling of dimensions, if done, is done at the Contractor's own risk.

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1.3.4 The Architect/Engineer will interpret and decide matters concerning performance under the requirements of the Contract Documents at the written request of either the Owner or Contractor. The Architect's/Engineer's response to such requests will be made with reasonable promptness and within any time limits agreed upon. Interpretations and decisions of the Architect/Engineer will be consistent with the intent of any reasonably inferable from the Contract Documents and will be in writing or the form of drawings. When making such interpretations and decisions, the Architect/Engineer will endeavor to secure faithful performance by both Owner and Contractor, not show partiality to either, and will not be liable for results of interpretations or decisions so rendered in good faith. The Architect's/Engineer's decisions on aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

1.3.5 Organization of the specifications into divisions, sections and articles, and arrangement of drawings shall not control the Contractor in dividing the Work among Subcontractors or establishing the extent of Work to be performed by any trade.

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ARTICLE 2 – OWNER

2.1 DEFINITIONS

2.1.1 “Owner” means the County of Rockland or its authorized representative, the entity identified as such in the Agreement, and is referred to throughout the Contract Documents as singular in number.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 The Owner shall furnish to the Contractor the Site’s surveys or other information about the physical characteristics, legal limitations and utility locations. If required, the Owner shall furnish to the Contractor with a legal description of the Site. The Contractor shall confirm the location of each utility. The Contractor represents that it has inspected the Site, and has satisfied itself with the condition thereof, including, without limitation, all structural, surface and subsurface conditions thereof. The Contractor shall undertake further investigations, including soil borings and otherwise, to determine the subsurface conditions. The Owner shall make available to the Contractor such soil borings, tests and reports as it may have available, and the Contractor shall be entitled to rely on the accuracy of such information furnished by the Owner.

2.2.2 Upon written request from the Contractor, information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

2.2.3 Unless otherwise provided in the Contract Documents, the Owner shall furnish the Contractor, with three sets of construction drawings and specifications free of charge. The Contractor is permitted to make copies of these documents for use on this Project. All costs of reproduction are the responsibility of the Contractor.

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ARTICLE 3 – CONTRACTOR

3.1 DEFINITIONS

3.1.1 The Contractor is the person or entity identified as such in the Award of Bid and is referred to throughout the Contract Documents as singular in number. The term “Contractor” means the Contractor or the Contractor’s authorized representative.”

3.1.2 Unless expressly indicated otherwise, whenever the term “Contractor” or “Prime Contractor” is noted in the project manual, it shall mean each prime contractor.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS

3.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and with the information furnished by the Owner, and shall at once report, in writing, to the Owner or Architect/Engineer, errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Architect/Engineer for damage resulting from errors, inconsistencies, discrepancies or omissions in the Contract Documents, or portions of the Work performed by others, unless the Contractor recognized such error, inconsistency or omission, and knowingly failed to report it to the Owner or Architect/Engineer. If the Contractor performs any construction activity knowing it involves such an error, inconsistency or omission without such notice to the Owner or Architect/Engineer, the Contractor shall assume responsibility for such performance, and be responsible for the costs for correction. Should anything necessary to a clear understanding of the Work be unclear or omitted, or should an error, inconsistency, discrepancy or omission occur in any of the Contract Documents or a portion of the Work performed by others, the Contractor shall immediately notify the Owner or Architect/Engineer, in writing, of such omission, error, inconsistency or discrepancy. The Contractor shall not proceed with that portion of the Work only, unless directed to by the Owner or Architect/Engineer in writing. If the Contractor proceeds without so notifying the Owner or Architect/Engineer as appropriate, the Contractor shall be responsible for the cost of correcting same, including any resulting damage.

3.2.2 The Contractor shall take field measurements, verify field conditions and carefully compare such field measurements and conditions, and other information known to the Contractor, with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported in writing, immediately to the Architect/Engineer and Owner.

3.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and approved submittals.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. Subject to the schedule for completion and the progress of other trades, the Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless Contract Documents give other instructions concerning these matters.

3.3.2 Notwithstanding the above, the Owner shall have the right, but not the duty, to reject means and methods proposed by the Contractor which (1) will constitute or create a hazard to the Work, or to persons or property and (2) will not produce finished Work in accordance with the terms of the Contract. The Owner’s approval of the Contractor’s means and methods of construction, or its failure to exercise its right to reject such means or methods, shall not relieve the Contractor of its obligation to accomplish the result intended by this Contract; nor shall the exercise of such right to reject create a cause of action for damages. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work for the Contractor.

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The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents, either by activities or duties of the Architect/Engineer or Owner or Owner's Representative in their administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.3.3 The Contractor shall be responsible for inspecting portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.3.4 The Contractor shall inspect all materials delivered to the premises and reject any materials that will not conform to the Contract Documents when properly installed.

3.3.5 The Contractor shall be responsible for and coordinate all inspections required by any governmental body having jurisdiction over the Project. Failure to obtain any permits, licenses or other approvals because of the failure of the Contractor to conform to this requirement shall not extend the Contract time, and the Contractor shall not be entitled to an increase in the Contract Sum.

3.4 **LABOR AND MATERIALS**

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities, storage and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit unfit persons or persons not skilled in tasks assigned to them. The Contractor shall be responsible for maintaining proper and harmonious labor relations with its employees to not interfere with the peaceful and orderly progress of the Project. The Contractor shall comply with all regulations and directives as to payroll reporting submittals.

3.4.3 On request from the Architect/Engineer or Owner, the Contractor shall, within 48 hours, submit copies of confirmed orders from manufacturers and suppliers for all materials and equipment so that a record can be established for the verification of material and equipment delivery schedules. If required by the Architect/Engineer or Owner, the Contractor shall furnish satisfactory evidence of the kind and quality of materials and equipment even if such items are not otherwise required to be submitted for approval.

3.4.4. Materials and workmanship shall, in every respect, be in accordance with the best modern practice, with materials and workmanship of the highest quality, to the Owner's satisfaction. All materials required for the Work shall be free from all defects, of the best available grade and quality, entirely satisfactory for the purpose intended, furnished in ample quantities to prevent delays, and in accordance with all requirements of this Contract. If the contract drawings, specifications or directions of the Architect/Engineer and Owner fail to note the quality of any Work, the interpretation which calls for the best quality of Work is to be followed. Materials installed as part of the permanent construction shall be new materials, unless otherwise explicitly required.

3.4.5 Manufactured materials shall be delivered in unbroken original packages, containers or bundles bearing the manufacturer's name and the brand, and shall be stored off the ground and adequately covered to protect them from moisture according to the manufacturer's requirements or as specified by the Contract Documents.

3.4.6 All materials shall be used in accordance with the manufacturer's directions unless the Architect/Engineer or Owner issues written instructions to the contrary.

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3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Architect/Engineer that materials and equipment required by the Contract Documents shall be of good quality and new unless otherwise required or permitted by the Contract Documents, the Work will be free from defects not inherent in the quality required or permitted, and will conform with the requirements of the Contract Documents for a period not less than one (1) year from the date of Project completion. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes any remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Where Work to be performed adjoins or meets preexisting ("work"), then the Work shall be performed in a manner not to disrupt the preexisting work or void any existing warranty of the preexisting work.

3.6 TAXES/TITLE

3.6.1 The Contractor shall pay all applicable Federal, state and local employment and other taxes, duties and assessments arising out of the Contractor's Work performance.

3.6.2 The Owner is exempt from payment of Federal, State, local taxes and Sales and Compensating Use Taxes of the State of New York and of cities and counties on all materials and supplies sold to the Owner in accordance with the provisions of this Contract. These taxes are not to be included in payment requests. However, this exemption does not apply to tools, machinery, equipment or other property leased by or to the Contractor or a Subcontractor, or to supplies and materials which even though they are consumed, are not incorporated into the completed Work (consumable supplies). The Contractor and its Subcontractors shall be responsible for and pay all applicable taxes, including Sales and Compensating Use Taxes, on such leased tools, machinery equipment or other property and upon all such un-incorporated supplies and materials.

3.6.3 The Contractor agrees to sell and the Owner agrees to purchase all supplies and materials, other than consumable supplies, required, necessary or proper for or incidental to the construction of the Project covered by this Contract. The sum paid under the Award of Bid for such supplies and materials shall be in full payment and consideration for the sale of such supplies and materials herein.

3.6.4 The Contractor agrees to perform the Work, labor and services required, necessary, proper or incidental to construct the project for the total sum shown in the Award of Bid to be paid to in accordance with the Award of Bid which shall be in full consideration for the performance by the Contractor of its duties and obligations under this Contract.

3.6.5 The purchase by the Contractor of the supplies and materials sold hereunder shall be a purchase or procurement for resale and therefore not subject to the New York or New York City Sales or Compensating Use Taxes or any such taxes of cities and counties ("Taxes"). The sale of such supplies and materials by the Contractor to the Owner is exempt from the Taxes. For such supplies and materials, the Contractor, at the request of the Owner, shall furnish to the Owner such bills of sale and other instruments as may be required by it, properly executed, acknowledged and delivered assuring to the Owner title to such supplies and materials, free of liens or encumbrances. The Contractor shall mark or otherwise identify all such materials as the property of the Owner.

3.6.6 Title to all materials to be sold by the Contractor to the Owner in accordance with the provisions of the Award of Bid shall immediately vest in and become the sole property of the Owner upon delivery of such supplies and materials to the Site and before it becomes a part of the permanent structure. Notwithstanding such transfer of title, the Contractor shall have the full and continuing responsibility to install such materials and supplies in accordance with the provisions of the

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Award of Bid, protect them, maintain them in a proper condition and promptly repair, replace and make good any damage to it, theft of disappearance thereof, and furnish additional materials in place of any that may be lost, stolen or rendered unusable, without cost to the Owner, until the Owner entirely accepts the Work covered by the Award of Bid. Such transfer of title shall in no way affect any of the Contractor's obligations hereunder. If after title has passed to the Owner, any of such supplies and materials being rejected as defective or otherwise unsatisfactory, title to all such supplies and materials shall be deemed to have been transferred back to the Contractor.

3.6.7 The purchase by Subcontractors of supplies and materials to be sold hereunder shall also be a purchase or procurement for resale to the Contractor (either directly or through other Subcontractors) and therefore not subject to the Taxes, provided that the subcontract agreements provide for the resale of such supplies and materials before and separate and apart from the incorporation of such supplies and materials into the permanent construction and that such subcontract agreements are subject to the terms of the Contract Documents concerning the separation of the sale of materials from the Work and labor, services, consumable supplies and any other matters to be provided, and provided further that the subcontract agreements offer separate prices for (1) materials and (2) all other services and matters. Such separation shall be followed in practice, including separating payments for supplies and materials from the payments for other Work and labor and other things to be provided.

3.6.8 The Contractor, Subcontractors and material-men shall obtain all necessary Contractor Exempt Purchase Certificates or resale certificates from the appropriate governmental agency or agencies, and furnish a Contractor Exempt Purchase Certificate or resale certificate to all persons, firms or corporations from which they purchase supplies and materials for the performance of the Work covered by this Contract.

3.6.9 If any of the provisions of this Section shall be deemed in conflict with any other provisions of this Contract or create any ambiguity, then the provision of this Article shall control.

3.7 **PERMITS, FEES, NOTICES AND LICENSES**

3.7.1 Per County of Rockland Local Law No. 11 of 1967, entitled *Licensing of Electricians* and all subsequent amendments, and Local Law No. 17 of 1974, as amended by Local Law No. 4 of 2005, entitled *Licensing of Plumbers, HVAC and Refrigeration*, and all subsequent amendments, a Contractor shall possess a valid County of Rockland license for the trade required for the Work as of the date of the opening of the Bid.

3.7.2 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

3.7.3 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the performance of the Work.

3.7.4 Whenever the Contractor observes that portions of the Contract Documents are at variance, the Contractor shall promptly notify the Architect/Engineer and the Owner in writing.

3.7.5 The Contractor shall perform no Work contrary to laws, statutes, ordinances, building codes, and rules and regulations. If the Contractor proceeds without such notice to the Architect/Engineer and Owner, the Contractor shall assume full responsibility for such Work and bear any attributable costs.

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3.8 **ALLOWANCES**

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes a reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

3.8.2.1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts.

3.8.2.2 The Contractor's costs for unloading and handling at the Site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowances amounts shall be included in the Contract Sum and not in the allowances.

3.8.2.3 Whenever actual costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by change order.

3.8.2.4 It is the Contractor's responsibility to include in the Schedule of Values all allowances. The Schedule of Values shall be submitted for approval by the Owner and the Architect/Engineer.

3.9 **SUPERINTENDENT**

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Site during the performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The superintendent and all assistants shall speak and write the English language with fluency.

3.9.2 The Contractor shall not change the superintendent without the Owner's prior written consent, which consent shall not be unreasonably withheld. The superintendent shall be present at the job to the fullest extent necessary until final completion. At the Owner's request, the Contractor shall assign a different superintendent to the Project.

3.9.3 Regular Project meetings of the representatives of the various trades engaged in the Work shall be held, furthering the Work and giving clarification by the Architect/Engineer and instructions by the Owner. Contractor's Representatives that fail to attend or execute the instructions given them shall be removed from the Work and other representatives immediately substituted on request of the Owner.

3.10 **CONTRACTOR'S CONSTRUCTION SCHEDULE**

3.10.1 After being awarded the Contract, the Contractor shall prepare and submit for the approval of the Owner and Architect/Engineer a Contractor's construction schedule for the Work. That schedule shall be submitted within three (3) Days of the award of the Contract and shall specify the periods for completion of the Work from the notice to proceed. The schedule shall not exceed time limits current under the Contract Documents, and shall be revised at appropriate intervals as required by the conditions of the Work and the Project, or at the direction of the Architect/Engineer or Owner. At all times, the construction schedule shall be related to the entire Project to the extent required by the Contract Documents and shall provide for expeditious and practicable execution of the Work. Unless the Owner designates another contractor, the Contractor shall be the lead contractor for scheduling, producing and maintaining a current composite construction schedule for the Project throughout. With the Owner's approval or its representative, this lead contractor shall integrate the work activities of the other contractors into one consistent schedule.

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3.10.2 The Contractor shall prepare and keep current, for the Architect's/Engineer's approval, a schedule of submittals, according to the Owner's requirements, which is to be coordinated with the Contractor's construction schedule to allow the Architect/Engineer reasonable time to review such submittals.

3.10.3 The Contractor shall conform to the most current schedules. The construction schedule shall not be changed without the Owner and the Architect/Engineer's written consent.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the Site for the Owner; one record copy of the drawings, specifications, Addenda, change orders and other modifications, in good order and marked currently to record change and selections made during construction, as well as reviewed shop drawings, product data, samples, and similarly required submittals. These shall be available to the Architect/Engineer or Owner and shall be delivered to the Architect/Engineer for submittal to the Owner in documentary form and digital format upon completion of the Work before final payment.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop drawings are drawings, diagrams, schedules and other data specially prepared for the Contractor, Subcontractors, sub-Subcontractors, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship, and establish standards by which the Work will be judged.

3.12.4 Shop drawings, product data, samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required, the way the Contractor proposes to conform to the information given, and the design concept expressed in the Contract Documents. Review by the Architect/Engineer is subject to the limitations set forth herein.

3.12.5 The Contractor shall prepare, review and submit to the Architect/Engineer and the Owner all shop drawings, product data, samples and similar submittals necessary for the proper execution of the Work, whether or not required by the Contract Documents, with reasonable promptness, and in such sequence as to cause no delay in the Work or the activities of the Owner, or of separate contractors. The Contractor shall cooperate with the Owner and assist the Architect/Engineer in coordinating the Contractor's shop drawings, product data and samples with those of other separate contractors. The Contractor shall follow the schedule of submittals as established by the Architect/Engineer. Submittals made by the Contractor that are not required by the Contract Documents may be returned without action.

3.12.6 The Contractor shall perform no portion of the Work requiring the submittal and review of the shop drawings, product data, samples or similar submittals until the respective submittal has been reviewed by the Architect/Engineer. Such Work shall be in accordance with reviewed submittals.

3.12.7 By submitting shop drawings, product data, samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related to it, or will do so with reasonable promptness, and has checked and coordinated the information contained within such submittals with the requirements of the Work and the Contract Documents.

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3.12.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's/Engineer's review of shop drawings, product data, samples, or similar submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal, and the Architect/Engineer has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the Architect's/Engineer's review thereof.

3.12.9 Before being forwarded to the Architect/Engineer, shop drawings prepared by Subcontractors shall be checked for accuracy and Contract requirements by the Contractor. A note shall appear on shop drawings stating that the Contractor has made this check. Shop drawings not checked and noted will be returned to the Contractor without being examined by the Architect/Engineer. Where errors, deviations or omissions in the Subcontractor's shop drawings are discovered later, the Contractor will be responsible, regardless of any Architect/Engineer's approval.

3.12.10 The Contractor shall direct specific attention, in writing or on resubmitted shop drawings, product data, samples or similar submittals, to revisions other than those requested by the Architect/Engineer on previous submittals.

3.12.11 Informational submittals upon which the Architect/Engineer is not expected to take responsive action shall be identified in the Contract Documents.

3.12.12 When Contract Documents require professional certification of performance criteria of materials, systems or equipment, the Architect/Engineer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.12.13 The Owner shall advise the Contractor of the procedure to be followed for submittals of shop drawings, product data or samples of which procedure shall be deemed part of these general conditions.

3.12.14 If the Contractor makes a submittal that differs from that referenced in the Contract Documents, the Contractor will be granted two submittal reviews; the initial review and a secondary review. In the instance of any submittal review beyond the second review, the Contractor shall be responsible for compensation to the Architect and/ Engineer for their services in reviewing the submittal.

3.13 **USE OF SITE**

3.13.1 The Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents, and shall not unreasonably encumber the Site with materials or equipment. The Contractor shall maintain the Site in a safe and orderly manner and condition at all times and shall comply with such Rules of Conduct as the Owner may promulgate for the use of the Site.

3.13.2 The Contractor shall coordinate its operations with and secure approval from the Owner before using any portion of the Site.

3.13.3 If the Premises are occupied, the Contractor, its Subcontractors, and their employees shall comply with the regulations governing access to, operation of, and conduct while in or on the Premises and shall perform the Work in such a manner as not to unreasonably interrupt or interfere with the conduct of business.

3.13.4 Equipment and material furnished by the Contractor, which requires protection from the elements, shall be stored and protected by the Contractor at its own expense. Equipment and material stored on Site shall only be so stored with the Owner's written permission and in a location designated by the Owner. Unless otherwise specified, the Contractor shall be responsible for the unloading, storage and transfer to the Work area of all materials and equipment required to perform its Work, and shall provide all material, supplies, equipment and

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labor needed for these operations. The Contractor shall make Provisions for staffing these areas with appropriate personnel as required by Contractor's Work jurisdiction.

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work and ensure all parts of the Project fit and are integrated correctly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or of fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or by a separate contractor except with the written consent of the Owner, and such separate contractor, Owner's or separate contractor's consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or independent contractor the Contractor's consent to cutting or otherwise altering the Work. Patching shall be performed by skilled tradesmen and of quality equal to or better than the basic structure. If the Contractor does not patch as directed, the Owner may direct another contractor to patch at the Contractor's sole cost and expense.

3.14.3 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for performing necessary patching as required for compliance with the Contract Documents, the Owner may perform or cause to be performed such patching and allocate the cost among those responsible, as the Owner determines to be equitable. The cost of patching shall be based upon the actual cost for work performed using prevailing wage rates or union wage rates for all labor, plus ten percent (10%) overhead and ten percent (10%) profit.

3.15 CLEANING UP

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials, boxes, crates or rubbish caused by operations under the Contract, and such materials shall be placed in a container so specified for same. It shall be the responsibility of the general construction contractor to perform a weekly broom cleaning of the entire premises including policing the exterior grounds of the area. Broom clean shall include small rubbish and waste items of all contractors. Removal of debris, trash, crates and boxes shall be done at the general contractor's expense daily or when full, and the general construction contractor will coordinate their removal with the other contractors. At the completion of the Work, the Contractor shall remove from and about the Project, waste materials, rubbish, the Contractor's tools, construction equipment, storage containers, machinery and surplus materials. The general construction contractor shall complete the final cleanup of the Site, interior and exterior as part of the final punch list. If the Contractor is the single prime contractor, it shall be responsible for cleaning up the Site. If there are multiple prime contractors, but no general construction contractor, the County will designate a prime contractor who cleans up the site.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, after notice to the Contractor, may do so or designate another Contractor to do so, and the cost thereof shall be back-charged to the Contractor.

3.15.3 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in these general conditions, the Owner may clean up and allocate the cost among those responsible, as the Owner determines to be just. The cost of cleanup shall be based upon prevailing wage rates, and cost of carting, plus overhead and profit.

3.16 ACCESS TO WORK, COMMUNICATIONS

3.16.1 The Contractor shall provide the Owner and Architect/Engineer access to the Work in preparation and progress wherever located. The Contractor shall forward all communications in writing to the Owner and Architect/Engineer directly.

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3.17 ROYALTIES AND PATENTS

3.17.1 The Contractor shall pay all royalties and license fees. Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Architect/Engineer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a specific manufacturer(s) is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect/Engineer.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify, save and hold harmless the Owner, Architect/Engineer, Architect's/Engineer's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, including loss of use, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, or its Subcontractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

3.18.2 In claims against any person or entity indemnified by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, this indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

3.18.3 The obligations of the Contractor shall not extend to the liability of the Architect/Engineer, their consultants, agents and employees arising out of: (i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (ii) the giving of or the failure to give directions or instructions by the Architect/Engineer, the Architect's/Engineer's consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

3.18.4 If any party is requested but refuses to honor the indemnity provisions herein, the indemnifying party shall, in addition to all other obligations, pay the costs of defending and commencing such actions, including reasonable attorney fees, to the party requesting indemnity hereunder.

3.19 AUDIT

3.19.1 The Contractor shall keep complete and accurate records of all costs incurred and items billed in connection with the performance of the Work, which records shall be open to audit by the Owner or its authorized representatives during the performance of the Work, and until three (3) years after final payment. In addition, the Contractor shall make it a condition of all subcontracts relating to the Work that all Subcontractors will keep accurate records of costs incurred and items billed in connection with their Work, and that such records shall be open to audit by the Owner or its authorized representatives during the performance of the Work, and until two (2) years after its completion.

3.20 REPRESENTATIONS

3.20.1 The Contractor represents and warrants that no person or agency has been employed or retained to solicit or secure the Award of Bid upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. The Contractor further represents and warrants that no payment, gift or anything of value has been made, given or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the Owner to make the Award of Bid, and the Owner relies upon such representations and warranties in the execution hereof.

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3.20.2 The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by it in the performance of this Contract. No elected official or other officer or employee of the Owner, nor any person whose salary is payable, in whole or in part, from the Owner, shall participate in any decision relating to this Contract which affects their personal interest or the interest of any corporation, partnership or association in which there are, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Contract or the proceeds thereof.

3.20.3 The Contractor and each person signing on behalf of the Contractor or any Subcontractor represents and warrants and certifies, under penalty of perjury, that to the best of its knowledge and belief: (a) the prices in this Contract have been arrived at independently without collusion, consultation, communication, or agreement, to restrict competition, as to any matter relating to such prices with any other Bidder or with any competitor; (b) unless otherwise required by law, the prices which have been quoted in this Contract and the proposal submitted by the Contractor have not been knowingly disclosed by the Contractor before the proposal opening, directly or indirectly, to any other Bidder or any other competitor; and (c) no attempt has been made or will be made by the Contractor to induce any other person, partnership or corporation to submit or not to submit a proposal to restrict competition. The fact the Contractor (a) has published lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price-lists for such items, or (c) has sold the same items to other customers at the same prices being Bid, does not constitute, without more, disclosure within the meaning, of the above.

3.20.4 For a breach or violation of such representations or warranties, the Owner shall have the right to annul this Contract without liability, entitling the Owner to recover all money paid hereunder, and the Contractor shall not make a claim for, or be entitled to recover, any sum or sums due under this Contract. This remedy shall not constitute Owner's sole remedy for falsity or breach, nor shall it constitute a waiver of the Owner's right to claim damages, refuse payment, or make any other action provided for by law or in accordance with this Contract.

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ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT/ENGINEER

4.1.1 The Architect/Engineer is a person or entity lawfully licensed to practice architecture or engineering and is identified as such in this Contract and is referred to throughout the Contract Documents as if singular in number. The term "Architect/Engineer" means the Architect or the Engineer or the Architect's or Engineer's authorized representative.

4.1.2 Duties, responsibilities and limitations of authority of the Architect/Engineer as stated in the Contract Documents shall not be restricted, modified, or extended without the written consent of the Owner, Contractor and Architect/Engineer. The consent shall not be unreasonably withheld.

4.1.3 In case of termination of employment of the Architect/Engineer, the Owner shall appoint an architect or engineer whose status under the Contract Documents shall be that of the former architect/engineer.

4.1.4 The drawings, specifications and other documents prepared by the Architect/ Engineer are instruments of the Architect's/Engineer's services through which the Work to be executed by the Contractor is described. They are to be used only for this Project and are not used on any other project. Submission or distribution to meet official regulatory requirements, or other purposes connected with the project, is not construed as publication in derogation of the Architect's/Engineer's common-law copyright or other reserved rights.

4.2 THE OWNER'S REPRESENTATIVE

4.2.1 The Owner's Representative is the person or entity designated by the Owner to act on behalf of the Owner throughout the Project.

4.2.2 The Owner may change the Owner's Representative at any time, and written notice of such change shall be given to the Contractor.

4.2.3 All instructions to and communications from the Contractor to the Owner shall be forwarded through the Owner's Representative, with simultaneous notification to the Architect/Engineer.

4.2.4 The Owner's Representative shall maintain at the Site one record copy of all contracts, drawings, specifications, Addenda, change orders, and other modifications related to the Project, in good order and marked currently to record all changes made during construction, and approved shop drawings, product data and samples. These shall be available to the Architect/Engineer and the Contractor.

4.3 ADMINISTRATION OF THE CONTRACT

4.3.1 The Architect/Engineer and Owner's Representative shall provide administration of the Contract, and will represent the Owner during construction, and will have authority to act on behalf of the Owner, and will advise the Owner concerning the Work of the Contractor as to whether it is being performed in accordance with the Contract Documents.

4.3.2 The Architect/Engineer shall visit the Site at intervals appropriate to the stage of construction to determine the progress and quality of the completed Work, and determine if the Work is being performed according to the Contract Documents. However, the Architect/Engineer is not required to make exhaustive or continuous on-Site observations to check the quality or quantity of the Contractor's Work. Based on its on-Site observations, the Architect/Engineer will keep the Owner informed of the progress of the Work. Nothing contained herein shall limit or modify the obligations of the Architect/Engineer to the Owner, as established by the agreement between them.

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4.3.3 Subject to the Contract Documents and the schedule of the Work, the Contractor shall be solely responsible for the construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the Work. The Architect/Engineer and the Owner shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents, or for acts or omissions of the Contractor, Subcontractors, or their agents, employees, or of any other persons performing portions of the Work.

4.3.4 The Architect/Engineer and the Owner shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so that the Architect/Engineer and the Owner's Representative may perform their functions under the Contract Documents.

4.3.5 The Owner shall oversee the scheduling and coordinating of the Work of all contractors on the Project, including their use of the Site, including coordinating the Work of all contractors on the Site. The Owner shall keep the contractors informed of the Project Construction Schedule to enable the contractors to plan and perform the work properly. The Contractor shall be responsible for coordinating the Work with the contractors who the Work may impact. Each contractor that has the prime responsibility in each scope of the Work shall be responsible for the coordination drawings in such scope.

4.3.6 Either the Architect/Engineer or the Owner shall have authority to reject Work that does not conform to the Contract Documents after consultation with the Owner and each other. Whenever the Architect/Engineer or the Owner considers it necessary or advisable for implementation of the intent of the Contract Documents, either the Architect/Engineer or the Owner shall have authority to require additional inspection or testing of the Work in herewith, whether or not such Work is fabricated, installed or completed. However, neither the Architect's/Engineer's or the Owner authority to act, nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Architect/Engineer or the Owner to the Contractor, Subcontractors, materials and equipment suppliers, their agents or employees, or other person performing portions of the Work.

4.3.7 The Architect/Engineer shall review and take other appropriate action upon the Contractor's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with the information given and the design concept expressed in the Contract Documents. The Architect's/Engineer's action shall be taken with reasonable promptness to cause no delay in the Work or the Owner, Contractor, or separate contractors' activities while allowing sufficient time in the Architect's/Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted to determine the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the Contractor's responsibility as required by the Contract Documents. The Architect's/Engineer's review of the Contractor's submittals shall not relieve the Contractor of the obligations hereunder. The Architect's/Engineer's review shall not constitute approval of safety precautions or, unless otherwise explicitly stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures. The Architect's/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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ARTICLE 5 - SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 "Subcontractor" means a person or entity that has an agreement with the Contractor to perform a portion of the Work at the Site or supply materials to the Site, not including a separate contractor or Subcontractor of an independent contractor. References to "Subcontractor" throughout the Contract Documents are singular in number and means a Subcontractor or an authorized representative of such Subcontractor.

5.1.2 The Contractor's use of Subcontractors shall not diminish the Contractor's obligations to complete the Work in accordance with the Contract. The Contractor shall control and coordinate the Work of its Subcontractors.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise stated in the Bidding Requirements, the Contractor, as soon as practicable after the award of the Contract, shall furnish the Owner and Architect/Engineer, in writing, the names of all Subcontractors and sub-Subcontractors proposed for each portion of the Work. The Owner and Architect/Engineer shall promptly reply to the Contractor, in writing, whether or not either party, after due investigation, has reasonable objection to any such Subcontractor or sub-Subcontractor. Failure to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with a Subcontractor or sub-Subcontractor to whom the Owner or Architect/Engineer has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.2.3 If the Owner or Architect/Engineer has reasonable objection to a Subcontractor or sub-Subcontractor proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect/Engineer has no reasonable objection. No increase in the Contract Sum shall be allowed for such a change.

5.2.4 The Contractor shall not change a Subcontractor or a sub-Subcontractor, person or entity previously selected if the Owner, Architect/Engineer or Owner's Representative makes reasonable objection to such change.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these documents, assumes toward the Owner, Architect/Engineer and Owner's Representative. Each subcontract agreement shall preserve and protect the rights of the Owner, Architect/Engineer and Owner's representative under the Contract Documents concerning the Work to be performed by the Subcontractor, so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless expressly provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with sub-Subcontractors. The Contractor shall make available to each proposed Subcontractor, before the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-Subcontractors.

5.3.2 The Contractor shall be responsible for informing its Subcontractors and suppliers of all the terms, conditions and requirements of the Contract Documents including, but not limited to the General Conditions and changes made by Addenda.

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5.4 **CONTINGENT ASSIGNMENT OF SUBCONTRACTORS**

5.4.1 The Contractor assigns each subcontract agreement for a portion of the Work to the Owner provided that:

5.4.1.1 Such assignment is effective only after the termination of the Contract in accordance with hereto, and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

5.4.1.2 Such assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2 The Contractor shall promptly submit to the Owner a copy of each subcontract upon execution of the same. Each subcontract shall contain a contingent assignment of the subcontract to the Owner, consistent with this section.

5.5 **RIGHT TO PAY SUBCONTRACTOR**

5.5.1 In the event of any default hereunder by the Contractor, or if the Owner or Architect/Engineer fails to approve any Application for Payment that is not the fault of a Subcontractor, the Owner may make direct payment to the Contractor's Subcontractor, less appropriate retainage. In that event, the amount paid to the Subcontractor shall be deducted from the payment to the Contractor.

5.5.2 Nothing contained herein shall create any obligation on of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any obligation to make any further payment to any Subcontractor.

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ARTICLE 6 - CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION OR BY SEPARATE CONTRACTS

The Owner reserves the right to perform construction or operations related to the Project with the Owner's forces and award separate contracts in connection with other portions of the Project or other construction or operations on the Site. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided elsewhere in the Contract Documents.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs, as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, before proceeding with that portion of the Work, promptly report to the Architect/Engineer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to report shall constitute an acknowledgment that the Owner's or the Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 Costs caused by delays, improperly timed activities, or defective construction shall be borne by the Contractor responsible, therefore subject to the provisions of the Contract Documents. The parties intend that this Contract and each Owner-Contractor agreement for the Project imposes reciprocal obligations on the Contractor and each other Contractor to properly connect and coordinate its Work with other contractors and, therefore, each Contractor shall have the right to take appropriate legal action against another Contractor for that Contractor's failure to perform.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or property of the Owner or separate contractors.

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ARTICLE 7 - CHANGES IN THE WORK

7.1 CHANGES

7.1.1 Changes in the Work may be accomplished after execution of the Contract without invalidating the Contract, by (1) Change Order, (2) Construction Change Directive or (3) Order for a Minor Change in the Work, subject to the limitations stated herein, and elsewhere in the Contract Documents.

7.1.1 7 A Change Order shall be based upon agreement among the Owner, Contractor, and the Architect/Engineer, a Construction Change Directive requires authorization by the Owner and the Architect/Engineer, and may or may not be agreed to by the Contractor; an Order for a Minor Change in the Work may be issued by the Architect/Engineer or the Owner alone.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument, prepared on behalf of the Owner and signed by the Owner and Contractor, with the approval of the Architect/Engineer, stating their agreement upon all of the following:

7.2.1.1 a change in the Work;

7.2.1.2 the amount of the adjustment in the Contract Sum, if any; and

7.2.1.3 the extent of the adjustment in the Contract time, if any.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order signed by the Owner, with the approval of the Architect/Engineer, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract time, or both. The Owner may, by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract, including additions, deletions, the Contract Sum, and Contract time.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order. A Construction Change Directive signed by the Contractor indicates the Contractor's agreement to such Construction Change Directive, including adjustment in Contract Sum and Contract time, or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods, to be determined by the Architect/Engineer:

7.3.3.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

7.3.3.2 Unit Prices stated in the Contract Documents or subsequently agreed upon;

7.3.3.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

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7.3.3.4 the actual cost or savings attributable to the change, including an allowance of twenty percent (20%) total, for overhead and profit unless otherwise agreed in writing by the parties.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or contract time.

7.3.5 The Contractor shall keep and present, in such form as the Owner and Architect/Engineer may prescribe, an itemized accounting, together with the appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this paragraph shall be limited to the following:

7.3.5.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance;

7.3.5.2 costs of materials, supplies and equipment, including the cost of transportation, whether incorporated or consumed;

7.3.5.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from Contractor or others;

7.3.5.4 costs of premiums for all bonds and insurance, permit fees and sales, use or similar taxes related to the Work; and

7.3.5.5 additional costs of field supervision directly attributable to the change.

7.3.6 Pending final cost determination to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for deletion or change which results in a net decrease in the Contract Sum shall be actual net cost with allowance for overhead and profit, as confirmed by the Owner, with approval of the Architect/Engineer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance of twenty percent (20%) total, for overhead and profit, shall be figured based on the net increase, if any, concerning that change. No other markups shall be allowed and there shall be no markups on markups.

7.3.7 If the Owner and Contractor disagree with the adjustment to the Contract time or the method for determining it, the adjustment or the matter shall be referred to the Architect/Engineer for the final determination.

7.3.8 When the Owner and Contractor agree with the determination made by the Architect/Engineer concerning the adjustments in the Contract time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately, and shall be recorded by preparation and execution of an appropriate change order.

7.4 MINOR CHANGES IN THE WORK

7.4.1 The Architect/Engineer, with the approval of the Owner, shall have the authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract time, and not inconsistent with the intent of the Contract Documents. This authority shall also apply to changes of an emergency nature, or where required to avoid unfavorable impact upon other contractors or interference with the operation of installed systems or equipment. Such changes shall be effected by written order and shall be binding on the Contractor. The Contractor shall carry out such written orders promptly.

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ARTICLE 8 - UNCOVERING AND CORRECTION OF WORK

8.1 TESTS AND INSPECTIONS

8.1.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided in the Contract Documents, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Contractor shall give the Architect/Engineer three (3) Days' notice of when and where tests and inspections are to be made so the Architect/Engineer may observe such procedures. The Owner shall bear the costs of all routine tests, inspections or approvals.

8.1.2 If the Architect/Engineer, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included above and not the result of the Contractor's failure to comply with the Contract Documents, the Architect/Engineer will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect/Engineer of when and where tests and inspections are to be made so the Architect/Engineer may observe such procedures. The Owner shall bear such costs except as provided below.

8.1.3 If such procedures for testing, inspection or approval reveal a failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated or additional testing and inspection, compensation for the Architect's/Engineer's services and expenses, and the costs of corrective or remedial Work.

8.1.4 Unless otherwise required by the Contract Documents, required certificates of testing, inspection or approval shall be secured by the Contractor and promptly delivered to the Architect/Engineer.

8.1.5 If the Architect/Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Architect/Engineer will do so promptly and, where practicable, at the usual testing place.

8.1.6 Tests or inspections conducted in accordance with the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

8.2 UNCOVERING OF WORK

8.2.1 If a portion of the Work is covered contrary to the Architect's/Engineer's request or requirements expressed explicitly in the Contract Documents, it must, if required in writing by the Architect/Engineer, be uncovered for the Architect's/Engineer's observation and be replaced at the Contractor's expense without change in the Contract time.

8.2.2 If a portion of the Work has been covered which the Architect/Engineer has not explicitly requested to observe before it being covered, the Architect/Engineer may ask to see such Work, and the Contractor shall uncover it.. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate change order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or by a separate Contractor, in which event the Owner shall be responsible for payment of such costs.

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8.3 CORRECTION OF WORK

8.3.1 The Contractor shall promptly correct Work rejected by the Architect/Engineer or failing to conform to the requirements of the Contract Documents, whether observed before or after substantial completion, and whether or not fabricated, installed or completed. The Contractor shall bear the costs of correcting such rejected Work, including additional testing and inspections compensation for the Architect's/Engineer's services and expenses made necessary.

8.3.2 If, within one (1) year after the date of substantial completion of the Work or designated portion thereof, or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended concerning portions of Work first performed after substantial completion by the time between substantial completion and the actual performance of the Work. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after the discovery of the condition.

8.3.3 The Contractor shall remove from the Site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

8.3.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may stop the Work or correct it in accordance herewith. If the Contractor does not correct such nonconforming Work within a reasonable time fixed by written notice from the Architect/Engineer, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) Days after written notice, the Owner may upon ten (10) Days written notice sell such materials and equipment at auction or private sale, and shall account for the proceeds thereof after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's/Engineer's services and expenses made necessary thereby. If such proceeds of sale do not cover costs that the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payment then or after that due the Contractor is not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

8.3.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate Contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

8.3.6 Nothing contained in this section shall be construed to establish a period of limitation with respect to other obligations, which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described above relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations, other than specifically to correct the Work.

8.4 ACCEPTANCE OF NONCONFORMING WORK

8.4.1 If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the contract sum shall be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

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ARTICLE 9- TIME**9.1 PROGRESS AND COMPLETION**

9.1.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Contract, the Contractor confirms and agrees that the Contract time stated in this Contract is sufficient for performing the Work. In performing the Work, the Contractor shall emphasize on considerations that will aid in expediting the construction of the Project consistent with the construction standards and procedures of the Owner. The Contractor agrees to use all resources at its command so that the Project is completed on or before the established Project completion date, and to this end, it shall give constant attention to the adequacy of its own and each Subcontractor's planning, personnel, equipment and the availability of materials and supplies. The Contractor shall proceed expeditiously with adequate forces and shall achieve substantial completion within the Contract time.

9.1.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner, in writing, prematurely commence operations on the Site or elsewhere before the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

9.2 DELAYS AND EXTENSIONS OF TIME

9.2.1 Claims relating to extensions of time shall be made in accordance with applicable provisions contained in this Contract. If the Contractor is delayed at any time in the progress of the Work by an act or neglect of the Owner or Architect/Engineer, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by other causes which the Architect/Engineer determines may justify the delay, then the Contract time shall be extended by change order for such reasonable time as the Architect/Engineer or Owner may determine.

9.2.2 Before the Contractor's time extension request may be approved, the Contractor must, within five (5) Days after commencement of the condition that allegedly has caused or is causing delay, submit a written application to the Owner identifying:

- (a) the Contractor; the Contract registration number; and Project description;
- (b) liquidated damage assessment rate, if any, as specified in the Contract;
- (c) original Bid amount;
- (d) the original Contract start date and completion date;
- (e) any previous time extensions granted (number and duration);
- (f) the extension of time requested;
- (g) in addition, the application for extension of time shall be stated in detail and include:
 - i) the nature of each alleged cause of delay in completing the Work;
 - ii) the date upon which each such cause of delay began and ended and the number of Days attributable to each such cause;
 - iii. a statement that the Contractor waives all claims except for those delineated in the application, and the particulars of any claims which the Contractor does not agree to waive. For time
 - iv. extensions for substantial and final completion payments, the application shall include a detailed statement of the dollar amounts of each element of claim item reserved;
 - v. a statement indicating the Contractor's understanding that the time extension is granted only for the purpose of permitting continuation of contract performance and payment for Work performed and that the Owner retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.

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9.2.3 Notwithstanding certain exceptions, no claim for monetary damages or other compensation or any claim other than for an extension of time as herein provided shall be made or asserted against the Owner because of any delay in performance of this Contract occasioned by any act or omission of the Owner, the Owner's representative, the architect/engineer or other contractors, subcontractors, sub-subcontractors, material men, their employees or agents. This limitation against the Owner shall not affect the Contractor's right to assert a claim for delay damages against other Contractors as set forth herein.

9.3 EXTENSION FOR CONCURRENT CAUSES OF DELAY

9.3.1 The Contractor shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently, but if at all, only for the actual period of delay in completion of the Work as determined by the Owner irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or its Subcontractors or material-men, and would of itself (irrespective of the concurrent causes) have delayed the Work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission. The determination made by the Owner on an application for an extension of time shall be binding and conclusive on the Contractor.

9.4 NOTICE OF CONDITIONS CAUSING DELAY

9.4.1 Within five (5) Days after the commencement of any condition which is causing or may cause a delay in completion, including conditions for which the Contractor may be entitled to an extension of time, the Contractor must notify the Owner in writing of the effect, if any, of such condition upon the previously approved Schedule, and must state why and in what respects, in any, the condition is causing or may cause such delay.

9.4.2 Failure by the Contractor to notify the Owner in writing may, at the discretion of the Owner, be deemed sufficient cause to deny any extension of time on account of delay in completion arising out of or resulting from such change, extra Work, suspension, or other condition, and shall constitute a waiver by the Contractor of all claims for damages for delay.

9.4.3 If and when appropriate, the Progress/Construction Schedule shall be revised by the Lead Contractor with approval of the Owner. The revised Progress/Construction Schedule shall be strictly adhered to by all Contractors.

9.5 LIQUIDATED DAMAGES

9.5.1 If the Contract Documents provide for liquidated damages for delay beyond the completion date stated in the Contract Documents, and if they are so assessed, then the Construction Manager or Owner may assess same against the Contractor in proportion to the Contractor's share of the responsibility for such delay. However, such an assessment shall not exceed the amount assessed against the Construction Manager or Owner.

9.5.2 Such assessment may be made in the month of the delay and shall be held by the Construction Manager or Owner until the Contractor is back on schedule and the delay occasioned thereby has been eliminated.

9.5.3 The liquidated damages will be assessed for each milestone for each Contractor who does not meet those milestone dates. The liquidated damages shall be \$3,000.00 per Day. This amount will be deducted from the monthly draw request in the period of which the delay occurs. The amount will be continually withheld until the Prime Contractor responsible for the delay gets the schedule back on track.

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9.5.4 Since the actual damages for delay may be extremely difficult to ascertain, it is agreed that this sum is reasonable and shall be considered and treated not as a penalty but as liquidated damages due to the County from the Contractor by cause of late completion, added construction costs, supervision and other public inconvenience.

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ARTICLE 10 - PAYMENTS AND CONDITIONS**10.1.1 CONTRACT SUM**

10.1.1 The Contract sum is stated in the Contract, including authorized adjustments, is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents "Contract Sum".

10.2 SCHEDULE OF VALUES

10.2.1 Before the first Application for Payment, the Contractor shall submit to the Owner and Architect/Engineer, a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer or Owner may require. A line item shall be included in the schedule of values for "Close Out" items. Close Out is defined as all approved as-built drawings, operations and maintenance manuals, materials, and items required to be turned over to the Owner, instructional training sessions etc. This line item shall be listed as equal to one percent (1%) of the Total Contract amount but not less than \$5,000.00. Unless objected to by the Architect/Engineer or Owner, this schedule shall be used as a basis for reviewing the Contractor's Application for Payment.

10.2.2. The Schedule of Values shall furnish the most detailed breakdown feasible for analysis. It shall state the names of all contractors, Subcontractors and material suppliers, and the amounts to become due to each, as well as the value of Work to be completed by the Contractor's forces. The information as to labor and materials shall further be broken down to floor-by-floor, system-by-system and component-by-component items wherever applicable. The Contractor's overhead and profit shall each be carried as separate items. The total for all items shall aggregate the Contract Sum.

10.3 APPLICATION FOR PAYMENT

10.3.1 At least fifteen (15) Days before the date established for each progress payment, the Contractor shall submit to the Owner and the Architect/Engineer on the standard AIA forms G702 and G703 or that designated by the Owner, an itemized Application for Payment for Work completed in accordance with the Schedule of Values. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect/Engineer may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage, if provided for elsewhere in the Contract Documents. Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or materials supplier because of a dispute or other reason. Each application for payment shall be accompanied by the Contractor's Affidavit and an invoice on company stationery. The Contractor shall submit with all applications for payment, a notarized copy of payroll records for all personnel involved with this Project and partial or final waivers of lien from the Contractor, Subcontractors and material-men. The Contractor shall send applications for payment to Robert H. Gruffi, P.E., Director, Facilities Management, Dr. Robert L. Yeager Health Center, Sanatorium Road, Pomona, NY 10970.

10.3.2 Unless otherwise provided in the Contract Documents, payments shall be made for materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment, or otherwise protect the Owner's interest, and shall include applicable insurance, storage, and transportation to the Site for such materials and equipment stored off the Site. Such warranty shall also include persons or organizations to whom fringe benefits of any description are payable.

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10.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim because of having provided labor, materials and equipment relating to the Work.

10.3.4 A sum equal to five percent (5%) shall be deducted from each payment to the Contractor and be held by the County of Rockland. Payment will be made in full, less retainage, upon completion and acceptance of the Work by the Owner.

10.3.5 When the Work or significant portions thereof is substantially completed, the Contractor shall submit to the Owner a requisition to pay of the remaining amount of the Contract balance. Upon receipt of such requisition the owner shall approve and promptly pay the remaining items to be completed and an amount necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged. As the remaining items of Work are satisfactorily completed or corrected, the Owner shall promptly pay, upon receipt of a requisition, for these items less an amount necessary to satisfy any claims, liens or judgments against the contractor, which have not been suitably discharged.

10.4 CERTIFICATES FOR PAYMENT

10.4.1 After consultation with the Owner, the Architect/Engineer will, within ten (10) Days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect/Engineer determines is properly due, or notify the Contractor and Owner, in writing, of the Architect's/Engineer's reasons for withholding certification in whole or in part as provided below.

10.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect/Engineer to the Owner, based on the Architect's/Engineer's observation at the Site and the data comprising the Application for Payment, that the Work has progressed to the point indicated, and that to the best of the Architect's/Engineer's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon substantial completion, results of subsequent tests and inspections, minor deviations from the Contract Documents, correctable before completion, and specific deviations from the Contract Documents qualifications expressed by the Architect/Engineer. The issuance of a Certificate for Payment will further represent that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect/Engineer has (1) made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and materials suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

10.5 DECISIONS TO WITHHOLD CERTIFICATION

10.5.1 The Construction Manager or Architect/Engineer may decide not to certify payment, and may withhold a Certificate of Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager or Architect's/Engineer's opinion the representations to the Owner required above cannot be made. If the Construction Manager or Architect/Engineer cannot certify payment in the amount of the Application, the Construction Manager or Architect/Engineer will notify the Contractor and Owner as provided herein. If the Contractor, Construction Manager or Architect/Engineer cannot agree on a revised amount, the Construction Manager or Architect/Engineer will promptly issue a Certificate for Payment for the amount for which the Construction Manager or Architect/Engineer is can make such representations to the Owner. The Construction Manager or Architect/Engineer may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of

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a certificate for payment previously issued, to such extent as may be necessary in the Construction Manager or Architect's/Engineer's opinion to protect the Owner from loss because of:

10.5.1.1 defective or incomplete Work not remedied;

10.5.1.2 third party claims filed or reasonable evidence indicating probable filing of such claims;

10.5.1.3 failure of the Contractor to make payments properly to Subcontractors for labor, materials or equipment;

10.5.1.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

10.5.1.5 damage to the Owner or another contractor;

10.5.1.6 reasonable evidence that the Work will not be completed within the Contract time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

10.5.1.7 the Contractor's persistent failure to carry out the Work in accordance with the Contract Documents.

10.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

10.6 PROGRESS PAYMENTS

10.6.1 After the Architect/Engineer has issued a Certificate for Payment, the Owner shall make payments in the manner and within the time provided in the Contract Documents and notify the Architect/Engineer. The Owner has the right to make payment to the Contractor by joint check.

10.6.2 Within fifteen (15) Days of the receipt of any payment from the Owner, the Contractor shall pay each of its Subcontractors and materialmen with proceeds from the payment representing the value of the Work performed and materials furnished by the subcontractor or materialmen and reflecting the percentage of the Subcontractor's Work completed or the materialmen's material supplied in the requisition approved by the Owner and based upon the actual value of the Subcontractor purchase order less an amount necessary to satisfy claims, liens or judgments against the Subcontractor or materialmen which have not been suitably discharged and less any retained amount as hereafter described. The Contractor shall retain not more than five percent (5%) of each payment to the Subcontractor and materialmen except that the Contractor may retain an excess of five percent (5%) but not more than ten percent (10%) of each payment to the Subcontractor provided that before entering into a subcontract with the Contractor, the Subcontractor is unable or unwilling to provide a performance bond and a labor and material bond both in the total amount of the Subcontractor at the request of the Contractor.

10.6.3 The Architect/Engineer or the Owner will, upon request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect/Engineer and Owner on account of portions of the Work done by such Subcontractor.

10.6.4 Neither the Owner nor Architect/Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

10.6.5 Payment to material suppliers shall be treated in a manner similar to that provided herein.

10.6.6 A certificate for payment, a progress payment, or partial or entire use or occupancy of the project by the Owner shall not constitute acceptance of Work.

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10.7 FAILURE OF PAYMENT

10.7.1 If the Architect/Engineer does not issue a certificate of payment, through no fault of the Contractor, within ten (10) Days after receipt of the Contractor's application for payment, if the Owner does not pay the Contractor within forty-five (45) Days, excluding legal holidays, after the date established in the Contract Documents, the amount certified by the Architect/Engineer, then the Contractor may, upon seven (7) Days written notice to the Owner and Architect/Engineer, stop the Work until payment of the amount owing has been received. The Contract time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and startup. The Contractor's right to stop the Work is not applicable in the event that the Architect/Engineer or Owner withholds the certificate for payment or payment by virtue of the Contractor's failure to fully perform under this Contract.

10.8 SUBSTANTIAL COMPLETION

10.8.1 Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is complete in accordance with the Contract Documents, a certificate of occupancy has been issued, all utility connections are functioning properly, and the Owner can use and occupy the Project for its intended purpose.

10.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect/Engineer, a request for certification of substantial completion along with a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's request, the Architect/Engineer will inspect whether the Work or designated portion thereof is substantially complete. If the Architect's/Engineer's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the certificate of substantial completion, complete or correct such item upon notification by the Architect/Engineer. The Contractor shall then submit a request for another inspection by the Architect/Engineer to determine substantial completion. When the Work or designated portion thereof is substantially complete, the Architect/Engineer will prepare a certificate of substantial completion which shall establish the date of substantial completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall furnish all items on the list accompanying the certificate. Warranties required by the Contract Documents shall commence on the date of substantial completion of the Work or designated portion thereof, unless otherwise provided in the certificate of substantial completion and shall be provided to the Architect/Engineer and Owner, in the appropriate form, before final payment is made. The certificate of substantial completion shall be submitted to the Owner and Contractor for their written acceptance of their responsibilities in such a certificate.

10.8.3 Upon substantial completion of the Work or designated portion thereof, and application by the Contractor and certification by the Architect/Engineer, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

10.9 PARTIAL OCCUPANCY OR USE

10.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security maintenance, heat, utilities, damage to the Work and insurance, and have agreed, in writing, concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a request to the Architect/Engineer, as provided above. Consent of the Contract Doc Version 29 Facilities – 8-23-21

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Contractor to partial occupancy or use shall not be reasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect/Engineer.

10.9.2 Immediately before such partial occupancy or use, the Owner, Contractor and Architect/Engineer shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

10.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work.

10.10 **FINAL COMPLETION AND FINAL PAYMENT**

10.10.1 **FINAL COMPLETION:** Upon receipt of written notice that the Work is ready for final inspection and acceptance, and upon receipt of a final application for payment, the Architect/Engineer will promptly make such inspection and, when the Architect/Engineer finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect/Engineer will promptly issue a final certificate for payment, stating that based on the Architect's/Engineer's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents, and that the entire balance found to be due to the Contractor and noted in the said final certificate is due and payable. Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect/Engineer:

- 10.10.1.1 A certificate evincing that insurance required by the Contract Documents to remain in force after the final payment is currently in effect, and will not be cancelled or allowed to expire until at least thirty (30) Days prior written notice has been given to the Owner.
- 10.10.1.2 A written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents.
- 10.10.1.3 Other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall be responsible to the Owner for all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees and the Owner may withhold from final payment or retainage, an amount sufficient for such purpose.
- 10.10.1.4 All documents required in accordance with the applicable specifications and the requirements of the Architect/Engineer, including warranties, operating manuals, final material manuals, digital format.
- 10.10.1.5 The contractor shall turn over to the A/E, all construction information, including AutoCAD files, surveys, measurements, construction changes to produce As-Built drawings by the Architect/Engineer.
- 10.10.1.6 Completion of all training obligations in accordance with the specifications.

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10.10.1.7 **FINAL PAYMENT:** To receive final payment, the Contractor shall submit the following items to the County:

- 10.10.1.7.1 Certificate of Substantial Completion. (AIA Form 704)
- 10.10.1.7.2 Contractor's Affidavit of Payment of Debts and Claims. (AIA Form G706)
- 10.10.1.7.3 Contractors Affidavit of Release of Liens. (AIA Form 706A)
- 10.10.1.7.4 Consent of Surety to Final Payment. (AIA Form G707)
- 10.10.1.7.5 General Release (Blumberg Form B-110 or B-111); and
- 10.10.1.7.6 Contractor's Guarantee.

10.10.2 If, after substantial completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of change orders affecting final completion, and the Architect/Engineer so confirms, the Owner may, upon application by the Contractor and certification by the Architect/Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents. If bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect/Engineer before certification of such payment. Such payment shall be made under terms and conditions governing final payment, except it, shall not constitute a waiver of claims.

10.10.3 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of all claims by that payee, except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

10.11 MONEY RETAINED AGAINST CLAIMS

10.11.1 If any claim shall be made by any person, firm or corporation against the Owner or against the Contractor and the Owner: (1) for an alleged loss, damage or injury of the kind referred to herein which, may not be covered by the contingent liability, public liability or property damage insurance policy or, which, together with previously filed claims, is in excess of the amount payable under such policies; or (2) for an infringement of patents or use of patented articles, tools, etc., as referred herein, or (3) for damage claimed to have been caused directly or indirectly by the failure of the Contractor to perform the Work in strict accordance with this Contract: the amount of such claim, or so much thereof as the Owner may deem necessary, may be withheld by the Owner, as security against such claim, from any money due hereunder, until such time as the commencement of an action thereon would be barred by law or until final adjudication of such action by a Court of competent jurisdiction. The Owner, in its discretion, may permit the Contractor to substitute other satisfactory security instead of the money withheld.

10.11.2 If no action is commenced upon such claim within the time-limited thereof by law, the Owner shall, upon written demand by the Contractor, pay the amount so withheld without interest.

10.11.3 If an action upon such claim is timely commenced and the liability of the Owner, or the Contractor, or both, shall have been established therein by a final judgment of a court competent jurisdiction, or if such claim shall have been admitted by the Contractor to be valid, the Owner shall pay such judgment or admitted claim out of the moneys retained by it under the provisions hereof, and pay the balance, if any, without interest, to the Contractor.

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10.12.1 If any time before or after the whole Work herein agreed to be performed, is completed and accepted by the Owner, any persons claiming to have performed any labor or furnished any material toward their performance or completion of this Contract shall file any notices as described in the Lien Law, the Owner shall retain, from the moneys due or to become due under this Contract, so much of such moneys as shall be sufficient to pay the amount claimed in said notice, together with the reasonable costs of any action or actions brought or that may be brought to enforce such Lien. The Owner shall hold the moneys so retained until the lien thereon created by the said act and the filing of the said notices shall be discharged in accordance with the law.

10.13 NO ESTOPPEL

10.13.1 Neither the Owner nor any department, officer, agent or employee thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this Contract by the Owner, the Owner's Representative, or any other officer, agent or employee of the Owner, either before or after the final completion and acceptance of the Work and payment therefor: (1) from showing the true and correct classification, amount, quality or character of the Work actually done; or that any such determination, decision, order, letter, payment or certificate was untrue, incorrect or improperly made in any particular, or that the Work or any part thereof does not in fact conform to the requirements of this Contract; and (2) from demanding and recovering from the Contractor any overpayment made to it, or such damages as the County may sustain by reason of the Contractor's failure to perform each and every part of this Contract.

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ARTICLE 11 - INSURANCE AND BONDS**11.1 CONTRACTOR'S LIABILITY INSURANCE**

11.1.1 The Contractor shall purchase and maintain from a company or companies acceptable to the Owner, lawfully authorized to do business in the jurisdiction in which the project is located, such insurance as will protect the Contractor, Owner, Architect/Engineer and such other parties designated by the Owner from claims set forth below, which may arise out of or result from the Contractor's operations under the Contract, or for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- 11.1.1.1 claims under Workers' compensation, disability benefit and other similar employee benefit acts, which are applicable to the Work to be performed.
- 11.1.1.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- 11.1.1.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- 11.1.1.4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by another person;
- 11.1.1.5 claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use;
- 11.1.1.6 claims for damages because of bodily injury, death of a person or property damage arising out of the ownership, maintenance or use of a motor vehicle;
- 11.1.1.7 all other claims involving the Contractor's obligations hereunder.

11.1.2 The insurance required herein shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverage shall be written on an occurrence basis, shall be maintained without interruption from date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment. The County of Rockland shall be included as named additional insured, and an endorsement to the policy indicating this inclusion must be included with the insurance.

11.1.3 The Contractor shall file certificates of insurance acceptable to the Owner with the Owner before signing this Contract. These certificates and the insurance policies shall contain a provision that coverage's afforded under the policies will not be canceled or allowed to expire until not less than thirty (30) Days prior written notice had been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for compensation. Upon request, the Contractor shall furnish the Owner with a true copy of each policy.

11.1.4 If, at any time, any of the above-required insurance policies should be cancelled, terminated or modified so that insurance is not in effect as above required, then, if the Owner shall so direct, the Contractor shall suspend performance of the Work. If the Work is suspended, no extension of time shall be due on account thereof. If the Work is not suspended,

<p style="text-align: center;">COUNTY OF ROCKLAND FACILITIES MANAGEMENT BLDG. A., 2nd FLOOR, 50 SANATORIUM RD, POMONA, NY 10970 PHONE: 845-364-2958 / FAX: 845-364-3810</p>		PAGE: 66
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then the Owner may, at the Owner's option, obtain insurance affording coverage equal to that above required, the cost of such insurance to be deducted from any payments due to the Contractor from the Owner.

11.1.5 For the entire term of the Contract, the Contractor and each Subcontractor shall secure:

- 11.1.5.1 Workers' Compensation and Employer's Liability Insurance for the benefit of employees required to be insured by law. Employer's Liability Insurance must be in unlimited amount.
- 11.1.5.2 Disability Benefit Insurance during the life of the Contract for the benefit of such employees as required to be insured by the applicable provisions of law.
- 11.1.5.3 Comprehensive General Liability Insurance, Standard Comprehensive General Liability policy with contractual, products, and completed operations and explosion, blasting, collapse and underground damage liability coverage's issued to and covering the liability of the Contractor for all the Work and operations relating to the Work and all obligations assumed by the Contractor under the Contract in an amount which shall not be less than the following limits:

<u>Bodily Injury Liability</u>	
\$1,000,000.00/\$2,000,000.00	Each person/each occurrence
\$2,000,000.00	Aggregate
<u>Property Damage Liability</u>	
\$1,000,000.00	Each Occurrence
\$2,000,000.00	Aggregate

11.1.5.4 Automobile Liability and Property Damage Insurance:

A policy covering the use in connection with the Work of all owned, rented, leased and hired vehicles bearing, or under the circumstances under which such vehicles are being used, required by the Motor Vehicle Laws of the State of New York to attach license plates. The coverage under such policy shall not be less than the following limits:

<u>Bodily Injury</u>	
\$1,000,000.00	Combined Single Limit Per Accident
<u>Property Damage</u>	
\$1,000,000.00	Combined Single Limit Per Accident

11.1.5.5 Excess/Umbrella Liability

\$5,000,000.00	Each Occurrence
\$5,000,000.00	Aggregate

11.1.5.6 All liability insurance to include the County of Rockland, including its officials and employees, as an additional named insured.

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11.2 PROPERTY AND OTHER INSURANCE

11.2.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum, as well as subsequent modifications thereto for the entire Work at the Site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property, whichever is earlier. This insurance shall include the interests of the Owner, the Architect/Engineer, the Contractor, Subcontractors, and sub-Subcontractors in the Work.

11.2.2 Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, false Work, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's/Engineer's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

11.2.3 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall inform the Contractor, in writing, before the commencement of the Work. The Contractor may then purchase insurance, which will protect the interests of the Contractor, Subcontractors and sub-Subcontractors in the Work, and by appropriate change order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without notifying the Contractor, the Owner shall be responsible for all reasonable costs properly attributable to the Owner.

11.2.4 If the property insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles. If the Owner or insurer increases the required minimum deductibles above the identified amounts in this Contract, or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. If deductibles are not identified in the Contract Documents, the Owner shall pay costs not covered because of deductibles.

11.2.5 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the Site after written approval of the Owner at the value established in the approval, and portions of the Work in transit.

11.2.6 The property insurance specified may, in certain instances, include other parties as named insured, as the interests of such parties may appear. Loss, if any, is to be made adjustable with and payable to the Owner on behalf and for the named insured as the interests of such insured may appear. At the Owner's sole discretion, the Owner shall have the power to adjust and settle with the insurer any loss or claim under such insurance. The above is not intended to be a complete, full, or accurate description of the coverage provided by the insurance policies, copies of which are on file with the Owner. This paragraph is not intended to create or give any rights to the Contractor or Subcontractor other than those available to such contractors under the terms of said policies. The Owner assumes no obligation to obtain insurance other than that evidenced by said policies, and the Owner makes no representation or guarantee as to the effect and coverage under said policies. The Contractor and Subcontractor shall not violate or permit to be violated any term or condition of such policies and shall, at all times, satisfy the requirements of the Owner and the insurance companies issuing the policies mentioned above.

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11.2.7 **Boiler and Machinery Insurance:** The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and sub-Subcontractors in the Work, and the Owner and Contractor shall be named insured.

11.2.8 **Loss of Use Insurance:** The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, other than as a result of the Contractor's negligence.

11.2.9 If the Contractor requests, in writing, that insurance for risks other than those described herein, or for other special hazards be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate change order.

11.2.10 **Waivers of Subrogation:** The Owner and Contractor waive all rights against (1) each other and any of their Subcontractors, sub-Subcontractors, agents and employees, each of the other, and (2) Architect's/Engineer's consultants, separate contractors, if any, and any of their Subcontractors, sub-Subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained in accordance with hereto or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner, or Contractor, as appropriate, shall require of the Architect/Engineer, Architect's/Engineer's consultants, separate contractors, if any, and the Subcontractors, sub-Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers, each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.2.11 A loss insured under Owner's property insurance shall be adjusted and settled with the appropriate insured by the Owner as fiduciary, and made payable to the Owner as fiduciary for the insured, as their interests may appear, subject to requirements of any applicable mortgage clause and of this section. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their sub-Subcontractors similarly.

11.3 PERFORMANCE AND PAYMENT BONDS

11.3.1 The Contractor shall furnish to the Owner and keep in force during the term of the Contract performance and labor and material payment bonds guaranteeing that the Contractor will perform its obligations under the Contract and pay for all labor and materials furnished for the Work. Such bonds shall be issued in a form and by a surety reasonably acceptable to the Owner, shall be submitted to the Owner for approval as to form, shall name the Owner as obligee and shall be in the amount equal to at least one hundred percent (100%) of the Contract Sum (as the same may be adjusted from time to time, in accordance with the Contract). The Contractor shall deliver the executed, approved bonds to the Owner simultaneously with the execution of this Contract. Payee to be: Commissioner of Finance, County of Rockland, 50 Sanatorium Road, Building A, 8th Floor, Pomona, New York 10970.

11.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

11.3.3 The Owner may require the Contractor, to the extent available, to obtain a bond from an appropriate surety for the Contractor's maintenance obligation under the Contract Documents.

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ARTICLE 12 - PROTECTION OF PERSONS AND PROPERTY

12.1 SAFETY PRECAUTIONS AND PROGRAMS

12.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract, and shall conform to all applicable rules pertaining to the Work, including the New York State Safety Requirements, County of Rockland Safety Manual and OSHA Regulations. Neither the Owner nor the Architect/Engineer shall be responsible for providing a safe working place for the Contractor, the Subcontractors or their employees, or any individual responsible to them for the Work.

12.1.2 In the event the Contractor encounters on the Site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) or other hazardous materials or conditions which have not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect/Engineer in writing. The Work in the affected area shall not after that be resumed except by written agreement of the Owner and Contractor if, in fact, the material is asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by a qualified consultant retained by the Architect/Engineer at the Owner's expense, or a final determination by a competent governmental authority.

12.1.3 The Contractor shall not be required, in accordance with the Contract Documents, to perform without consent, any Work relating to asbestos, lead or lead based paint or polychlorinated biphenyl (PCB) or other hazardous materials or conditions, unless the presence of such materials on the project results from the Work or operations of the Contractor, its Subcontractors, sub-Subcontractors or materialman.

12.2 SAFETY OF PERSONS AND PROPERTY

12.2.1 The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

12.2.1.1 employees on the Work and other persons who may be affected thereby;

12.2.1.2 the Work and materials and equipment to be incorporated therein, whether in the storage on or off the Site, under care, custody or control of the Contractor or the Contractor's Subcontractors or sub-Subcontractors; and

12.2.1.3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designed for removal, relocation or replacement in the course of construction.

12.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury or loss. If the Contractor fails to give such notices, or fails to comply with such laws, ordinances, rules, regulations and lawful orders, it shall be liable for and shall indemnify and hold harmless the Owner and the Architect/Engineer, and their respective employees, officers and agents, against any resulting fines, penalties, judgments or damages, including reasonable attorneys' fees, imposed on or incurred by the parties indemnified hereunder.

12.2.3 The Contractor shall erect and maintain reasonable safeguards for safety and protection as required by existing conditions and performances of the Contract, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

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12.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for the execution of the Work, the Contractor shall exercise the utmost care and carry on such activities under the supervision of properly qualified personnel.

12.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by the Contractor, a Subcontractor, or a sub-Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts or omissions of the Owner or Architect/Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations elsewhere hereunder.

12.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the Site, whose duty shall be to prevent accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor, in writing, to the Owner and Architect/Engineer.

12.2.7 The Contractor shall not load or permit any part of the construction or Site to be loaded to endanger its safety.

12.2.8 Any disturbance to grades or damage to areas outside the limit of Contract due or accountable to any Contractor, shall be rectified by it immediately. Any damage to Municipal or County property, roads by trucks or construction equipment shall be repaired immediately by the Contractor or Subcontractor responsible for the damage. It is each Contractor's responsibility to comply or secure compliance with this requirement. If any Contractor or Subcontractor fails to rectify site damage or lacks the facility to do so, the County will direct the Contractor to perform such Work as required and back-charge the Contractor or Subcontractor responsible for same.

12.2.9 If shown on the drawings, the locations of utility structures and facilities are approximate only, and the accuracy and completeness are not guaranteed. The Contractor shall verify all facts regarding the location and nature of all utilities at its expense. The Contractor shall permit the owners of the utilities, or their agents, access to the site of the Work at all times to reset, relocate and protect their facilities, and it shall cooperate with them in performing this Work. The Contractor shall cooperate with the utility owners concerned and notify them not less than ten (10) Days in advance of the time proposed to perform any Work that will endanger or affect their facilities. The cost incurred by the Contractor for protection and preservation of utilities and cooperation with their owners includes the Contractor's price.

12.2.10 When excavating in the vicinity of existing utility lines, the procedure stated in the New York State Labor Law shall be adhered to, and in the absence thereof, the following procedure shall be adhered to:

12.2.10.1 The appropriate utility company shall be notified, in writing, at least three (3) Days in advance when making an excavation where any of these pipes or lines will be within the area of excavation. This written notice of intention shall be served personally or by registered or certified mail, with a return receipt requested, to the proper company representative, and shall contain the name of the person responsible for the excavation, the date, place and type of excavation to be conducted. A copy of such notice shall promptly be delivered to the Owner.

12.2.10.2 The Contractor is required to participate in the Underground Facilities Protection Organization ("UFPO"). The Contractor must call 1-800-962-7962 at least two (2) but not more than ten (10) Days before excavation and shall provide the Owner with the time and date of the call and the case number assigned. Participation in UFPO does not relieve the Contractor from its responsibility to locate and protect all underground facilities.

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12.2.11 When working within a building with an operable fire and/or smoke detection system, the Contractor must notify the Architect/Engineer and Owner three (3) Days in advance of any activity (for example, welding, soldering, cutting, burning, drilling or any other heat, smoke or dust creating activity) that has the potential of creating false alarms before beginning that activity. The Contractor shall be required to take all reasonable precautions to prevent false alarms and shall be required to pay the Owner for each such false alarm triggered by its forces or those of its subcontractors in the amount of \$1,000.00 per occurrence. Payment shall be made by change order.

12.2.12 The Contractor shall promptly report to the Architect/Engineer and Owner, in writing, all accidents arising out of or in connection with the Work that cause death, personal injury or property damage. The report shall give full details, including statements of witnesses, hospital reports, and other information in the possession of the Contractor. In addition, in the event of any serious injury or damage, the Contractor shall immediately notify the Owner and Architect/Engineer by telephone, of such accident.

12.2.13 If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not to exceed twenty-one (21) Days after the first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim for additional cost or time related to this claim is to be asserted, it shall be filed as provided herein.

12.2.14 In accordance with Section 402 of the Clean Water Act, stormwater discharges from certain construction activities to waters of the United States is unlawful unless they are authorized by a National Pollutant Discharge Elimination System ("NPDES") permit or by a state permit program. New York's State Pollutant Discharge Elimination System ("SPDES") is an NPDES-approved program with permits issued in accordance with the Environmental Conservation Law ("ECL"). Discharges of pollutants to all other "Waters of the State of New York" such as groundwater are unlawful unless authorized by a SPDES permit. To protect all Municipal Separate Storm Sewer Systems ("MS4"), the Owner shall address the discharge of any pollutants from the Construction Activity it performs. No contractor shall make any discharge to an MS4 without prior written permission from the County of Rockland. The County of Rockland reserves the right to determine the need for making a discharge to an MS4. If necessary, the County will develop a Storm Water Pollution Prevention Plan, an Erosion and Sediment Control Plan, and obtain a SPDES Discharge Permit before any discharges are permitted. The Contractor shall adhere to any requirements imposed by the County of Rockland during any construction activity.

12.3 **EMERGENCIES**

12.3.1 In an emergency affecting the safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided as if it were a Change Order.

12.4 **PROTECTION OF WORK**

12.4.1 During the performance and up to the date of final acceptance, the Contractor shall be under an absolute obligation to protect the finished and unfinished Work against any damage, loss, or injury; and in the event of such damages, loss or injury, the Contractor shall promptly replace or repair such Work, whichever the Owner shall determine to be preferable. The obligation to deliver finished Work in strict accordance with this Contract before final acceptance shall be absolute and shall not be affected by the Owner's approval of or failure to prohibit means and methods of construction used by the Contractor.

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**ARTICLE 13 - TERMINATION OR SUSPENSION OF THE WORK
OR THE CONTRACT**

13.1 OWNER'S RIGHT TO STOP THE WORK

13.1.1 If the Contractor defaults, neglects or fails to correct or carry out Work in accordance with the Contract Documents; the Owner, by three (3) Days written notice, may (1) order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, or (2) immediately correct such deficiencies.

13.1.2 In either such case, an appropriate change order shall be issued deducting from payments then or after that due to the Contractor, the cost of such stoppage or of correcting such deficiencies, including compensation for the Architect's/Engineer's additional services and expenses made necessary by such default, neglect or failure, including, without limitation, the Owner's reasonable attorneys' fees. Such change order shall be deemed to have been executed by the Contractor, whether or not signed by the Contractor. If payments then or after that due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

13.2 RESERVED

13.3 TERMINATION BY THE CONTRACTOR

13.3.1 The Contractor may terminate the Contract if the Work is stopped for a period of ninety (90) Days through no act or fault of the Contractor or its Subcontractor, sub-Subcontractor or their agents or employees, or any other persons performing portions of the Work under Contract with the Contractor, for any of the following reasons:

- 13.3.1.1 Issuance of an order of a court or other public authority having jurisdiction;
- 13.3.1.2 An act of government, such as a declaration of national emergency, making material unavailable;
- 13.3.1.3 Because the Architect/Engineer has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided herein, or because the Owner has not made a payment on a Certificate for Payment within the time stated in the Contract Documents;

13.3.2 If one of the above reasons exists, the Contractor may, upon ten (10) additional Days written notice given after the expiration of the resulting ninety (90) Days term to the Owner and Architect/Engineer, terminate the Contract and recover from the Owner payment for Work executed.

13.4 TERMINATION BY THE OWNER FOR CAUSE

13.4.1 The Owner may terminate the Contract if the Contractor:

- 13.4.1.1 becomes insolvent;
- 13.4.1.2 makes an assignment for the benefit of creditors;
- 13.4.1.3 has a voluntary or involuntary petition in bankruptcy filed by or against it;
- 13.4.1.4 fails to commence Work when notified to do so by the Owner;

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- 13.4.1.5 abandons the Work;
- 13.4.1.6 refuses to proceed with the Work when and as directed by the Owner;
- 13.4.1.7 reduces its working force to a number, which, if maintained, would be insufficient, in the opinion of the Owner, to complete the Work in accordance with the Progress Schedule;
- 13.4.1.8 fails or refuses to increase its working force sufficiently when ordered to do so by the Owner;
- 13.4.1.9 sublets assigns, transfers, conveys or otherwise disposes of this Contract other than as herein specified;
- 13.4.1.10 fails to secure and maintain all required insurance;
- 13.4.1.11 has a receiver or receivers appointed to take charge of the Contractor's property or affairs;
- 13.4.1.12 is or has been unnecessarily or unreasonably or willfully delaying the performance and completion of the Work, or the award of necessary subcontracts, or the placing of necessary material and equipment orders;
- 13.4.1.13 is or has been willfully or in bad faith violating any of the provisions of this Contract;
- 13.4.1.14 is not or has not been executing this Contract in good faith and in accordance with its terms;
- 13.4.1.15 cannot complete the Work within the time herein provided therefor or within the time to which such completion may have been extended; provided, however, that the impossibility of timely completion is attributable to conditions within the Contractor's control;
- 13.4.1.16 has made any statement or representation in this Contract or in any document submitted by the Contractor concerning the Work, (or for purposes of securing this Contract) is knowingly untrue or incorrect when made;
- 13.4.1.17 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper supervision
- 13.4.1.18 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- 13.4.1.19 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- 13.4.1.20 defaults, neglects or fails to correct or carry out Work in accordance with the Contract Documents; or
- 13.4.1.21 otherwise is guilty of a substantial breach of any provision of the Contract Documents.

13.4.2 When a cause for termination exists, the Owner may without prejudice to any other rights or remedies of the Owner, and after giving the Contractor and the Contractor's surety, if any, three (3) Days written notice to cure, terminate the employment of the Contractor and may, subject to any prior rights of the surety:

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13.4.2.1 take possession of the site and all materials, equipment, tools and construction equipment and machinery thereon owned by the Contractor;

13.4.2.2 accept assignment of the Contractor's subcontracts;

13.4.2.3 finish the Work by whatever reasonable method the Owner may deem expedient.

13.4.3 When the Owner terminates the Contract for one of the reasons stated herein, the Contractor shall not be entitled to receive further payment until the Work is finished.

13.4.4 Upon receipt of such notice the Contractor shall immediately discontinue all further operations under this Contract and shall immediately quit the Site, leaving untouched all plant, materials, equipment, tools and supplies then on the Site.

13.4.5 After declaring the Contractor in default, the Owner may have the Work completed by such means and in such manner, by Contract with or without public letting, or otherwise, as it may deem advisable, utilizing for such purpose such of the Contractor's plant, materials, equipment, tools and supplies remaining on the Site, and also such Subcontractors as it may deem advisable.

13.4.6 After such completion, the Owner shall certify that the expense incurred in such completion, including the cost of re-letting and the total amount of any additional damages to the Owner from the date when the Contractor should have completed the Works in accordance with the terms of the latest approved Progress Schedule to the date of actual completion of the Work. Such certificate shall be binding and conclusive upon the Contractor, the Contractor's sureties, and any person or entity claiming under the Contractor as to the amount thereof.

13.4.7 The expense of such completion, as certified by the Owner, shall be charged against and deducted out of moneys as would have been payable to the Contractor if it had completed the Work; the balance of such money, if any, subject to the other provisions of this Contract, to be paid to the Contractor without interest after such completion. Should the expense of such completion, so certified by the Owner, exceed the total sum which would have been payable under this Contract if the sum had been completed by the Contractor, any such excess shall be paid by the Contractor or its surety to the Owner upon demand.

13.4.8 In completing the whole or any part of the Work following the default of the Contractor, the Owner shall have the power to depart from or change or vary the terms and provisions of this Contract, provided, however, that such departure, change or variation is made to reduce the time or expense of such completion. Such departure, change or variation, even to the extent of accepting a lesser or different performance, shall not affect the conclusiveness of the Owner's certificate of the cost of completion, nor shall it constitute a defense to an action to recover the amount by which such certificate exceeds the amount which would have been payable to the Contractor hereunder but for its default.

13.4.9 In addition to the right to declare the Contractor in default, the Owner shall have the absolute right, in its sole discretion and without a hearing, to complete or cause to complete in the same manner as described above, any or all unsatisfactory or incomplete punch list Work that remains after the completion date specified in the final approved punch list that was submitted and accepted at substantial completion. A written notice of the exercise of this right shall be sent to the Contractor who shall immediately quit the Site in accordance with the provisions hereof.

13.5 **SUSPENSION BY THE OWNER FOR CONVENIENCE**

13.5.1 The Owner may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period as the Owner may determine.

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13.5.2 In such an event only, an adjustment shall be made for demonstrable increases in the Contractor's costs of performance of the Contract caused by suspension, delay or interruption if Work suspension exceeds ninety (90) Days. No adjustment shall be made to the extent that performance is, was, or would have been so suspended, delayed or interrupted by another cause.

13.6 **TERMINATION BY THE OWNER FOR CONVENIENCE**

13.6.1 Notwithstanding any other provision to the contrary in any agreement or the General Conditions, the Owner reserves the right, at any time and in its absolute discretion, to terminate the Contractor's services and the Work by giving three (3) Days written notice to the Contractor. In such event, the Contractor shall be entitled to, and the Owner shall make payment to the Contractor for Work completed before the effective termination date only.

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ARTICLE 14 – CLAIMS AND DISPUTES**14.1 DEFINITION:**

A claim is a demand or assertion by one of the parties seeking adjustment or interpretation of the Contract terms, payment of money, an extension of time, or other relief concerning the terms of the Contract. The term "claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate claims shall rest with the party making a claim.

14.1.1 DECISION OF ARCHITECT/ENGINEER: Claims, including those alleging an error or omission by the Architect/Engineer, shall be referred initially to the Architect/Engineer for action. A decision by the Architect/Engineer shall be required as a condition precedent to litigation of a claim between the Contractor and Owner as to all such matters arising before the date final payment is due, regardless of (i) whether such matters relate to execution and progress of the Work or (ii) the extent to which the Work has been completed. The decision by the Architect/Engineer in response to a claim shall not be a condition precedent to litigation in the event (i) the position of Architect/Engineer is vacant, (ii) the Architect/Engineer has failed to render a decision within agreed time limits, (iii) the Architect/Engineer has failed to take action required within sixty (60) Days after the claim is made, (iv) ninety (90) Days have passed after the claim has been referred to the Architect/Engineer, (v) the claim relates to a mechanic's lien, or (vi) the claim relates to the services performed by the Architect/Engineer.

14.1.2 TIME LIMITS ON CLAIMS: Claims by either party must be made within five (5) Days after the occurrence of the event giving rise to such claim, or within five (5) Days after the claimant first recognizes the condition giving rise to the claim, whichever is later. If not so made on time, such claims shall be deemed waived. The time limits set forth herein are of the essence and are to be strictly construed.

14.1.3 CONTINUING CONTRACT PERFORMANCE: Pending final resolution of a claim, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Work, and the Owner shall continue to make payments in accordance with the Contract Documents.

14.1.4 WAIVER OF CLAIMS: FINAL PAYMENT: The making of final payment shall not constitute a waiver of claims by the Owner.

14.1.5 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS: Contractor represents that it has had sufficient time to examine the site of the Work to determine the character of the subsurface material and conditions to be encountered; that it has based its Bid upon the sub-site information furnished by the Owner and its examination and that it will make no claim for subsurface conditions which can reasonably be inferred from the Owner's information or its examination. If the Contractor encounters subsurface or other latent physical conditions at the Site which differ substantially from those shown, described, or indicated in such information provided by the Owner or from any information which is a public record and which subsurface or other latent physical condition could not have been reasonably anticipated from that information or the Contractor's inspection and examination of the Site, the Contractor shall give immediate written notice to the Owner before any such condition is disturbed. The Owner shall promptly investigate and determine if the conditions are substantially different from those which should have been reasonably anticipated and make such changes in the drawings and specifications as may be required. If necessary, the Contract Sum and completion date shall be adjusted to reflect any increase or decrease in the cost of or time required for the performance of the Contract.

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14.2 CLAIMS FOR ADDITIONAL TIME/NO DAMAGE FOR DELAY

14.2.1 If the Contractor wishes to make a claim for an increase in the Contract time, written notice as provided herein shall be given. The Contractor's claim shall include an estimate of cost and probable effect of delay on the progress of the Work. In the case of a continuing delay, only one claim is necessary. Notwithstanding certain exceptions, the Contractor shall make no claim for monetary or other damages against the Owner or its agents for the delay in the performance of this Contract for any reason and agrees that any such claim shall be fully compensated for by an extension of time to complete the performance of the Work provided for in the Contract Documents.

14.2.2 If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were severely abnormal for the time and could not have been anticipated and that those weather conditions had such an adverse effect on the scheduled construction that could not have been planned for by the Contractor.

14.3 RESOLUTION OF CLAIMS AND DISPUTES

14.3.1 The Architect/Engineer will review claims and take one or more of the following preliminary actions within fourteen (14) Days of receipt of a claim: (i) request additional supporting data from the claimant, (ii) submit a schedule to the parties indicating when the Architect/Engineer expects to take action, (iii) reject the claim in whole or in part, stating the reasons for rejection, (iv) recommend approval of the claim by the other party or (v) suggest a compromise. The Architect/Engineer may also, but is not obligated to, notify the surety, if any, of the nature and amount of the claim.

14.3.2 If a claim has been resolved, the Architect/Engineer will prepare or obtain appropriate documentation.

14.3.3 If a claim has not been resolved, the party making a claim shall, within fourteen (14) Days after the Architect's/Engineer's preliminary response, take one or more of the following actions: (i) submit additional supporting data requested by the Architect/Engineer, (ii) modify the initial claim, or (iii) notify the Architect/Engineer that the initial claim stands.

14.3.4 If a claim has not yet been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect/Engineer, the Architect/Engineer will notify the parties in writing that the Architect's decision shall be final and binding on the parties. Upon expiration of such time period, the Architect/Engineer will render to the parties the Architect's/Engineer's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of the Contractor's default, the Architect/Engineer may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

14.4 NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

14.4.1 The Contractor hereby waives all claims against any officer, agent or employee of the Owner for, or on account of, anything done or omitted to be done in connection with this Contract.

14.4.2 The Contractor shall require each Subcontractor or consultant to agree in the contract with such Subcontractor or consultant not to make any claim against the Owner's officers, agents, or employees, because of such contract, or any acts or omissions of the Contractor.

14.4.3 The Contractor hereby agrees to indemnify the officers, agents or employees of the Owner, against any expenses, legal fees, or the like incurred by them or on their behalf as a result of any claim asserted against them in violation of this Section.

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ARTICLE 15 - NEW YORK STATE LABOR LAW**15.1 GENERAL**

15.1.1 The Contractor shall post the appropriate prevailing wage schedules at the construction site so that workers are aware of the wages and supplements to which they are entitled by law. The Department of Labor will provide posters and wallet cards to be distributed by contracting agencies on the job sites of all public Work jobs. These posters and wallet cards will inform that employees on a public work project are entitled to receive the prevailing wages and supplements as determined by the Department of Labor.

15.1.2 Contractors at each Public Work site (regardless of whether it is a State agency or authority construction project) will be required to have these posters displayed in a conspicuous place. The posters and cards will list the Department of Labor's Public Work Field Offices, with phone numbers for individuals to call if they believe their rights are being violated.

15.1.3 The Contractor must display these posters on the job site as part of the required posting of wage schedules.

15.1.4 The Contractor is to provide each worker with a written notice, informing them of the prevailing wage requirements for the job, and have each worker sign a station or declaration that attests that they have been given this information.

15.1.5 Said Bidder agrees to comply with the schedule of wages applicable to the performance of the said contract and the statutory requirements and rules of the public and governmental authorities.

15.1.6 The Contractor and each Subcontractor for the Work shall comply with Article 8 (Sections 220-223) of the New York Labor Law relating to public works contracts providing for prevailing wages. The Contractor must submit proof that it has obtained the required Workers' Compensation and Disability Benefits coverage or that it is not required to provide coverage under the law. (See forms attached hereto)

15.1.7 The following requirements of Article 8 (Section 220-223) of the New York State Labor Law are specifically incorporated in this Contract:

- 15.1.7.1 No laborer, worker or mechanic in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or a part of the Work shall be permitted or required to work more than eight (8) hours in any one (1) Day or more than five (5) Days in any one (1) week except in the extraordinary emergencies stated in the Labor Law or where a dispensation is granted by the Commissioner of Labor (Section 220.2).
- 15.1.7.2 Each laborer, worker or mechanic employed by the Contractor or Subcontractor shall be paid not less than the prevailing rate of wages at the time the Work is performed, and shall be paid or provided not less than prevailing supplements at the time the Work is performed, as determined by the fiscal officer. If the prevailing rate of wages or the prevailing supplements change after the Contract is let, each worker, laborer or mechanic shall be paid or provided not less than the new rates (Section 220.3).
- 15.1.7.3 The Contractor and every Subcontractor shall post in a prominent and accessible place at the Work site, a statement of the current prevailing wage rates and supplements for the various classes of mechanics, workmen or laborers (Section 220.3a).

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15.1.7.4 No employee shall be deemed an apprentice unless individually registered in a program registered with the New York State Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not exceed the ratio permitted to the Contractor as to its workforce on any job under the registered program. Any employee who is not registered shall be paid the prevailing wage rate for the classification of the Work performed. The Contractor or Subcontractor will be required to furnish written evidence of the registration of the Contractor's or Subcontractor's program and apprentices and the appropriate ratios and wage rates for the area of construction before using any apprentices on the Work (Section 220.3).

- a. No Contractor, Subcontractor, nor any person acting on its behalf, shall because of age, race, creed, color, disability, sex, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the Work to which the employment relates (Section 22-3(e)).
- b. No Contractor, Subcontractor, nor any person acting on its behalf shall, in any manner, discriminate against or intimidate any employee on account of age, race, creed, color, disability, sex, or national origin (Section 22-e(b)). NOTE: The Human Rights Law also prohibits discrimination in employment because of age, marital status, or religion.
- c. There may be deducted from the amount payable to the Contractor under the Contract a penalty of fifty dollars (\$50.00) for each Day during which such person was discriminated against or intimidated in violation of the Contract's provisions.
- d. The Contract may be canceled or terminated by the State or municipality, and all money due or to become due thereunder may be forfeited for a second or any subsequent violation of the terms or condition of the anti-discrimination sections of the Contract.

15.2 PREVAILING RATE SCHEDULE

15.2.1 In accordance with Section 220 of the Labor Law, the Contractor and its Subcontractors shall pay laborers, workers, or mechanics employed in the performance of the Work not less than the prevailing rate of wage and to provide supplements (fringe benefits) in accordance with the prevailing practices in the locality where the Work is performed.

15.2.2 If a prevailing rate schedule is included in the specifications, it will be used as a reference for the Contract to be awarded. However, the Contractor is responsible for obtaining and using the most current prevailing rate schedule. Upon the signing of the Contract, the Department of Jurisdiction shall advise the Bureau of Public Works, Department of Labor, as to the name of the Contractor to whom the Contract was awarded, the date and the amount of the Contract.

15.2.3 The "Department of Jurisdiction" is the County of Rockland.

15.3 WITHHOLDING OF PAYMENTS FROM CONTRACTORS

15.3.1 When the Bureau of Public Works finds that a Contractor or Subcontractor on a public works project failed to pay or provide the required prevailing wages or supplements, the Bureau is authorized by Section 220-b of the Labor Law to notify the financial officer of the Department of Jurisdiction that awarded the public works contract. Such officer must then withhold or cause to be withheld from any payment due to the prime contractor on account of such contract the amount indicated by the Bureau of Public Works as sufficient to satisfy the unpaid wages and supplements, including interest and any civil penalty that the Commissioner of Labor may assess. The withholding continues until a final determination of the underpayment by the Commissioner of Labor, or by the Court, in the event a legal proceeding for review of the Commissioner of Labor's determination is instituted.

<p align="center">COUNTY OF ROCKLAND FACILITIES MANAGEMENT BLDG. A., 2nd FLOOR, 50 SANATORIUM RD, POMONA, NY 10970 PHONE: 845-364-2958 / FAX: 845-364-3810</p>		PAGE: 80
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15.3.2 The Department of Jurisdiction shall comply with an order of the Commissioner of Labor of the Court concerning the release of the funds so withheld.

15.4 **DISCRIMINATION IN EMPLOYMENT**

15.4.1 The Contractor will abide by the pertinent provisions of Sections 291-299 of the Executive Law and the Civil Rights Law of the State of New York relating to unlawful discriminatory practices insofar as they may apply to this Contract.

15.4.2 Wherever applicable, the Contractor agrees to comply with the Americans With Disabilities Act of 1990 (ADA) provisions prohibiting discrimination based on disability concerning employment policies and procedures, structural and program accessibility, transportation, and telecommunications.

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ARTICLE 16 - MISCELLANEOUS PROVISIONS**16.1 GOVERNING LAW**

16.1.1 The laws of the State of New York shall govern this Contract. Wherever applicable, any recipient of significant funds agrees to comply with the Americans With Disabilities Act of 1990 (ADA) provisions prohibiting discrimination based on disability concerning employment policies and procedures, structural and program accessibility, transportation, and telecommunications.

16.2 SUCCESSORS AND ASSIGNS

16.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party regarding covenants, agreements, and obligations contained in the Contract Documents. The Contractor shall not assign the Contract without the written consent of the Owner. The Owner may designate one or more representatives to supervise the Contractor's performance under this Contract.

16.3 WRITTEN NOTICE

16.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by overnight delivery service or certified mail return receipt requested to the last business address known to the party giving notice. Notice may also be made by facsimile transmission. In such a case, notice will be deemed received when the transmission is made. The party making such facsimile transmission shall also forward a copy of such notice by regular mail.

16.4 RIGHTS AND REMEDIES

16.4.1 Duties and obligations imposed, and the remedies and rights available by the Contract Documents shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

16.4.2 No action or failure to act by the Owner, Architect/Engineer shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be expressly agreed in writing.

16.5 INTEREST

16.5.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due to the extent that such interest is required under the applicable statutes of New York State or County of Rockland.

16.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

16.6.1 As between the Owner and Contractor:

16.6.1.1 Before final Certificate for Payment. As to acts or failures to act occurring before issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run, and any alleged cause of action shall be deemed to have accrued in all events not later than the date of issuance of the final Certificate for Payment; and

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FACILITIES MANAGEMENT**

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TITLE:**

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16.6.1.2 After final Certificate for Payment: As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run, and any alleged cause of action shall be deemed to have accrued in all events not later than the date of any act or failure to act by the Contractor in accordance with any warranty provided hereunder, the date of any correction of the Work or failure to correct the Work by the Contractor, or the date of the actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

16.6.1.3 Either party shall bring no action more than two (2) years after the date upon which the respective claim arose, except that in the event of a latent defect which is not discovered until after the issuance of a final Certificate of Payment, the applicable statute of limitations shall be two (2) years after the date upon which the specific latent defect was discovered.

16.7 LEGISLATIVE ACTION

16.7.1 After the legislative resolution accepting the Bid is adopted, the Contractor shall be advised by the County of Rockland of acceptance, and a copy of the resolution shall be supplied. The Contractor shall promptly obtain the required bonds and insurance certificates required by the Bidding Documents. The County's Department of General Services-Facilities Management shall specify the start date for Work. Failure to appear at the time and place specified for initiation of the Work, or failure to have the required performance and payment bonds or insurance certificates delivered to the County, shall constitute a default, and the County may, on three (3) Days' notice, declare the Contractor in default, and award the Contract to the next lowest responsible Bidder. The defaulting Contractor and its surety shall be responsible for all losses sustained by the County.

16.8 CONTRACT DOCUMENTS

16.8.1 The Contract Documents contain all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained in the Contract.

16.9 HEADINGS NOT BINDING

16.9.1 The article, section, chapter headings and the table of contents are inserted in the Contract for convenience only and shall not to be considered in the construction or interpretation of any of the Contract's provisions.

16.10 UNLAWFUL PROVISIONS DEEMED STRICKEN FROM CONTRACT

16.10.1 If this Contract contains any unlawful provision not an essential part of the Contract and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall, upon notice by either party, be considered to be stricken from the Contract without affecting the binding force of the remainder.

16.11 ALL LEGAL PROVISIONS DEEMED INCLUDED

16.11.1 It is the intent and understanding of the parties to this Contract that each provision of law required to be inserted in this Contract shall and is inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in proper form, then this Contract shall promptly upon the application of either party be amended by such assertion to comply strictly with the law and without prejudice to the rights of the parties.

FACILITIES MANAGEMENTBLDG. A., 2nd FLOOR, 50 SANATORIUM RD, POMONA, NY 10970

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TITLE:****BID NUMBER: RFB-RC-****16.12 WAIVER**

16.12.1 A waiver by the Owner of a breach of any provision of this Contract shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of the Contract unless and until the same be agreed to in writing by the Owner.

16.13 ALL DEFENSES RESERVED

16.13.1 Every defense, right and remedy that the Owner has under this Contract is not exclusive, and it is in addition to and concurrent with all other defenses, right and remedies which the Owner has under this Contract and which the Owner otherwise has, will have, or may have under law, equity or otherwise.

16.14 CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

16.14.1 This Contract shall be deemed to have been executed in the County of Rockland, State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the laws of the State of New York.

16.14.2 The parties agree that all claims asserted by or against the Owner arising under this Contract or related thereto shall be heard and determined in the courts of the State of New York ("New York State Courts") located in the County of Rockland.

16.15 SERVICE OF NOTICES

16.15.1 The Contractor hereby designates the business address specified in its proposal as the place where all notices, directions or other communications to the Contractor may be delivered or to which they may be mailed.

16.15.2 Such address may be changed at any time by an instrument in writing executed and acknowledged by the Contractor and delivered to the Owner.

16.16 CONTRACT EXECUTORY

16.16.1 The Award of Bid shall be deemed executory only to the extent of monies appropriated in the County budget and available for the Contract and no liability on account thereof shall be incurred by the County beyond the amount of such monies. The Contract is not a general obligation of the County of Rockland. Neither the full faith and credit nor the taxing power of the County of Rockland is pledged to pay any amount due or to become due under the Contract. It is understood that neither this Contract nor any representation by any County employee or officer creates any obligation to appropriate or make monies available for the Contract.

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COUNTY OF ROCKLAND**PAGE: 84****FACILITIES MANAGEMENT**BLDG. A., 2nd FLOOR, 50 SANATORIUM RD, POMONA, NY 10970

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