

**INFORMATION FOR BIDDERS**



**2. INFORMATION FOR BIDDERS**

**DEPARTMENT OF PUBLIC WORKS**

**Division of Engineering**

## INFORMATION FOR BIDDERS

### 1. ADDENDA AND INTERPRETATION

No interpretation of the meaning of the plans, specifications or other contract documents will be made to any bidder orally. Every request for such interpretation should be in writing addressed to the Westchester County Department of Public Works, Division of Engineering, Room 512, Michaelian Office Building, White Plains, New York, and to be given consideration must be received at least five (5) days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be posted on the internet not later than three (3) days prior to the date fixed for the opening of bids. Revisions to plans or drawings requiring the issuance of additional or revised drawings will be noted on the internet with instructions how to acquire copies of such revised plans or drawings. Failure of any bidder to receive any such addendum or interpretation or any other form, instrument or document shall not relieve any bidder from any obligation under its bid as submitted. All addenda so issued shall become part of the contract documents.

A bidder's failure to request a clarification, interpretation, etc. of any portion of the plans, specifications, or contract or to point out any inconsistency therein will preclude such bidder from thereafter claiming any ambiguity, inconsistency, or error which should have been discovered by a reasonably prudent bidder and from asserting any claim for damages arising directly or indirectly therefrom.

### 2. VOIDED CLAUSES

Wherever in this booklet any page is stamped "VOID", only the section(s) or paragraph(s) so stamped are void. All other sections(s) and paragraph(s) remain in full force and effect.

### 3. PRE-BID SITE INSPECTION

Unless otherwise stated, on building construction work, bidders are free and encouraged to examine the work site during normal work hours preceding the date on which bids are to be opened. For those bidders requesting further clarification of the conditions, an appointment with the County's representative, on the eighth day (Tuesday) prior to the bid opening date, can be requested, by contacting the, Department of Public Works, Division of Engineering at (914) 995-2553.

Each bidder must inform itself fully of the conditions relating to the work to be performed. Failure to do so will not relieve a successful bidder of the obligation to furnish all material and labor necessary to carry out the provisions of the contract documents and to complete the contemplated work for the consideration set forth in its Bid.

At the time of the opening of bids each bidder will be presumed to have inspected the sites and to have read and to be thoroughly familiar with the Plans and Contract Documents (including all addenda).

### 4. BID SECURITY

**Bid Security shall be provided in accordance with the "Notice to Contractors."** Where

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a Performance and Payment bond is required in the Notice to Contractors, the executed “Bid Bond and Consent of Surety” of the Proposal Pages must be submitted with the Bid when the bid is more than \$100,000. The successful bidder, no matter the size of its bid, will be required to furnish a Performance and Payment Bond.

Where a Performance and Payment Bond is not specified in the Notice to Contractors, then the required Security may be furnished in the form of a Certified Check; drawn to the order of “County of Westchester, clipped to the top of the front cover and submitted with the Bid.

Certified checks submitted will be returned to all bidders submitting certified checks within three (3) days after the opening of bids unless the bidder or bidders submitting certified checks are among the two lowest bidders. At any time after the opening of bids, the second lowest bidder, if the second lowest bidder has submitted a certified check, may substitute a bid bond for the certified check by presenting the bond to the Secretary of the Board of Acquisition and Contract. This bond shall be in the form and coverage required by the County and shall be in an amount not less than the amount of the bidder's certified check. After receipt, approval and acceptance of the bond by the County, the County will forward to the bidder a County check in an amount equal to the bidder's certified check.

All certified checks submitted will be returned to the two lowest bidders within 48 hours after the successful bidder executes the required contract and furnishes the County with all necessary bonds and insurance certificates.

In the event that the successful bidder has not executed the required contract and furnished the required bonds and insurance certificates within forty-five (45) days after the opening of bids, the County, upon demand from a bidder (except for the successful bidder), will send a County check to the bidder in the amount of the bidder's certified check.

Failure of the successful bidder to execute the contract and furnish the necessary bonds and insurance certificates shall result in forfeiture of the bid security, such sum to be retained by the County as liquidated damages.

### 5. PERFORMANCE AND PAYMENT BOND

#### **If required pursuant to "Notice to Contractors."**

If a Performance and Payment bond is required in accordance with the “Notice to Contractors”, the “Bid Bond and Consent of Surety” of the Proposal Pages must be executed by the Contractor’s Surety Company and submitted with the Bid for all bids over \$100,000.

Simultaneously with its delivery of the executed contract, the successful bidder shall deliver to the County an executed bond in the amount of one hundred percent of the accepted bid as security for the faithful performance of its contract and in the amount of one hundred percent for the payment of all persons performing labor or furnishing materials in connection therewith, prepared in satisfactory form and having as surety thereon such bond underwriter or surety that appears on the U.S. Treasury’s listing of approved sureties (Department Circular 570), and is licensed to transact business in New York State. In the event such Surety ceases to appear on the U.S. Treasury’s listing of approved sureties (Department Circular 570) or ceases to be licensed to transact business in New York State or becomes insolvent or enters liquidation proceedings, the Contractor, at its sole cost, shall furnish a replacement bond from a surety satisfactory to the County.

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The form of contract and Performance and Payment Bond to be used in connection with this Contract and to become a part of the contract documents is attached in the section entitled "Sample Contract and Bond for Construction".

### 6. INDEMNIFICATION AGREEMENT

The Contractor agrees:

- A. that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, the Contractor agrees to indemnify and hold harmless the County of Westchester, its officers, employees, elected officials, and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Contractor or third parties under the direction or control of the Contractor; and
- B. to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of the Agreement and to bear all other costs and expenses related thereto.

### 7. INSURANCE REQUIREMENTS

The Contractor, upon award of the contract and throughout the term of the Agreement, shall obtain at its own cost and expense the required insurance as delineated below from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better. Contractor shall provide evidence of such insurance to the County of Westchester ("County"), either by providing a copy of policies and/or certificates as may be required and approved by the Director of Risk Management of the County ("Director"). The policies or certificates thereof shall provide that ten (10) days prior to cancellation or material change in the policy, notices of same shall be given to the Board of Acquisition and Contract of the County of Westchester by registered mail, return receipt requested, for all of the following stated insurance policies, with a copy also sent to the Director of Risk Management of the County. All notices shall name the Contractor and identify the Contract Number.

If at any time any of the policies required herein shall be or become unsatisfactory to the Director, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Director, the Contractor shall upon notice to that effect from the County, promptly obtain a new policy, and submit the policy or the certificate as requested by the Director to the Office of Risk Management of the County for approval by the Director. Upon failure of the Contractor to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated.

Failure of the Contractor to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Contractor from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Contractor concerning indemnification.

All property losses shall be made payable to the "County of Westchester" and adjusted with the appropriate County personnel.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of Contractor's negligent acts or omissions under the

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agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Contractor until such time as the Contractor shall furnish such additional security covering such claims in form satisfactory to the Director.

In the event of any loss, if the Contractor maintains broader coverage and/or higher limits than the minimums identified herein, the County shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

The Contractor shall provide proof of the following coverage. (Other coverage may be required by the County of Westchester based on specific needs. If such other coverages are required for a specific contract, those coverages will be described in the "Special Clauses" of the contract specifications):

- a) Workers' Compensation and Employer's Liability. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: <http://www.wcb.ny.gov>.

If the employer is self-insured for Workers' Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

- b) Commercial General Liability Insurance with a combined single limit of \$1,000,000 (c.s.1) per occurrence and a \$2,000,000 aggregate limit naming the "County of Westchester" as an additional insured on a primary and non-contributory basis. This insurance shall include the following coverages:
  - i. Premises - Operations.
  - ii. Broad Form Contractual.
  - iii. Independent Contractor and Sub-Contractor.
  - iv. Products and Completed Operations.

NOTE: Additional insured status shall be provided by standard or other endorsement that extends coverage to the County of Westchester for both on-going and completed operations.

All Contracts involving the use of explosives, demolition and/or underground work shall provide proof that XCU is covered.

- c) Commercial Umbrella/Excess Insurance: \$2,000,000 each Occurrence and Aggregate naming the "County of Westchester" as additional insured, written on a "follow the form" basis.
- d) Owners Protective Liability Policy naming the County as insured, with a minimum limit of liability per occurrence of \$3,000,000 (where applicable, or as determined by the Director, Risk Management)
- e) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a

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combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages and name the "County of Westchester" as additional insured:

- i. Owned automobiles.
  - ii. Hired automobiles.
  - iii. Non-owned automobiles.
- f) Construction Insurance: For the construction, renovation or repair of bridges, viaducts or similar structures, the Contractor at its own cost and expense shall provide and maintain a "Bridge Builder's Risk Form, All Risk Insurance Contract," with flat premium endorsement, until the construction contract is accepted by the Board of Acquisition and Contract of the County of Westchester. The coverage shall be written for 100% of the completed value, covering the Contractor and County of Westchester as the insureds. The Contractor shall provide the original and duplicate policy to the County (unless the County shall accept, in lieu thereof, all contained endorsements including all applicable provisions and coverages).

For the construction of (a) new buildings and (b) for additions or repairs of existing buildings or structures, the Contractor at its own cost and expense shall provide and maintain a "Builder's Risk Form, All Risk Insurance Contract," with flat premium endorsement, until the construction contract is accepted by the Board of Acquisition and Contract of the County of Westchester. The coverage shall be written for 100% of the completed value, covering the Contractor and County of Westchester as the insureds. The Contractor shall provide the original and duplicate policy to the County (unless the County shall accept, in lieu thereof, all contained endorsements including all applicable provisions and coverages).

All policies of the Contractor shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County is named as an insured, shall not apply to the County.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Contractor.

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### 8. PREVAILING WAGE RATES AND SUPPLEMENTS

#### A. Wages to be Paid and Supplements to be Provided

Each laborer, workman or mechanic employed by the Contractor(s), Sub-contractor(s) or other person(s) doing or contracting to do the whole or part of the work contemplated by this Contract, shall be paid the prevailing wages and provide the supplements (including but not limited to health, welfare and pension benefits) as required by Article 8 (Section 220-223) and Article 9 (230-239) of the New York State Labor Law.

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### B. Schedule of Hourly Rates/Supplements

The "Schedule of Hourly Rates and Supplements" shows the prevailing hourly rates of wages to be paid and supplements to be provided. It is the County's preference that such supplements shall be paid to a Federally qualified Pension, Health and Welfare program and New York State Registered Apprentice Training Program.

Classifications not appearing on the rate sheet can be used only with the consent of the Commissioner of Public Works and then the rate to be paid will be given by the Commissioner of Public Works after advising with the State Department of Labor.

### C. Grounds for Cancellation of Contract

In the event of a failure, to pay the prevailing wages and provide the supplements in accordance with the New York State Labor Law, and as described in this Contract, it shall be considered a material breach. For the breach or violation of this provision, without limiting any other rights or remedies to which the County or any individual may be entitled or any civil or criminal penalty for which any violator may be liable, the County shall have the right, in its discretion, to terminate this agreement immediately upon notice. In such event, the Contractor(s), Sub-Contractor(s), et al shall be liable to the County for any additional costs incurred by the County in the completion of the project.

In addition to any other remedies available to the County and irrespective of any applicable penalties pursuant to law, the County may deduct from the amount payable to the Contractor under this contract five hundred (\$500.00) dollars as reimbursement for the costs it incurs in investigating any violation of Section 220 of the Labor Law.

### D. Records to be kept on Site

The Contractor(s), Sub-contractor(s), et al. shall certify their payrolls and keep them on site and available, in addition to the following informative records:

- 1) Record of hours worked by each workman, laborer and mechanic on each day;
- 2) Record of days worked each week by each workman, laborer and mechanic;
- 3) Schedule of occupation or occupations at which each workman, laborer and mechanic on the project is employed during each work day and week;
- 4) Schedule of hourly wage rates paid to each workman, laborer and mechanic for each occupation.
- 5) A statement or declaration signed by each workman, laborer and mechanic attesting that they have been provided with a written notice, informing them of the prevailing wage rates and supplements requirement for this contract.

### E. Responsibility of the Contractor, Sub-Contractor, et al.

The Contractor(s), Sub-Contractor(s), et al. will display the posters in a conspicuous location at the site and distribute the wallet cards to the employees. These posters and wallet cards will inform the employees that they are entitled to receive the prevailing wages and supplements as determined by the Department of Labor and will list the



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Department of Labor's Public Work field offices, with phone numbers for individuals to call if they believe their rights are being violated.

### F. Pay for a Legal Day's Work & Use of Apprentices

The wages to be paid for a legal day's work, as hereinbefore defined, to laborers, workmen or mechanics upon such public works, shall be not less than the prevailing rate of wages as hereinafter defined. Serving laborers, helpers, assistants and apprentices shall not be classified as common labor and shall be paid not less than the prevailing rate of wages as hereinafter defined. No employee shall be deemed to be an apprentice unless he is individually registered in an apprenticeship program which is duly registered with the Industrial Commissioner in conformity with the provision of Article 23 of the Labor Law. The wages to be paid for a legal day's work, as hereinbefore defined, to laborers, workmen or mechanics upon any material to be used upon or in connection therewith shall be not less than the prevailing rate for a day's work in the same trade or occupation in the locality within the state where such public work on, about or in connection with which such labor is performed in its final or completed form is to be situated, erected or used and shall be paid in cash; provided, however, that an employer may pay his employees by check upon a Certificate of the Industrial Commissioner to be issued only after a hearing upon the application to pay by check, which hearing shall be with notice of at least five days to be served personally or by mail on all interested persons, or if not served as aforesaid, then to be published in a manner directed by the Industrial Commissioner, which shall afford interested persons the opportunity to appear and to be heard at such hearing, and after proof has been furnished satisfactorily to the Industrial Commissioner of the employer's financial responsibility and the employer gives assurance that such checks may be cashed by employees without difficulty and for the full amount for which they are drawn. Such Contracts shall contain a provision that each laborer, workman or mechanic, employed by such Contractor, Subcontractor or other person about or upon such public works, shall be paid the wages herein provided.

### G. Fiscal Officer's Duty to Determine Schedule of Wages

It shall be the duty of the fiscal officer (the "New York State Commissioner of Labor"), to ascertain and determine the schedule of wages to be paid workmen, laborers and mechanics on each such public work, prior to the time of the advertisement for bids, and such schedule of wages shall be annexed to and form a part of the specifications for the work. Such fiscal officer shall file with the department having jurisdiction such schedule of wages to the time of the commencement of the advertisement for bids on all public works proposed to be constructed. The term "Contract" as used in this subdivision also shall include reconstruction and repair of any such public work.

Where Contracts are not awarded within ninety days of the date of the establishment of the prevailing rate of wages by the fiscal officer, the department of jurisdiction shall request of the fiscal officer a redetermination of a schedule of wages.

### H. Penalty for Payment of Less than Prevailing Wages

Any person or corporation that willfully pays after entering into such Contract, less than such stipulated wage scale as established by the fiscal officer shall be guilty of a

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misdemeanor and upon conviction shall be punished for such first offense by a fine of five hundred dollars or by imprisonment for not more than thirty days, or both fine and imprisonment; for a second offense by a fine of one thousand dollars, and in addition thereto the Contract on which the violation has occurred shall be forfeited and no such person or corporation shall be entitled to receive any sum nor shall any officer, agent, or employee of the state, municipal corporation or commission or board appointed pursuant to law pay the same or authorize its payment from the funds under his charge or control to any person or corporation for work done upon any Contract, on which the Contractor has been convicted for a second offense in violation of the provisions of this section.

### 9. LABOR AND COMPLIANCE WITH LABOR LAW

#### A. Preference for Westchester Residents

The Contractor agrees that in the performance of the work under this Contract he will give preference, and so far as legally possible, to employ citizens and residents of Westchester County.

#### B. Certifications To Be Filed

It is agreed that, in accordance with Section 220-d of the Labor Law as amended before final payment by or on behalf of the County for any sum due on account of a Contract for a public improvement, the Contractor and each and every Subcontractor of the Contractor or a Subcontractor is required to file a statement in writing in form satisfactory to the Commissioner of Finance certifying to the amounts then due and owing from such Contractor or Subcontractor filing such statement to or on behalf of any and all laborers for daily or weekly wages or supplements on account of labor performed upon the work under the Contract, setting forth therein the names of the persons whose wages or supplements are unpaid and the amount due to each or on behalf of each respectively, which statement so to be filed shall be verified by the oath of the Contractor or Subcontractor as the case may be that he has read such statement subscribed by him and knows the contents thereof, and that the same is true to his own knowledge.

#### C. Retention of Funds

It is further agreed that in accordance with Section 220b of the Labor Law, as amended:

- 1) In case any interested person shall have previously filed a protest in writing objecting to the payment to any Contractor or Subcontractor to the extent of the amount or amounts due or become due to him/her for daily or weekly wages or supplements for labor performed on the public improvement for which such Contract was entered into, or if for any other reason it may be deemed advisable, the Commissioner of Finance may deduct from the whole amount of any payment on account thereof the sum or sums admitted by any Contractor or Subcontractor in such statement or statements so filed to be due and owing by him on account of labor performed on such public improvement before making payment of the amount certified for payment in any estimate or voucher, and may withhold the amount so deducted for the benefit of the laborers, workmen or mechanics whose

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wages or supplements are unpaid or not provided, as the case may be, as shown by the verified statements filed by any Contractor or Subcontractor, and may pay directly to any person the amount or amounts shown to be due to him or his duly authorized collective bargaining labor organization, as the case may be, for such wages or supplements by the statements filed as hereinbefore required, thereby discharging the obligation of the Contractor or Subcontractor to the person or his duly authorized collective bargaining labor organization receiving such payment to the extent of the amount thereof, or

- 2) When any interested person shall file a written complaint with the fiscal officer as defined in section 220-b of the Labor Law, alleging unpaid wages or supplements due for labor performed on a public improvement for which a Contract has been entered into, and said labor is alleged to have been performed within the two year period immediately preceding the date of the filing of said complaint, or if, on the fiscal officer's own initiative, unpaid wages or supplements appear to be due, the fiscal officer shall immediately so notify the financial officer of the civil division interested, or, if there are insufficient moneys still due to the Contractor or Subcontractor to satisfy said wages and supplements, including interest and penalty, the financial officer of another civil division which has entered or subsequently enters into a public improvement contract with the Contractor or Subcontractor, who shall withhold from any payment due or earned by the Contractor or Subcontractor executing said public improvement, sufficient moneys to satisfy said wages and supplements, including interest at the rate provided herein, and any civil penalty that may be assessed as provided herein, pending a final determination. The Commissioner of Finance shall immediately confirm in writing to the fiscal officer the amount of money withheld.
- 3) Moneys withheld pursuant to this section shall be held by the Commissioner of Finance for the sole and exclusive benefit of the workers employed on said public improvement and for payment of any civil penalty that may be assessed as provided herein and shall not be used for any other purpose except upon court order. Any person, partnership, association, corporation or governmental body who files a lien or commences a judicial proceeding with respect to any moneys withheld pursuant to this section shall notify the fiscal officer in writing of the lien or claim on or before the date of filing of the lien or commencement of the judicial proceeding. In any proceeding to obtain moneys withheld pursuant to this section by any person, partnership, association, corporation or governmental body, the Commissioner of Labor shall have the right to appear and be heard.
- 4) The fiscal officer shall then cause an investigation to be made to determine whether any amounts are due to the laborers, workmen or mechanics, or on their respective behalves, on such public improvement, for labor performed after the commencement of the three-year period immediately preceding the filing of the complaint or the commencement of the investigation on his own initiative, as the case may be, and shall order a hearing therein at a time and place to be specified and shall give notice thereof, together with a copy of such complaint, or a statement of the facts disclosed upon such investigation, which notice shall be served personally or by mail on all interested persons, including the person complained

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against and upon the financial officer of the civil division; such person complained against shall have an opportunity to be heard in respect to the matters complained of, at the time and place specified in such notice, which time shall be not less than five days from the service of said notice. The fiscal officer in such an investigation shall be deemed to be acting in a judicial capacity and shall have the rights to issue subpoenas, administer oaths and examine witnesses. The enforcement of a subpoena issued under this section shall be regulated by the Civil Practice Law and Rules. Such investigation and hearing shall be expeditiously conducted, and upon such hearing and investigation, the fiscal officer shall determine the issues raised thereon and shall make and file an order in his office stating such determination and forthwith serve a copy of such order, either personally or by mail, together with notice of filing, upon the parties to such proceedings, and if the fiscal officer be the Comptroller, upon the Commissioner of the Department of Labor. Such order shall direct payment of wages or supplements found to be due, including interest at the rate of interest then in effect as prescribed by the Superintendent of Banks pursuant to Section fourteen (a) of the Banking law per annum from the date of the underpayment to the date of payment.

- 5) In addition to directing payment of wages or supplements, including interest found to be due, the order of the fiscal officer may direct payment of a further sum as a civil penalty in an amount not exceeding twenty-five percent of the total amount found to be due. In assessing the amount of the penalty, due consideration shall be given to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations of the employer or any successor or substantially-owned affiliated entity or any of the partners if the Contractor or Subcontractor is a partnership or any of the five largest shareholders of the Contractor or Subcontractor, as determined by the fiscal officer, and any officer of the Contractor or Subcontractor who knowingly participated in the violation of this article, and the failure to comply with record keeping or other non-wage requirements. Upon the fiscal officer's determination of the penalty, where the fiscal officer is the Commissioner of the Department of Labor, the penalty shall be paid to said Commissioner for deposit in the State Treasury.
- 6) Upon the entry and service of such order, the Commissioner of Finance shall pay to the claimant, from the moneys due to the Contractor or Subcontractor, the amount of the claim as determined by the fiscal officer and the amount of the civil penalty, if any, shall be paid as provided herein, provided that no proceeding pursuant to Article Seventy-Eight of the Civil Practice Law and Rules for review of said order is commenced by any party aggrieved thereby within thirty days from the date of said order was filed in the office of the fiscal officer. Said proceeding shall be directly in the appellate division of the Supreme Court. Where the fiscal officer is the Commissioner of the Department of Labor, the civil penalty shall be paid to said Commissioner for deposit in the State Treasury. In the event that such a proceeding for review is instituted, moneys sufficient to satisfy the claim and civil penalty shall be set aside by the Commissioner of Finance, subject to the order of the Court.

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- 7) When final determination has been made and such determination is in favor of the complainant, said complainant may in addition to any other remedy provided by this article, institute an action in any Court of appropriate jurisdiction against the person or corporation found violating this article, any substantially-owned affiliated entity or any successor of the Contractor or Subcontractor, any officer of the Contractor or Subcontractor who knowingly participated in the violation of this article, and any of the partners if the Contractor or Subcontractor is a partnership or any of the five largest shareholders of the Contractor or Subcontractor, as determined by the fiscal officer, for the recovery of the difference between the sum, if any, actually paid to him by the Commissioner of Finance pursuant to said order and the amount found to be due him as determined by said order. Such action must be commenced, within three years from the date of the filing of said order, or if the said order is reviewed in a proceeding pursuant to Article Seventy-eight of the Civil Practice Law and Rules, within three years after the termination of such review proceeding.
- 8) When two final determinations have been rendered against a Contractor, Subcontractor, successor, or any substantially owned affiliated entity of the Contractor or Subcontractor, any of the partners if the Contractor or Subcontractor is a partnership, any officer of the Contractor or Subcontractor who knowingly participated in the violation of this article, any of the five largest shareholders of the Contractor or Subcontractor or any successor within any consecutive six-year period determining that such Contractor, Subcontractor, successor, or any substantially-owned affiliated entity of the Contractor or Subcontractor, any of the partners or any of the five largest shareholders of the Contractor or Subcontractor, any officer of the Contractor or Subcontractor who knowingly participated in the violation of this article has willfully failed to pay the prevailing rate of wages or to provide supplements in accordance with this article, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate public work projects are rendered simultaneously, such Contractor, Subcontractor, successor, or any substantially-owned affiliated entity of the Contractor or Subcontractor, any of the partners if the Contractor or Subcontractor is a partnership or any of the five largest shareholders of the Contractor or Subcontractor, any officer of the Contractor or Subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public work contract or subcontract with the State, any municipal corporation or public body for a period of five years from the second final determination, provided, however, that where any such final determination involves the falsification of payroll records or the kickback of wages or supplements, the Contractor, Subcontractor, successor, or any substantially-owned affiliated entity of the Contractor or Subcontractor, any partner if the Contractor or Subcontractor is a partnership or any of the five largest shareholders of the Contractor or Subcontractor, any officer of the Contractor or Subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public work contract with the State, any municipal corporation or public body for a period of five years from the first final determination.

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- 9) Nothing in this subdivision shall be construed as affecting any provision of any other law or regulation relating to the awarding of public contracts.

Pursuant to Section 220-C of the Labor law, any Contractor or Subcontractor who shall upon his oath verify any statement required to be filed herein, which is known by him to be false, shall be guilty of perjury and punishable as provided by the Penal Law.

### 10. CONTRACTOR'S REPORT OF EMPLOYMENT AND WEEKLY AFFIDAVIT

Each week the Contractor shall furnish to the Commissioner of Public Works the "Contractor's Report Of Employment And Weekly Affidavit" of the Sample Forms.

### 11. LAWS/REGULATIONS AND APPROPRIATIONS

- A. The Contractor shall, at its own cost and expense, comply with all provisions of the Labor Law (i.e. prevailing rate of wages and supplements), Lien Law, Workmen's Compensation Law and all other laws and ordinances affecting this contract or order, either Federal, State or local.
- B. It is recognized and understood by the Parties that when this Agreement is subject to future appropriation by the Westchester County Board of Legislators for funds not presently appropriated to pay for this Agreement; the County shall have no liability under this agreement beyond the funds, if any, that are appropriated and available for payment of the amounts due under this Agreement. The Parties understand and intend that the obligation of the County to pay the amounts due hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or monies of the County. The County shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. Notwithstanding the foregoing, the County will do all things lawfully within its power to obtain, maintain, and properly request and pursue funds from which payments under this Agreement may be made, including: (i) the County Executive making provisions for such payments to the extent necessary in the annual budget submitted to the Board of Legislators for the purpose of obtaining funding; and (ii) using its reasonable efforts to have such portion of the budget approved.

### 12. REFUSAL TO ANSWER QUESTIONS

It is understood and agreed by the Contractor that he/she bears an affirmative obligation to answer questions specifically or directly relating to this agreement before any official, board or agency authorized or empowered to inquire into such matters. This section shall not be construed as barring the Contractor, its directors, officers or employees from exercising their constitutional privilege against self-incrimination.

The foregoing, however, shall not be construed as limiting the rights and remedies of the County in the event of such refusal, and when such body or agency is wholly civil in nature,

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failure or refusal to fully cooperate with and diligently answer the inquiries of such official, board or agency may constitute grounds for the termination of this agreement and/or the exercise of any and all other rights or remedies which the County may have by reason of such failure or refusal.

Any and all contracts made with the State, the County of Westchester, or any public department, agency or official thereof, since July 1, 1959 by such person and by any firm, partnership or corporation of which he is a member, partner, director or officer, may be canceled or terminated by the County of Westchester, without incurring any penalty or damages on account of such cancellation or termination, but any monies owing pursuant to said transaction or contract prior to the cancellation and termination, shall be paid.

The successful bidder will be required to make all books and records concerning this contract available during business hours, upon reasonable notice, to duly authorized County personnel for the purpose of ascertaining compliance and/or performance of all provisions of this contract. This provision shall survive the termination of this agreement and for a period of six (6) years thereafter.

### 13. BID REQUIREMENTS

The Bid must be made on the "Proposal Pages" included in this specification or as provided with an addendum. All blank spaces on said Proposal Pages must be filled in and no change shall be made in the phraseology or in the items as contained therein.

Any bid which fails to name a price per unit of measurement for each of the items for which quantities are given, may be held to be informal and rejected. Bids submitted on Proposal Pages that contain any omissions, alterations, additions or items not called for in the bid documents, or that are illegible, unbalanced, conditional, incomplete or contain irregularities of any kind, may be rejected as informal. If the various parts of the work have been divided into classes and/or items to enable the bidder to bid for different portions of the work in accordance with its estimate of their costs, in the event of any increase or decrease in the quantity will be paid for at the price bid for that particular item. The sum of the amounts for each class or item, obtained by multiplying the approximate quantity by the unit price, shall constitute the total sum bid.

In the event of a discrepancy between the written bid amount and the numerical bid amount, the written amount will take precedence and be controlling as to the amount of the Bid. Any such discrepancy shall be corrected as set forth in Article "Correction Of Errors" of the Information for Bidders.

### 14. MISCELLANEOUS ADDITIONAL WORK (ITEM W-800)

A. Description - Under this item each Contractor shall furnish all labor, material and equipment required to accomplish miscellaneous additional work:

- 1) Necessitated by encountering during the course of the work field conditions of a nature not determinable during design; or
- 2) For which no unit prices are applicable.

## INFORMATION FOR BIDDERS

- B. Method of Measurement - Only that miscellaneous additional work shall be performed by the Contractor and will be paid for by the County, which has been authorized by the Commissioner or the Construction Administrator in writing, prior to its commencement.
- C. Article “Increase or Decrease of Quantities: Elimination of Items” of the Information for Bidders, will still apply relative to the percentage of the total awarded contract price that the work under the contract may be increased or decreased.
- D. Payment - The total amount paid to the Contractor will be determined in strict accordance with the provisions of Article “Extra Work: Increased Compensation/ Decreased Work: Credit to the Owner” of the General Clauses, and such payment will include only that overhead and profit that is applicable to the work performed under this item.
- E. Each Contractor shall include in its total bid the lump sum printed in the Proposal and any bid other than the specified amount will be considered informal.

### 15. CORRECTION OF ERRORS

Relative to dollar bid items and the required computations as submitted and performed by bidders on the proposal sheets, if there are any inconsistencies derived in multiplying unit bid prices by the stated quantities, the Commissioner reserves the right to reconcile the unit bid prices or the products of the unit bid prices and the stated quantities, when in the Commissioner's professional opinion such reconciliation(s) would concur with the apparent intent of a bidder and the Commissioner's estimated values of the respective bid items of the proposed contract work. In addition to the foregoing, the Commissioner reserves the right to correct all mathematical errors in additions or subtractions.

### 16. SHOWN QUANTITIES

All bids shall be submitted upon the following express conditions, which shall apply to and become a part of every bid received. The Bidders accept the quantities shown on the Proposal Pages opposite items of the work for which unit prices are to be bid as being approximate estimated quantities. Bidders shall satisfy themselves by personal examination of the location of the proposed work and surroundings thereof, and by such other means as they may prefer, as to the scope of the work and the accuracy of the approximate estimated quantities; and shall not at any time after submission of their bids dispute such approximate estimated quantities nor assert that there was any misrepresentation by the County or any misunderstanding by the Contractor in regard to the quantity or kind of materials to be furnished, or work to be done.

### 17. QUALIFICATION OF BIDDERS

The County may make such investigation as it deems necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish all information and data for this purpose as may be requested. The County reserves the right to reject any bid if the evidence submitted by, or the investigation of such bidder fails to satisfy the County, in the County's sole discretion, that it is properly qualified to carry out the obligations of the contract and to complete the contemplated work.



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### 18. REQUIRED EXPERIENCE

The County requires that each contractor possess not less than five (5) year's experience in performing work substantially similar in scope and size to the work for which it is bidding. The contractor agrees that upon request of the County the contractor will furnish a detailed statement of each project that it has performed during the most recent five (5) years (including but not limited to the name and address of the project, the name of the awarding entity/owner, the name of the awarding entity's/owner's representative, a current telephone number where that representative can be reached, the description of the project, general scope of the contractor's work, contract price, dates of performance, whether the contract was terminated for cause or convenience, whether the contract was completed and whether liquidated damages were assessed against the contractor [and if so, provide a written explanation]). The County reserves the right to require additional information as it deems appropriate concerning the history of the contractor's performance of each such contract. The final determination of whether the contractor possesses the requisite experience rests in the sole discretion of the County.

### 19. INCREASE OR DECREASE OF QUANTITIES: ELIMINATION OF ITEMS

In entering into this contract, the Contractor agrees that quantities shown on the Proposal Pages opposite items of the work for which unit prices have been requested are approximate estimated quantities, and that during the progress of the work the County may find it advisable and shall have the right to omit portions of the work, and to increase or decrease the shown approximate estimated quantities, or the scope of the whole work; and that the County reserves the right to add to or take from the total amount of the work up to a limit of thirty percent of the total amount of the contract based upon the executed contract price for all the specified work.

The Contractor shall make no claim for anticipated profits or loss of profits, because of any difference between the quantities of the various classes of work actually done, or of the materials actually furnished, and the original specified scope of work and the shown approximate estimated quantities.

The aforesaid thirty- percent pertains to the total amount of the contract and not to any individual item. Individual items may be increased or decreased any amount or may be eliminated entirely if so ordered by the Commissioner, excepting that the total amount of the contract as adjusted shall not result in a net increase or decrease of more than thirty percent except by mutual agreement between both parties thereto.

The Contractor waives all claims of any nature due to a misunderstanding of the location, character, or other conditions surrounding the work or of the shown approximate estimated quantities of items of the work.

### 20. BREAKDOWN COST OF LUMP SUM ITEMS AND CONTRACTS

After award of the contract and prior to actual start of the work, the successful bidder shall submit an itemized schedule of its estimated costs of lump sum items and or lump sum total contract work, for approval by the County. The schedule shall be submitted as an outline series with minor subdivisions, in accordance with the directives of the County. As part of

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this Schedule, the Contractor will be required to include a sum sufficient, as determined in the County's sole discretion, for the preparation and submission of approved final "As-builts", record drawings, guarantees, warranties, and operations and maintenance manuals.

### 21. ENGINEERING CHARGES

In addition to any and all other remedies available to the County when the work embraced in the contract is not completed on or before the date specified herein, engineering and inspection expenses incurred by the County of Westchester upon the work from the completion date originally fixed in the contract to the final date of completion of the work may be charged to the Contractor and be deducted from monies due the Contractor. Consideration of any extra work or supplemental contract work added to the original contract, as well as extenuating circumstances beyond the control of the Contractor, will be given due consideration by the County before assessing engineering and inspection charges against the Contractor. Such charges will be assessed, however, in cases where in the opinion of the Commissioner, the Contractor has delayed the work.

### 22. ESTIMATES AND PAYMENTS

As the work progresses but not more often than once a month and then on such days as the Construction Administrator may fix, the Contractor will submit a requisition in writing of the amount and value of the work performed and the materials and equipment provided to the date of the requisition, less any amount previously paid to the Contractor. The Contractor must complete at least ten (10%) percent of the work before submitting any claims for mobilization. From each requisition, the County will retain five percent (5%) plus one hundred fifty percent (150%) of the amount necessary to satisfy any claims, liens or judgments against the Contractor that have not been suitably discharged. The Commissioner will thereupon cause the balance of the requisition therein to be paid to the Contractor. In lieu of all or part of the cash retainage the County shall only accept bonds or notes of United States of America, New York State or political subdivisions thereof. As a condition to the making of any progress payment as set forth in this paragraph, the County, in its sole discretion may require the Contractor to submit such document as may be reasonably required to establish that the Contractor (and its subcontractor(s)) have timely and properly paid their respective subcontractor(s) and materialmen of whatever tier.

**VENDOR DIRECT PAYMENT:** All payments made by the County to the Contractor will be made by electronic funds transfer ("EFT") pursuant to the County's Vendor Direct program. The Contractor is required to complete the Vendor Direct Payment Authorization Form, which is located in the Forms Section on page 11 and 12. Payments will be automatically credited to the Contractor's designated bank account at the Contractor's financial institution. Payments are anticipated to be deposited two business days after the voucher/invoice is processed for payment. Saturdays, Sundays, and legal holidays are not considered business days. Under the Vendor Direct program you will receive an e-mail notification two days prior to the day the payment will be credited to your designated account. The e-mail notification will come in the form of a remittance advice with the same information that currently appears on County check stubs and will contain the date that the funds will be credited to your account. If there is a discrepancy in the amount received please contact

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your Westchester County representative as you would have in the past if there were a discrepancy in a check.

In the unlikely event that you do not receive the money in your designated bank account on the date indicated in the e-mail, please contact the Westchester County Accounts Payable Department at 914-995-3748. Whenever you change your bank or change or close your account a new Vendor Direct Payment Authorization Form must be submitted. Please contact the Westchester County Accounts Payable Department at 914-995-3748 and a new form will be e-mailed to you. When completing the payment authorization form you must either supply a voided check or have it signed by a bank official to ensure the authenticity of the account being set up to receive your payments. Failure to return the completed authorization form prior to award of the contract may result in the bid being considered non-responsive and the bid may be rejected.

When the work or major portion thereof, as contemplated by the terms of the contract (see Substantial Completion Payment and Final Payment later in this article), are substantially completed in the judgment of the Commissioner, the Contractor shall submit a requisition for the remainder of the contract balance. An amount equal to two (2) times the value of the remaining items to be completed plus one hundred fifty percent (150%) of the amount that the Commissioner deems necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged shall be deducted from the requisition. As the remaining items of work are satisfactorily completed or corrected, the County will, upon receipt of a requisition, pay for these items less one hundred fifty percent (150%) of the amount necessary to satisfy any claims, liens or judgments.

Contractor agrees, in the event of any withdrawal by the contractor of amounts retained from payments to the contractor pursuant to the terms hereof, that notwithstanding any contrary interpretation of Section 106 of the New York General Municipal Law, the contractor will be obliged to maintain the market value of securities deposited in an amount equal to the amount withdrawn pursuant to said Section 106. The Contractor will, within five (5) days of demand therefore by the fiscal officer of the County, deposit with such fiscal officer cash, or securities of the kind provided in Section 106, of a market value sufficient to maintain the market value of all securities on deposit at a level equal (as of the date such notice of the fiscal officer is given to the contractor) to the amount which the County shall be entitled to retain from payments to the contractor pursuant to the terms of the contract.

All estimates will be made for actual quantities for work performed and materials and equipment incorporated in the work as determined by the measurements of the Engineer, and this determination shall be accepted as final, conclusive and binding upon the Contractor. All estimates will be subject to correction in any succeeding estimate.

Payment will be made for materials pertinent to the project which have been delivered to the site or off-site by the Contractor and/or Subcontractor and suitably stored and secured in first-class condition as required by the Construction Administrator. Payment may be limited to materials in short and/or critical supply and materials specially fabricated for the project, as defined by the contract. Payment will be made only upon the written request of the contractor. The Contractor must submit certified copies of the manufacturer's or vendor's invoices or statements establishing the true purchase value of the material or equipment; freight bills, release of liens and certificate of insurance covering all equipment and materials. Then the County will include in the following monthly payment an amount not to

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exceed the lesser of the bid breakdown or the total purchase price of the stored equipment and materials less retainage provided that such equipment and materials are suitable for their intended use.

The Contractor shall be responsible for safeguarding stored equipment and materials against loss or damage of any nature whatsoever, shall retain title until incorporated into the work and acceptance by the County and in case of loss or damage, the Contractor shall replace such lost or damaged equipment and materials at no cost to the County.

After receipt of payment, the Contractor shall not remove from the site equipment and materials for which such payment was made without written authorization from the Commissioner.

No major equipment item shall be brought to the site until the following conditions are met:

- 1) The County must have received the manufacture's recommendations for on-site storage in writing.
- 2) The structure in which the equipment is to be installed is roofed (roofing must be watertight) and has such protection of doorways, windows, and other openings that will provide reasonable protection from the weather.
- 3) Prior to the County making a Partial Payment on a major equipment item the following conditions must be met:
  - a. The Contractor must certify to the County, in writing, that the equipment has been properly stored.
  - b. The Shop Drawings must be approved and the draft Operation and Maintenance Manuals must have been submitted.

The Contractor shall furnish to the Construction Administrator, prior to the making up of any Partial or Final Estimate, a copy of its and its Subcontractors' weekly payrolls for each and every preceding payroll period. The payroll submitted shall be a certified true copy and shall contain full information including but not limited to the number of hours worked, rate, classification and total sum paid each employee charged to or working on the job. With all except the first estimate, the Contractor shall furnish to the Construction Administrator a sworn statement listing all unpaid bills and liabilities incurred under the Contract.

### A. Substantial Completion Payment

- 1) Within thirty (30) days after receiving written notice from the Contractor of substantial completion of the work under this Agreement, the Commissioner will cause an inspection to be made of the work done under this contract. If, upon such inspection, the Engineer determines that the work is substantially complete, a Substantial Completion Payment to the Contractor for the work done under this Contract, less any and all deductions authorized to be made by the Commissioner under this contract or by law, will be issued.
- 2) Such a Payment shall be considered a Partial and not a Final Payment.
- 3) As a condition precedent to receiving payment therefore, the Contractor must have received County approval of all Shop Drawing submittals, the Operation and Maintenance Manuals, and As-Built Drawing(s). Together with its application for substantial completion payment the Contractor shall also deliver to the

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Construction Administrator a verified statement certifying that all claims or liabilities arising from the completed work, including all charges for Extra Work, Change Orders, additional time, damages or credits (collectively referred to as "claims") have been presented to the County. All such claims shall be described in sufficient detail so as to be easily identified. The Contractor's failure to submit the verified statement shall constitute a full and final waiver of all claims against the County from the beginning of the project through the date of substantial completion as established by the County. The presentation of the verified statement to the County shall not constitute an acknowledgement by the County that any such claim is valid. The County expressly reserves its right to assert that any such claim(s) is waived or precluded by reason of other provisions of the contract documents. Only claims particularly identified on the Contractor's verified statement shall be preserved; all other claims whatever nature shall be deemed waived and released. It shall also submit proof of title of the materials and equipment covered by the contract. The Contractor shall also, prior to the issuance of said Substantial Completion Payment, supply to the County affidavits and certificates for labor, material and equipment (where applicable).

### B. Final Payment

- 1) Within ten (10) days after receiving written notice from the Contractor of completion of all the work, the Engineer will make a final inspection. If upon inspection the Engineer determines that no further work is needed, the Commissioner will request that the Board of Acquisition and Contract approve the completion of the project and authorize payment of the Final Estimate. Also required prior to the Board of Acquisition and Contract approval is a Condition Report by the Contractor that any damage of public or privately owned properties resulting from the Contractor's work has been satisfactorily repaired.
- 2) As a condition precedent to receiving Final Payment therefore the Contractor shall submit a supplementary verified statement similar to that required under, "A. Substantial Completion Payment", hereof. This verified statement must include only those charges for Extra Work, Change Orders, additional time, damages or credits (collectively referred to as "claims") that accrued between substantial completion and final completion. The Contractor's failure to submit the verified statement shall constitute a full and final waiver of all claims against the County from the beginning of the project through the date of substantial completion as established by the County. The presentation of the verified statement to the County shall not constitute an acknowledgement by the County that any such claim is valid. The County expressly reserves its right to assert that any such claim is waived or precluded by reason of other provisions of the contract documents. Only claims particularly identified on the Contractor's supplementary verified statement shall be preserved; all other claims of whatever nature shall be deemed waived and released.
- 3) The Contractor shall also, prior to the issuance of Final Payment, supply to the County affidavits and certificates for labor, material and equipment (where applicable).

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- 4) The County will, not less than thirty (30) days after the Final Acceptance of the work under this contract, by the Board of Acquisition and Contract, pay the Contractor upon the receipt of all required documentation the balance of funds due thereunder after deduction of all previous payments, liens and all percentages and amounts to be kept and retained under provision of this contract.

All prior Partial Payments, being merely estimates made to enable the Contractor to prosecute the work more advantageously, shall be subject to correction in the Final Estimate and Payment

- 5) The acceptance by the Contractor or by anyone claiming by or through him of the Final Payment shall operate as and shall be a release to the County and every officer and agent thereof, from any and all claims of the Contractor for anything done or furnished in connection with this work or project and for any act or omission of the County or of any others relating to or affecting the work. No payment, however, final or otherwise, shall operate to release the Contractor or its Sureties from any obligation under this contract or the Performance and Payment Bond. Should the Contractor refuse to accept the final payment as tendered by the County, it shall constitute a waiver of any rights to interest thereon. Nor shall refusal to accept final payment extend any applicable statute of limitation.

### 23. PAYMENTS TO SUBCONTRACTORS AND MATERIALMEN BY CONTRACTOR

Within fifteen calendar days of the receipt of any payment from the County, the contractor shall pay each of its sub-contractors and materialmen the proceeds from the payment representing the value of the work performed and/or materials furnished by the subcontractor and/or materialmen as reflected in the payment from the owner less an amount necessary to satisfy any claims, liens or judgment against the subcontractor or materialman which have not been suitably discharged and less any retained amount as hereafter described. The contractor shall retain not more than five per centum of each payment to the subcontractor and/or materialman except that the contractor may retain in excess of five per centum but not more than ten per centum of each payment to the subcontractor provided that prior to entering into a subcontract with the contractor, the sub-contractor is unable or unwilling to provide a performance bond and a labor and material bond both in the full amount of the sub-contract at the request of the contractor. However, the contractor shall retain nothing from those payments representing proceeds owed the subcontractor and/or materialman from the County's payments to the contractor for the remaining amounts of the contract balance as provided in Article "Estimates and Payments" of the Information For Bidders. Within fifteen calendar days of the receipts of payment from the contractor, the subcontractor and/or materialman shall pay each of its subcontractors and materialmen in the same manner as the contractor has paid the subcontractor.

Nothing provided herein shall create any obligation on the part of the County to pay or to see the payment of any moneys to any subcontractor or materialman from any contractor nor shall anything provided herein serve to create any relationship in contract or otherwise, implied or expressed between the subcontractor or materialman and the County. Notwithstanding anything to the foregoing, the County may tender payments to the Contractor in the form of joint or dual payee checks.

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**NOTICE:** No direct payment will be made for work done or materials furnished under the General Clauses, Information for Bidders, General Clauses and Special Clauses, except where expressly stated elsewhere, but compensation shall be deemed to be included in the contract lump sum price for the total work and/or the contract unit prices for the various items of the work.

### 24. TIME OF STARTING

Time being of the essence, all bidders shall take notice that the timely completion of the work called for under this contract is of the greatest importance. The contractor shall commence its work within ten (10) days after "notice to proceed" has been given it by the Commissioner (unless a definite starting date is stated). Prior to commencing its work, the Contractor shall notify the Director of Project Management, Division of Engineering and Department of Public Works, at least forty-eight (48) hours prior to the planned date of its "start", so that a Construction Administrator can be assigned to the work.

### 25. SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION AND DEMOLITION WORK

At all times the Contractor shall use all required and necessary precautions for the safety and protection of the public, County personnel, construction employees, and private and public property on or adjacent to the work.

The Contractor shall comply fully with all the applicable provisions of the following listed governmental regulations and standards, noting that in case of conflict, the Contractor shall comply with the most stringent rule or regulation:

- 1) State of New York, Department of Labor, Bureau of Standards and Appeals, Industrial Code Rule 23 "Protection of Persons Employed in Construction and Demolition Work."
- 2) United States Department of Labor, Bureau of Labor Standards, "Safety and Health Regulations for Construction," as promulgated in accordance with the Occupational Safety and Health Act of 1970, Public Law 91-596; 84 Stat. 1590, Laws of 91st Congress - 2nd Session.

It shall be the sole responsibility of the Contractor to ascertain which of the regulations and standards contained in the foregoing listed publications effect its construction activities, and it shall be solely responsible for the penalties resulting from its failure to comply with such applicable rules and regulations. Copies of the listed publications are available for reference purposes only, in the Westchester County Department of Public Works, Division of Engineering, Design Section, Room 500, Michaelian Office Building, White Plains, New York.

The West Nile Mosquito control program:

- 1) Routinely, the work site should be inspected for potential habitats (i.e. stagnant/standing water) for mosquitoes.
- 2) Conditions that would require remediation include: improper site grading, ruts/other depressions, water in debris (i.e. containers, tires, etc.), stored or

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discarded materials, and excavations, and those cited by the Construction Administrator.

- 3) Under the direction of the Construction Administrator, the Contractor shall take all necessary preventive and/or corrective action to eliminate the potential breeding grounds.

### 26. ACCIDENT PREVENTION AND FIRST AID FACILITIES

In addition to conforming to the applicable governmental regulations and standards referred to in Article "Fire Prevention And Control" of the Information For Bidders, the Contractor shall conduct its work in accordance with the recommendations contained in the latest edition of the "Manual of Accident Prevention in Construction," as published by the Associated General Contractors of America, Inc. and the most recent safety codes approved by the American Standards Association. In case of the conflict with the referenced governmental regulations and standards, the most stringent regulation, standard or recommendation shall govern.

Further, and without in any way limiting the Contractor's obligations hereunder, and in accordance with the instructions of the Construction Administrator, the Contractor shall provide barricades, warning lights, danger and caution signs and other safeguards at all places where the work in any way is a hazard to the public.

The Contractor shall also provide and maintain upon the site at each location where major work is in progress, a completely equipped first aid kit that shall be readily accessible when construction activities are in progress. Posted on each first aid kit shall be the name, location and telephone number of the nearest hospital or doctor with whom the Contractor has previously made arrangements for emergency treatment in case of accident.

### 27. FIRE PREVENTION AND CONTROL

The Contractor shall abide by such rules and instructions as to fire prevention and control as the municipality having jurisdiction may prescribe. It shall take all necessary steps to prevent its employees from setting fires not required in the construction of the facility and shall be responsible for preventing the escape of fires set in connection with the construction.

It shall at all times provide the proper housekeeping to minimize potential fire hazards, and shall provide approved spark arresters on all steam engines, internal combustion engines and fuels.

Free access to fire hydrants and standpipe connections shall be maintained at all times during construction operations, and portable fire extinguishers shall be provided by the Contractor and made conveniently available throughout the construction site. The Contractor shall also notify its employees of the location of the nearest fire alarm box at all locations where work is in progress.



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### 28. STATE AND LOCAL SALES TAX EXEMPTION

The Contractor's attention is directed to Section 1115 of the Tax Law of New York State, Chapters 513 and 514 of the Laws of 1974. In connection with capital improvement contracts entered into on or after September 1, 1974, all tangible personal property which will become an integral component of a structure, building or real property of New York State, or any of its political sub-divisions, including the County of Westchester, is exempt from State and local retail sales tax and compensating use tax.

Bidders' proposals shall exclude dollar amounts for the payment of State and Local retail sales tax and compensating use tax, for tangible personal property defined above.

The successful bidder shall be obliged to file the required Contractor Exempt Purchase Certificates, which may be obtained from the New York State Department of Taxation and Finance (1-800-462-8100), in order to utilize such exemption.

### 29. APPRENTICES

The attention of all bidders is directed to Section 220(3-e) of the New York State Labor Law, which is hereby incorporated herein by reference, which requires, among other things, that "Apprentices who are registered under a Bona Fide New York State Registered Apprentice Training Program shall be permitted to work."

### 30. AFFIRMATIVE ACTION PROVISION

During the performance of this Contract, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or handicap. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, age or handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to include, or require the inclusion of the above provision in any subcontract made pursuant to its contract with the County.

### 31. AFFIRMATIVE ACTION PROGRAM REQUIREMENT

Relative to the award of this Contract, it is required that all bidders completely answer all questions contained in the questionnaire entitled "Affirmative Action Program Requirement" of the Proposal Pages, and properly attest to same.

It is also required that all subcontractors completely answer all questions contained in the questionnaire entitled "Affirmative Action Program Requirement-Subcontractors" of the Sample Forms, and properly attest to same. This form is to be submitted with the request to utilize subcontractor(s).

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### 32. AUTHORITY TO DO BUSINESS IN NEW YORK

Any corporation not incorporated under the Laws of New York State, must furnish a copy of its certificate of authority, from the New York State Secretary of State, to do business in the State of New York, in accordance with Article 13 of the New York State Business Corporation Law.

### 33. LICENSE REQUIREMENTS (ELECTRICAL)

- A. In accordance with the requirements of Local Law No. 20-1997 of Westchester County, no person shall perform work under any contract with the County of Westchester except (i) a licensed Master Electrician; (ii) a licensed "Special Electrician"; or (iii) a Journeyman Electrician working under the direct supervision and control of a Master Electrician.

In no event shall the County incur any liability to pay for any electrical work performed in violation of the licensing requirements of Local Law No. 20-1997 of Westchester County.

- B. Contract with separate bids:

If the project is one where separate bid specifications are required pursuant to the provisions of the New York General Municipal Law, then any person, partnership, corporation, business organization or other business entity submitting a bid for the electrical portion of the project must possess, at the time of submission of the Bid, a valid Master/"Special" Electrician's license issued by the Westchester County Electrical Licensing Board in accordance with Chapter 277 Article XVII of the Laws of Westchester County and the Westchester County Electrical Licensing Board Rules & Regulations, in particular No. 11, which states as follows:

No individual holding a Master Electrician's License shall lend such License to any person or allow any other person to carry on, engage in, or labor at the business as defined herein of installing, removing, altering, testing, replacing, or repairing electrical systems. A violation of this section by any person holding a License shall be sufficient cause for revocation of such License.

However, nothing herein shall be construed to prohibit the use of a License by the holder thereof for or on behalf of a partnership, corporation or other business association, provided that fifty-one (51) percent or more of the control of the voting capital stock of such partnership, corporation, or other business association is owned by one (1) or more holders of a Westchester County Master Electrical License and that all work performed by such partnership, corporation or other business association is performed by or under the direct supervision of such License holder or holders.

- C. Contract with single bid:

Where the project does not involve separate bids pursuant to the New York General Municipal Law but where some electrical work is contemplated along with other work, the person, firm, partnership or corporation engaged to perform said electrical work

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must possess a valid Master/"Special" Electrician's license issued by the Westchester County Electrical Licensing Board.

- D. An electrical bidder must complete the "Certificate of License (Electrical)" of the Proposal Pages and will be required to furnish a copy of such license with the sealed Bid. Other bidders will be required to furnish a copy of such license for the applicable person engaged to perform the electrical work when request by the County, prior to awarding the contract.
- E. The license must be maintained at all times during the performance of the work contemplated under the contract. The suspension, revocation or the failure to maintain or renew such license shall, in addition to any other right or remedy available to the County, be grounds for immediate termination of the contract, effective immediately upon notice from the Commissioner.

### 34. LICENSE REQUIREMENTS (PLUMBING)

- A. In accordance with the requirements of Chapter 277, Article XV of the Laws of Westchester County, no person shall perform plumbing work under any contract with the County of Westchester except (i) a licensed Master Plumber; (ii) a certified Journey Level Plumber employed by and under the direction of a licensed Master Plumber; or (iii) an Apprentice Plumber working under the direct supervision and control of a Master Plumber or under the direct supervision and control of a certified Journey Level Plumber in the employ of a licensed Master Plumber.

In no event shall the County incur any liability to pay for any plumbing work performed in violation of the licensing requirements of Chapter 277, Article XV of the Laws of Westchester County.

- B. Contract with separate bids:

If the project is one where separate bid specifications are required pursuant to the provisions of the New York General Municipal Law, then any person, partnership, corporation, business organization or other business entity submitting a bid for the plumbing portion of the project must possess, at the time of submission of the Bid, a valid Master Plumber's license issued by the Westchester County Board of Plumbing Examiners in accordance with the Westchester County Board of Plumbing Examiners Rules and Regulations and Chapter 277 Article XV of the Laws of Westchester County, in particular Section 277.509A, which states as follows:

- A. No holder of a license or certification issued under this article shall authorize, consent to or permit the use of his or her license or certification by or on behalf of any other person. No person who has not qualified or obtained a license or certification under this article shall represent himself or herself to the public as holder of a license or certification issued under this article, either directly, by means of signs, sign cards metal plates or stationery, or indirectly in any other manner whatsoever. However, nothing herein shall be construed to prohibit the use of a license by the holder thereof for or on behalf of a partnership, corporation or other business association, provided that 51 percent or more of the control of the voting capital stock of such partnership, corporation or other business

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association is owned by one or more holders of a Westchester County master plumbing license and that all work performed by such partnership, corporation or other business association is performed by or under the direct supervision of such license holder or holders.

C. Contract with single bid:

Where the project does not involve separate bids pursuant to the New York General Municipal Law but where some plumbing work is contemplated along with other work, the person, firm, partnership or corporation engaged to perform said plumbing work must possess a valid Master Plumber's license issued by the Westchester County Board of Plumbing Examiners.

- D. A plumbing bidder must complete the "Certificate of License (Plumbing)" of the Proposal Pages and will be required to furnish a copy of such license and the County issued identity badge with the sealed Bid. Other bidders will be required to furnish a copy of such license and the County issued identity badge for the applicable person engaged to perform the plumbing work when request by the County, prior to awarding the contract.
- E. A restricted Master Plumber's license issued by the Westchester County Board of Plumbing Examiners shall satisfy the requirements of this section provided such restricted license authorizes the Master Plumber to engage in the business of plumbing within the local municipality in which the work under the contract is to be performed.
- F. The license must be maintained at all times during the performance of the work contemplated under the contract. The suspension, revocation or the failure to maintain or renew such license shall, in addition to any other right or remedy available to the County, be grounds for immediate termination of the contract, effective immediately upon notice from the Commissioner.

### 35. LICENSE REQUIREMENTS (HAULERS)

#### **(Haulers Of Solid Waste; Recyclables; Construction And Demolition Debris; Garden And Yard Waste And/Or Scrap Metal)**

A. DEFINITIONS:

- 1) "Class A" refers to all haulers except those whose hauling business is limited solely to Class C, Class D or Class E activities or whose recycling business is limited to Class B activities. Class A Licensees may also conduct Class B, Class C, Class D and Class E activities.
- 2) "Class B" refers to Recyclable brokers. Class B Licensees may also conduct Class C, Class D and Class E activities.
- 3) "Class C" refers to haulers who exclusively handle construction and demolition debris. Class C Licensees may also conduct Class D and Class E activities. With respect to Class C haulers, the following shall apply: a. Class "C-1" shall refer to a business or subsidiary which generates construction and demolition debris, as defined herein, and which, incidental to such business, transports, stores, processes, transfers or disposes of the construction and demolition debris generated by the

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operations of such business or subsidiary. Class "C-1" Licensees may also conduct Class E activities; b. Class "C-2" shall refer to all other businesses which otherwise transport, collect, store, transfer, process, or dispose of construction and demolition debris. Class "C-2" haulers may also conduct Class "C-1", Class D and Class E activities.

- 4) "Class D" refers to (i) haulers who collect, store, transport, transfer, process or dispose of garden and yard waste generated, originated or brought within the County where such garden and yard waste was previously generated by a person or entity other than the Licensees and/or (ii) haulers who collect, store, transport, transfer, process or dispose of garden and yard waste and which own, lease, or control one or more vehicles having three (3) or more axles which vehicles will be used in the collection, storage, transfer, transportation, processing or disposal of garden and yard waste generated, originated or brought within the County.
- 5) "Class E" refers to haulers who exclusively conduct a scrap peddler business.
- 6) "Construction and Demolition Debris" means uncontaminated Solid Waste resulting from the construction, remodeling, repair and demolition of structures and roads, and uncontaminated Solid Waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance and seasonal and storm-related cleanup. Such waste includes, but is not limited to, bricks, concrete and other masonry materials, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, non-asbestos insulation, roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other waste, electrical wiring and components containing no hazardous liquids, metals, and trees or tree limbs that are incidental to any of the above.
- 7) "Hauler" means any person excluding municipalities, the County and any County district including, but not limited to, Refuse Disposal District No. 1 and all County sewer and water districts, who, for a fee or other consideration, collects, stores, processes, transfers, transports or disposes of Solid Waste, Recyclables or construction and demolition debris that is generated or originated within the County or brought within the boundaries of the County for disposal, storage, transfer or processing.
- 8) "Recyclables" means those materials defined as "Recyclables" under Section 825.30 (8) of the Westchester County Source Separation Law.
- 9) "Scrap Peddler" shall mean any person who collects scrap materials for sale to a Recyclable broker using no more than one vehicle for collection and transportation of such materials.
- 10) "Solid Waste" means all putrescible and non-putrescible materials or substances, except as described in Paragraph 4 of 6 NYCRR Part 360-1.2(a), and/or regulated under 6 NYCRR Part 364, that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection including, but not limited to, garbage, refuse, commercial waste, rubbish, ashes, incinerator residue and construction and demolition debris. "Solid Waste" shall not be understood to include Recyclables as defined above.

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- B. **PLEASE TAKE NOTICE** - In accordance with the requirements of Chapter 826-a, Article III of the Laws of Westchester County, it is unlawful for any person to collect, store, transfer, transport or dispose of solid waste; recyclables; construction and demolition debris; garden and yard waste and/or scrap metal, as defined herein, that is generated or originated within the County or brought within the boundaries of the County for disposal, storage, transfer or processing, or to conduct any activities defined as Class A, Class B, Class C, Class D or Class E activities under Chapter 826-a of the Laws of Westchester County, in Westchester County (hereinafter collectively referred to as "hauling") without having first obtained a license therefore from the Westchester County Solid Waste Commission.

In no event shall the County incur any liability with respect to any hauling activities conducted by the bidder or any subcontractor of the bidder in violation of Chapter 826-a of the Laws of Westchester County.

- C. Where the project necessitates that hauling be performed, either the bidder or the person, partnership, corporation, business organization or other business entity engaged to perform such hauling work on behalf of the bidder (hereinafter the "subcontractor") must possess a valid license issued by the Westchester County Solid Waste Commission at the time of submission of the bid and throughout the duration of any contract issued pursuant thereto.
- D. A hauler bidder must complete the "Certificate of License (Hauler)" of the Proposal Pages and will be required to furnish a copy of such license with the sealed bid. Other bidders will be required to furnish a copy of such license for the applicable person engaged to perform the hauling work when requested by the County, prior to awarding the contract.
- E. The suspension, revocation, or the failure to maintain or renew such license may, in addition to any other right or remedy available to the County, be grounds for termination of the contract, effective immediately upon notice from the Commissioner. The bidder which is awarded the contract hereunder shall have a continuing obligation to notify the Commissioner, within (2) business days, of any suspension, revocation or other action taken with respect to any license issued by the Westchester County Solid Waste Commission which may limit or impair the bidder's ability, or the ability of any authorized subcontractor, to perform such hauling work in the County of Westchester.

It shall be the bidder's responsibility to ensure that any subcontractor who will perform the hauling services required under any contract issued pursuant to this bid specification has a valid license for the duration of the term of any contract awarded hereunder.

- F. In the event that a license held by the bidder or its subcontractor is revoked, suspended or otherwise discontinued by the Westchester County Solid Waste Commission, or in the event that the bidder is otherwise required to obtain the services of a new or alternate subcontractor for the hauling work, the bidder shall immediately notify the Commissioner and seek the Commissioner's approval for the use of such subcontractor to provide the hauling services which are required under the contract, and shall provide the Commissioner with a copy of the license issued by the Westchester County Solid Waste Commission to such subcontractor. No bidder or subcontractor shall provide

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hauling services under the contract until a copy of its license has been provided to the Commissioner and the Commissioner has approved of such bidder or subcontractor.

### 36. MINORITY PARTICIPATION POLICY

- A. Pursuant to Chapter 308 of the Laws of the County of Westchester, the County encourages the meaningful and significant participation of business enterprises owned by persons of color and women - Minority Business Enterprise (MBE) and Women Business Enterprise(WBE); on County of Westchester contracts.
- B. It is the goal of the County of Westchester to use its best efforts to encourage, promote and increase participation of business enterprises owned and controlled by persons of color or women (MBE/WBE) in contracts and projects funded by all departments of the County and to develop a policy to efficiently and effectively monitor such participation.
- C. In recognition of the need to promote the development of business enterprises owned and controlled by persons of color and women to achieve a goal of equal opportunity, and overcome the existing under representation of these groups in the business community, the County of Westchester acting through its Office of Economic Development shall as a lawful public and County purpose provide technical and informational assistance to such business enterprises with a particular emphasis on education programs to encourage participation in the contract procurement process.
- D. For the purposes of this Local Law, a business enterprise owned and controlled by women or persons of color shall be construed to mean a business enterprise including a sole proprietorship, partnership or corporation that is: (a) at least 51% owned by one or more persons of color or women; (b) an enterprise in which such ownership by persons of color or women is real, substantial and continuing; (c) an enterprise in which such ownership interest by persons of color or women has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and (d) an enterprise authorized to do business in this state which is independently owned and operated. In addition, a business enterprise owned and controlled by persons of color or women shall be deemed to include any business enterprise certified as an MBE or WBE pursuant to Article 15-a of the New York State Executive Law and implementing regulations, 9 NYCRR Subtitle N Part 540 et seq., or as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et seq., and the relevant provisions of the Code of Federal Regulations as amended.
- E. The Contractor hereby acknowledges and agrees:
  - 1) That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall be reason of race, creed, color, religion, gender, age, ethnicity, disability, sex, alienage or citizenship status, national origin, marital status, sexual orientation, familial status, genetic predisposition or carrier status discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

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- 2) That no contractor, subcontractor, nor any person on its behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, religion, gender, age, ethnicity, disability, sex, alienage or citizenship status, national origin, marital status, sexual orientation, familial status, genetic predisposition or carrier status;
  - 3) That there may be deducted from the amount payable to the contractor by the County under this contract a penalty of fifty (50) dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;
  - 4) That this contract may be canceled or terminated by the County, and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract; and
  - 5) The aforesaid provisions of this section covering every contract for or on behalf of the County for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.
  - 6) Contractor agrees to include, or require the inclusion of the above provision in any subcontract made pursuant to its contract with the County.
- F. In furtherance of the Contractor's obligation to make documented good faith efforts to utilize Minority Business Enterprises (MBE) and Women's Business Enterprises (WBE) for the Work required by this Contract, the Contractor shall provide the Minority/Women Business Enterprise Questionnaire signed by an officer of the Contractor, and any additional information requested by the County, including but not limited to the following, which shall be delivered to the Construction Administrator and \_\_\_\_\_, Program Manager of Minority- and Women-Owned Business Program, County of Westchester, Room 911, 148 Martine Avenue, White Plains, New York 10601 coincident with the Contractor's delivery to the County of its bid and shall be provided by the Contractor with any request for approval of subcontractors:
- 1 (a) The name, address, telephone number and contact person of each MBE and WBE solicited verbally by Contractor during the applicable period for the performance of any portion of the Contractor's Work and the date(s) that each such solicitation was made;
  - 1 (b) A description of the portion of the Contractor's Work for which each such solicitation is made.
  - 1 (c) A listing of the project documents, if any, furnished to each such MBE and WBE.
  2. A copy of each written solicitation sent by the Contractor to each MBE and WBE and the name and address of each MBE and WBE to whom the solicitation was made.
  - 3) The name and address of each MBE and WBE that performs any portion of the Contractor's Work, a description of such portion of the Work and the dollar



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amount therefore.

- 4) A statement that the Contractor reviewed a list of MBE and WBE contractors in their outreach efforts. A list can be found at [www.westchestergov.com/mwob](http://www.westchestergov.com/mwob).
- 5) Indicate those MBE and WBE contractors found on the list that provided the type of subcontractor services required for this project. If none were found, please indicate.
- 6) Describe other outreach efforts, including other MBE and/or WBE lists, organizations or individuals that were contacted.

The failure of the low bidder to comply with the provisions of this subparagraph F may result in the County NOT awarding this contract to your firm. Failure of the Contractor to comply with the provisions of this subparagraph F may constitute a material breach of this Contract. Failure to comply with the Minority Participation Policy may be considered by the County when awarding contracts.

### 37. SEXUAL HARASSMENT POLICY

- A. As with discrimination involving race, color, religion, age, sexual orientation, disability, and national origin, Westchester County also prohibits sex discrimination, including sexual harassment of its employees in any form. The County will take all steps necessary to prevent and stop the occurrence of sexual harassment in the workplace.
  - 1) **This policy applies to all County employees and all personnel in a contractual relationship with the County.** Depending on the extent of the County's exercise of control, this policy may be applied to the conduct of non-County employees with respect to sexual harassment of County employees in the workplace.
  - 2) This sexual harassment policy includes, but is not limited to, inappropriate forms of behavior described by the Equal Employment Opportunity Commission.
- B. Sexual advances that are not welcome, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:
  - 1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; -OR-
  - 2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions, such as promotion, transfer, or termination, affecting such individuals; -OR-
  - 3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.
- C. Sexual harassment refers to behavior that is not welcome, that is personally offensive, that fails to respect the rights of others, that lowers morale and that, therefore, interferes

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with an employee's work performance and effectiveness or creates an intimidating, hostile or offensive working environment.

### 38. SMOKE-FREE WORKPLACE POLICY

- A. By way of Executive Order No. 5 of 1998 and Local Law 3 of 2003, it is now the policy of the County of Westchester to institute a smoke-free “workplace”.
- B. Every indoor County “workplace”, shall become a smoke-free area. The smoking or carrying of lighted cigarettes, cigars, pipes, or any other tobacco-based products, or products that result in smoke, is hereby banned.
- C. Every indoor County “workplace” shall be covered under this Executive Order, including the County Jail in Valhalla and the Westchester County Center in White Plains. This Executive Order shall not, however, apply to County-owned facilities that are not County “workplaces”, such as employees housing or privately run restaurants on County property (e.g. at the County golf courses).
- D. The Richard J. Daronco County Courthouse shall not, for purposes of this Executive Order, be considered a County “workplace”, and therefore shall not be required to be smoke-free.
- E. This Executive Order is intended to be consistent with, and not modify, any provisions of the New York State Public Health Law.
- F. This Executive Order shall take effect immediately and remain in full force and effect until otherwise superseded or revoked.

### 39. COUNTY ENERGY EFFICIENT PURCHASING POLICY

- A. By way of Executive Order No. 9 of 2002, it is now the policy of the County of Westchester to institute an Energy Efficient Purchasing Policy.
- B. This policy shall apply to all purchases made by and for the County in accordance with applicable laws, rules and regulations.
- C. Wherever the price is reasonably competitive and the quality adequate for the purpose intended, purchase and utilization of products that meet Energy Star requirements for energy efficiency as determined by the United States Environmental Protection Agency and the United States Department of Energy is hereby recommended.
- D. If the Energy Star label is not available with respect to a particular product, than it is recommended that products in the upper twenty-five percent of energy efficiency as designated by the United States Federal Energy Management Program shall be purchased and utilized if the prices of those products are reasonably competitive and the quality adequate for the purpose intended.

### 40. RESTRICTION ON USE OF TROPICAL HARDWOODS

- A. The bidder/proposer shall not use or propose to use any tropical hardwoods or tropical hardwood products in any form, except in accordance with State Finance Law § 165 (Use of Tropical Hardwoods), as may be amended from time to time. Pursuant to the

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State Finance Law § 165, any bid/proposal which proposes or calls for the use of any tropical hardwood or wood product in the performance of the contract shall be deemed non-responsive.

### 41. DISCLOSURE OF RELATIONSHIPS TO COUNTY

- A. The successful bidder is required to complete the form entitled “Required Disclosure of Relationships to County” on Proposal Pages 32-33 before award of the contract.
- B. In the event that any information provided on the completed Proposal Pages entitled “Required Disclosure of Relationships to County” changes during the term of this agreement, the Contractor shall notify the Commissioner in writing within ten (10) days of such event by submitting a revised “Required Disclosure of Relationships to County” form.

### 42. CONTRACTOR DISCLOSURE STATEMENT

The Contractor and each Major Subcontractor represents that all information provided by the Contractor and Major Subcontractor in the form entitled “Contractor Disclosure Statement” on Proposal Pages 23-31 is in all respects true and correct. In the event the information provided on that document changes during the term of this agreement or for a period of three (3) years after the date that the Contractor and/or the Major Subcontractor receives final payment under this agreement, the Contractor and/or Major Subcontractor shall notify the Commissioner in writing within ten (10) days of such event by submitting a revised “Contractor/Major Subcontractor Disclosure Statement”. Bidders must complete the Required Disclosure of Relationships to County form. The Required Disclosure of Relationships to County form is located on Proposal Pages 32-33.

### 43. CRIMINAL BACKGROUND INFORMATION

Pursuant to Executive Order 1-2008 and subject to the applicable provisions of New York Correction Law §§ 752 and 753, the County shall have the right to bar the following “Persons Subject to Disclosure” (Persons shall mean individuals or legal entities) from providing work or services to the County or from being on County property:

(a) Consultants, Contractors, Licensees, Lessees of County owned real property, their principals, agents, employees, volunteers or any other person acting on behalf of said Contractor, Consultant, Licensee, or Lessee who is at least sixteen (16) years old, including but not limited to Subconsultants, Subcontractors, Sublessees or Sublicensees who are providing services to the County; and

(b) Any family member or other person, who is at least sixteen (16) years old, residing in the household of a County employee who lives in housing provided by the County located on County property.

If any of the above mentioned Persons Subject to Disclosure has either one of the following:

(a) A conviction of a crime (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State);

(b) A pending criminal proceeding for a crime(s) as defined above; or

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(c) A refusal to answer such questions.

Where the following criteria apply:

(a) If any of the Persons Subject to Disclosure providing work or services to the County in relation to a County Contract are not subject to constant monitoring by County staff while performing tasks and/or while such persons are present on County property pursuant to the County Contract; and

(b) If any of the Persons Subject to Disclosure providing work or services to the County, in relation to a County Contract may, in the course of providing those services, have access to sensitive data (for example, Social Security Numbers and other personal/secure data); facilities (secure facilities and/or communication equipment); and/or vulnerable populations (for example, children, seniors and the infirm).

Accordingly, the Contractor is required to review the Instructions found in the instructions and complete “Contractor and all persons subject to Disclosure Certification Forms” located at Forms Pages 11-13 as well as any other applicable criminal disclosure forms (i.e., Forms Pages 14 through 19,” together with Forms Pages 11-13 collectively referred to as “Disclosure Forms”).

However, the following Persons Subject to Disclosure are **exempt** from Executive Order 1-2008: (i) those persons for whom the County has already conducted a background check and issued a security clearance that is in full force and effect; or (ii) those persons for whom another state or federal agency having appropriate jurisdiction has conducted a security and/or background clearance or has implemented other protocols or criteria for this purpose that apply to the subject matter of this Contract that is in full force and effect.

If a Person Subject to Disclosure is exempt from the disclosure described in Executive Order 1-2008 because of either “i” or “ii” above, then the Contractor shall notify the Procuring Officer<sup>1</sup> in the respective Department of its claim of exemption and it shall be the responsibility of the Procuring Officer to verify each exemption. If the Procuring Officer determines that the Contractor is exempt under sections “i” or “ii” above, the Procuring Officer shall confirm same with the Contractor and maintain a written record including all supporting details of the verification of and acknowledgement of said exemption.

If the Procuring Officer determines that the Contractor is not exempt under sections “i” or “ii” above, the Procuring Officer shall notify the Contractor in writing, and the appropriate Disclosure Forms shall be required.

It shall be the Contractor’s duty to disclose and to inquire of each and every Person Subject to Disclosure, whether they have been convicted of a crime or whether they are currently subject to pending criminal charges. It shall be the duty of the Contractor to submit a completed Certification Form “Forms Pages 11-13”annexed hereto as ,” which certifies that the Contractor and every Person Subject to Disclosure has been asked whether they have been convicted of a crime or are currently subject to pending criminal charges.

Should the Contractor or any Person Subject to Disclosure (also referred to as “Person”)

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<sup>1</sup> “Procuring Officer” shall mean the head of the department or the individual(s) authorized by the head(s) of the department(s) undertaking the procurement and with respect to those matters delegated to the Bureau of Purchase and Supply pursuant to Section 161.11(a) of the Laws of Westchester County, the Purchasing Agent.

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affirmatively advise that they have been convicted of a crime said Person shall be identified in Forms Page 14 entitled “Names And Titles Of Persons Subject To Disclosure That Answered Yes” to any questions on Forms Pages 11-13 and shall complete Forms Pages 15-16 entitled, “Criminal Background Disclosure Form For Persons Who Have Been Convicted of A Crime.”

Should the Contractor or any Person Subject to Disclosure advise that they are subject to pending criminal charges, said Person shall be identified in Forms Page 14 and shall complete the form annexed hereto as Forms Pages 17-18 entitled, “Criminal Background Disclosure Form For Persons Who Are Subject to Pending Criminal Charges.”

Should the Contractor or any Person Subject to Disclosure refuse to answer whether they have been convicted of a crime or are currently subject to pending criminal charges, the name and title of said Person(s) shall be listed on Forms Page 19 entitled “Persons That refused To Answer”.

It shall be the duty of the Contractor to submit to the Procuring Officer all of the attached applicable Disclosure Forms prior to the commencement of this Contract. It is the responsibility of each Contractor to assure that all of their proposed Subcontractors complete the criminal background and disclosure certification forms and submit the forms to the Procuring Officer before they will be approved to perform work on the contract.

Under no circumstances shall the existence of a language barrier serve as a basis for the waiver of or an exception to this obligation. If the Contractor needs to obtain translation services to fulfill this obligation, it shall be at the sole cost and expense of the Contractor.

The Contractor shall be required to make the same inquiry and forward updated Disclosure Forms to the Procuring Officer regarding additional Persons Subject to Disclosure in connection with this Contract during the term of this Contract. **NO NEW PERSON SUBJECT TO DISCLOSURE SHALL PERFORM WORK OR SERVICES OR ENTER ONTO COUNTY PREMISES UNTIL THE UPDATED DISCLOSURE FORMS ARE FILED WITH THE PROCURING OFFICER.**

**THE CONTRACTOR HAS A CONTINUING OBLIGATION TO MAINTAIN THE ACCURACY OF THE DISCLOSURE FORMS FOR THE DURATION OF THIS CONTRACT, INCLUDING ANY AMENDMENTS OR EXTENSIONS THERETO AND SHALL PROVIDE ANY UPDATES TO THE PROCURING OFFICER AS NECESSARY TO COMPLY WITH THE DISCLOSURE REQUIREMENTS BY EXECUTIVE ORDER 1-2008.**

Any failure by the Contractor to comply with the disclosure requirements of Executive Order 1-2008, absent proof of exemption deemed satisfactory by the County Procuring Officer, may be considered by the County, a material breach by the Contractor and may be grounds for immediate termination of this Agreement by the County.

#### 44. MANDATORY OSHA CONSTRUCTION SAFETY AND HEALTH TRAINING

Pursuant to NYS Labor Law §220-h – On all public work projects of at least \$250,000 all laborers, workers and mechanics employed, in the performance of the contract on the public work site, either by the contractor, sub-contractor or other person doing or contracting to do the

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whole or a part of the work contemplated by the contract, are required to be certified as having successfully completed an OSHA construction safety and health course of at least 10 hours prior to performing any work on the project.