

**PUBLIC IMPROVEMENT CONTRACT**

**THIS AGREEMENT** ("Contract") entered into and effective **Month/Day, 20** between the County of Orange, a municipal corporation and county of the State of New York, by and through its Department of Public Works having its principal office at 2455-2459 Route 17M, Goshen, New York, 10924 ("Owner"), and **Contractor's Name** a **State of Registration** business entity type e.g. sole proprietorship having its principal office at **principal business address**, if different than service address add "with services to be performed from offices at address" ("Contractor"),

**WITNESSETH:** That Owner and Contractor, for the promises and consideration set forth herein, agree as follows:

**1. CONTRACT DOCUMENTS & DEFINITIONS.** The Contract Documents include the Request for Bids ("RFB"), all addenda to the RFB, if any, the Contractor's submission in response to the RFB, this Contract, and all properly executed Contract modifications.

**2. WORK TO BE DONE.** Contractor, at its cost and expense, shall furnish all materials, appliances, tools, and labor of every kind required by the Contract Documents **including Bid Alternative(s) ###/name** and will complete and finish the Work in the most workmanlike manner in strict compliance with the Contract Documents, for the price of:

**Dollars (\$###.##)**

("Contract Sum"). Should the amount of Work be increased or decreased due to special conditions encountered in the Work, or where ordered by the Owner, the Contractor agrees that the basis of compensation for such increase or decrease shall be by Unit Bid Prices or as otherwise agreed upon pursuant to §7 of this Contract.

**3. EXAMINATION OF DOCUMENTS AND SITE.** Contractor agrees that before making its bid, it carefully examined the Contract Documents, together with the Work Site and is fully informed regarding all of the conditions affecting the Work to be done and the labor and materials to be furnished for the completion of this Contract. Contractor shall secure, at its cost and expense, all applicable and necessary permits from applicable authorities having jurisdiction required in connection with the Work.

**4. TIME OF COMPLETION.** The term of this Contract will commence on the date first written above. All Work is to be substantially completed by October 1, 2021 and fully commissioned and tested by October 8, 2021. Time is of the essence and Contractor will prosecute the Work without interruption, so that it will be entirely completed and performed by in accordance with timeframe state above, unless extended by written change order at the sole discretion of the Owner.

**5. LIQUIDATED DAMAGES FOR DELAY.** The parties recognize and agree that time is of the essence and the Work shall be accomplished within the time stated in §4 of this Contract. Since actual damages are speculative in nature and not readily ascertainable, liquidated damages shall apply if Contractor is unable to achieve substantial completion by the date agreed upon and through no fault of the Owner, its officers, employees and/or other contractors. Should the Work, including any previously approved change orders, not be substantially completed within the time specified and, unless an extension of time has been granted by the Owner, the Contractor shall forfeit the sum of **One Thousand Dollars (\$1,000.00) per Day**, for each and every Day from and after the time during which the Work, including any approved change orders, shall remain unfinished and incomplete. The forfeited sum(s) shall be deemed Liquidated Damages and shall be deducted from the sum agreed to be paid to the Contractor by the Owner under the terms of this Contract or any binding addendum and/or change order. This

provision shall not be construed as a penalty. If time is extended by any change order, this provision shall not be considered waived and shall apply to the new completion date specified in any change order.

**6. PERFORMANCE.** The Work under this Contract is to be done to the satisfaction of the Owner and all materials shall be subject to Owner's acceptance.

**7. CHANGES IN THE WORK AND CLAIMS FOR EXTRA WORK.** To the extent permissible under New York State Law, Owner reserves the right to order extra Work, or make changes by altering, adding to, or deducting from the Work without invalidating the Contract. The Contract Sum shall be increased or decreased by any one of the following mutually agreeable methods, to the extent any are legally applicable:

- 7.1** Using the Unit Price Bid;
- 7.2** Negotiated Lump Sum price; or
- 7.3** Negotiated Time and Material price.

Any claims for extension of time caused by changes shall be stated in writing and shall be subject to Owner approval.

**8. DEDUCTIONS.** Owner shall make an equitable deduction from the Contract Sum for any uncorrected Work or Work not done in accordance with the Specifications. In addition, Owner shall deduct contingency or other amounts required to close out the Contract upon completion of the Work.

**9. PAYMENT.**

**9.1** Contractor shall adhere to all provisions of New York State Labor Law regarding certified payrolls. With each requisition, Contractor shall submit a certified payroll of the amount paid for wages and applicable supplements for all employees. Certified payrolls shall be submitted for all employees of the Contractor and any Subcontractor(s) utilized by the Contractor. In addition, Owner reserves the right to require Contractor to submit with any requisition a detailed statement of all materials utilized and paid for by Contractor.

**9.2** The Owner will audit each month and pay such amount, as the Owner certifies has been earned by Contractor, less Five (5) percent retainage which will be paid to Contractor upon completion of the Work.

**9.3** Upon the faithful performance and full completion of the Work and within Thirty (30) Days after acceptance by Owner, Owner will pay to Contractor the remaining amount of the Contract Sum, (taking into account any additions or deductions) less the total of all previous payments. The acceptance by the Contractor of the Final Payment shall be and operate as a release to the Owner of all claims and liability to the Contractor for all things done or furnished in connection with this Work and for every act and neglect of the Owner, and others relating to or arising out of this Work, excepting the Contractor's claim for interest upon the final payment, if this payment be improperly delayed. No payment, however, final or otherwise, shall operate to release the Contractor or Contractor's sureties from any obligations under this Contract or the Performance or Payment Bonds.

## **10. LABOR LAW COMPLIANCE.**

**10.1** Pursuant to New York State Labor Law 220(2), no laborer, worker or mechanic in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or a part of the Work shall be permitted or required to work more than eight hours in any One (1) Calendar Day or more than Five (5) Days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. No such person shall be so employed more than Eight (8) hours in any Day or more than Five (5) Days in any One (1) week except in such emergency. Extraordinary emergency within the meaning of this §10 shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and Days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the New York State Commissioner of Labor ("Labor Commissioner") for the preservation of the Contract Site and for the protection of the life and limb of the persons using the same. Upon the application of any person interested, the Labor Commissioner shall make a determination as to whether or not on any public project or on all public projects in any area of this state, sufficient laborers, workers and mechanics of any or all classifications can be employed to carry on Work expeditiously if their labor is restricted to Eight (8) hours per Day and Five (5) Days per week, and in the event that the Labor Commissioner determines that there are not sufficient workers, laborers and mechanics of any or all classifications which may be employed to carry on such Work expeditiously if their labor is restricted to Eight (8) hours per Day and Five (5) Days per week, and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the Labor Commissioner for the preservation of the Project Site and for the protection of the life and limb of the persons using the same, the Labor Commissioner shall grant a dispensation permitting all laborers, workers and mechanics, or any classification of such laborers, workers and mechanics, to work such additional hours or Days per week on such public project or in such areas the Labor Commissioner shall determine. Whenever such a dispensation is granted, all Work in excess of Eight (8) hours per Day and Five (5) Days per week shall be considered overtime Work, and the laborers, workers and mechanics performing such Work shall be paid a premium wage commensurate with the premium wages prevailing in the area in which the Work is performed. No such dispensation shall be effective with respect to any public work unless and until the Owner certifies to the Labor Commissioner that such Project is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public. Time lost in any week because of inclement weather by employees engaged in the construction, reconstruction and maintenance of highways outside of the limits of cities and villages may be made up during that week and/or the succeeding three weeks.

**10.2** Pursuant to New York State Labor Law 220(3)(a) each laborer, workman or mechanic, employed by Contractor, any Subcontractor(s) or other person on this Project shall be paid not less than the prevailing rate of wages and supplements set by the New York State Department of Labor.

**10.3** Pursuant to New York State Labor Law 220(3)(d)(iv), the filing of payrolls in a manner consistent with Labor Law 220(3-a) is a condition precedent to payment of any sums due and owing for Work done upon the Project.

**10.4** Pursuant to Labor Law 220-d, the prevailing wage rate and supplement schedule was specified in the Contract Documents. Laborers, workmen or mechanics shall be paid not less than such prevailing wage rates and supplements.

**10.5** Pursuant to Labor Law 220-e, Contractor and every Subcontractor agrees:

**10.5.1** 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 by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the state of New York who is qualified and available to perform the Work to which the employment relates;

**10.5.2** that no Contractor, Subcontractor, nor any person on his 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, disability, sex or national origin;

**10.5.3** that there may be deducted from the amount payable to Contractor by the Owner under this Contract a penalty of fifty dollars (\$50.00) for each person for each Calendar Day during which such person was discriminated against or intimidated in violation of the provisions of the Contract;

**10.5.4** that this Contract may be cancelled or terminated by New York State or the Owner, 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 §10 of the Contract; and

**10.5.5** the aforesaid provisions covering every Contract for or on behalf of New York State or the Owner 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.

**10.6** Pursuant to Labor Law 220-h, if the Contract Sum of this Contract is at least two hundred fifty thousand dollars (\$250,000) all laborers, workers, and mechanics employed in the performance of the contract on the Project Site, either by Contractor, any Subcontractor(s) or other person doing or contracting to do the whole or a part of the Work contemplated by the Contract, shall be certified prior to performing any Work on the Project as having successfully completed a course in construction safety and health approved by the United States Department of Labor's Occupational Safety and Health Administration that is at least ten (10) hours in duration.

**10.7** Pursuant to Labor Law 222(2)(d), the design of this Project shall be subject to the review and approval of Owner and Contractor shall furnish performance and payment bonds as specified in the Contract Documents, which shall conform to the provisions of New York State, Owner and applicable local law, and that a copy of such performance and payment bonds shall be kept by Owner and shall be open to public inspection.

**10.8** Pursuant to Labor Law 222(2)(e), Owner shall consider the financial and organizational capacity of contractors and subcontractors in relation to the magnitude of Work they may perform, the record of performance of contractors and Subcontractors on previous Work, the record of contractors and subcontractors in complying with existing labor standards and maintaining harmonious labor relations, and the commitment of contractors to Work with minority and women-owned business enterprises pursuant to Article 15-A of the New York State Executive Law through joint ventures of subcontractor relationships. If the Contract Sum of this Contract is in excess of five hundred thousand dollars (\$500,000), Contractor and any Subcontractor shall participate in apprentice training programs in the trades of work it employs that have been approved by the New York State Department of Labor for not less than three (3) years and shall have graduated at least one apprentice in the last three (3) years and shall have at least one (1) apprentice currently enrolled in such apprenticeship training program. In addition, it must be

demonstrated that the program has made significant efforts to attract and retain minority apprentices, as determined by affirmative action goals established for such program by the New York State Department of Labor.

**10.9** Pursuant to Labor Law 222-a, in the construction of public works wherein a harmful dust hazard is created for which appliances or methods for the elimination of harmful dust have been approved by the Industrial Board of Appeals, the installation, maintenance and effective operation of such appliances and methods is required. Failure to comply with this provision shall void this Contract.

**11. POSTING.** Contractor and all Subcontractors, if any, engaged in the Work described in this Contract shall post and maintain at each of their establishments and at the Work Site(s), any and all notices required of employers by federal and New York State laws and regulations, as may be amended.

**12. BONDS.** Contractor shall procure and deliver bonds to Owner and maintain them at Contractor's cost and expense, until final acceptance by Owner of the Work covered by this Contract. Types and amounts of Bonds shall be as specified in the Instructions to Bidders.

**13. PROCUREMENT OF AGREEMENT.**

**13.1** Contractor represents and warrants that no person or selling agency has been employed or retained by Contractor to solicit or secure this Contract upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee or any other compensation. Contractor further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. Contractor makes such representations and warranties to induce the Owner to enter into this Contract and the Owner relies upon such representations and warranties in the execution hereof.

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

**14. CONFLICT OF INTEREST.**

**14.1** Contractor represents and warrants that neither it, nor any of its officers, directors, partners, members, employees, contractors, agents, assignees or other representatives, have any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance of this Contract. Contractor further represents and warrants that no person having such conflict of interest or possible conflict of interest shall be employed or contracted by it unless such person:

**14.1.1** if required by the County's "**Local Ethics Law**" (Local Law No. 2 of 1994, as amended) to submit a Disclosure Form to the Orange County Board of Ethics, amends such Disclosure Form to include their interest in this Contract; or

**14.1.2** if not required to complete and submit such a Disclosure Form, must either voluntarily complete and submit a Disclosure Form disclosing their interest in this

Contract or seek a formal opinion from the Orange County Ethics Board as to whether or not a conflict of interest exists.

**14.2** For a breach or violation of such representations or warranties, Owner shall have the right to annul this Contract without liability, entitling Owner to recover all monies paid hereunder and Contractor shall not make claim to, or be entitled to recover, any sum(s) otherwise due under this Contract. This remedy, if effected, shall not constitute the sole remedy afforded Owner, nor shall it constitute a waiver of Owner's right to claim damages, or otherwise refuse payment, or to take any other action provided for by law, in equity or pursuant to this Contract.

**14.3** The foregoing provisions shall not limit Owner's rights under the Local Ethics Law with regard to civil penalties or criminal prosecution as provided in the Local Ethics Law.

**15. CURRENT OR FORMER OWNER EMPLOYEES.**

**15.1** Contractor represents and warrants that it shall not retain the services of any Owner employee or former Owner employee in connection with this Contract or any other Contract that Contractor has or may have with the Owner, without the express written permission of the Owner. This limitation period covers the preceding three (3) years or longer if the Owner employee or former Owner employee has or may have an actual or perceived conflict of interest(s) due to their position with Owner.

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

**16. INDEPENDENT CONTRACTOR.**

**16.1** In performing the Work and incurring expenses under this Contract, Contractor shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of Owner. As an independent contractor, Contractor shall be solely responsible for determining the means and methods of performing the Work and shall have complete charge and responsibility for Contractor's personnel and subcontractors engaged in the performance of the same.

**16.2** In accordance with such status as independent contractor, Contractor covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be officers or employees of Owner, or of any department, agency or unit thereof, and that they will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of Owner including, but not limited to, Worker's Compensation and Disability, health insurance, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

**17. ASSIGNMENT.**

**17.1** Pursuant to New York State General Municipal Law §109, Contractor shall not assign, transfer, convey, sublet or otherwise dispose of any of its rights, title or interests in this Contract, or its power to execute this Contract, without the prior express written consent of the County Executive, or his or her

designee. If Contractor assigns, transfers, conveys, sublets or otherwise disposes of its rights, title or interests in this Contract, or its power to execute it without such consent, Owner shall revoke and annul this Contract and Owner shall be discharged from any and all liability and obligations growing out of this Contract to Contractor and to any party to which such assignment, transfer, conveyance, sublet or other disposition was purportedly made. Contractor shall also forfeit and lose all moneys theretofore earned under this Contract, except so much as may be required to pay its employees performing under this Contract. The provisions of this clause shall not hinder, prevent, or affect any assignment by Contractor for the benefit of its creditors made pursuant to the laws of the State of New York.

**17.2** This Contract may be assigned by Owner to any corporation, agency, municipality or instrumentality having authority to accept such assignment.

## **18. SUBCONTRACTORS.**

**18.1** Contractor shall submit in writing to the Owner a list of all Subcontractors, if any, whom Contractor shall engage for the Work prior to awarding any subcontracts. The Contractor shall not employ any Subcontractor to whom Owner may have a reasonable objection nor shall Contractor be required to employ any Subcontractor against whom Contractor has a reasonable objection. Contractor may not discharge and/or replace any Subcontractors without Owner's written approval. Contractor shall contractually require every Subcontractors' compliance with the terms of this Contract, as far as applicable to each Subcontractor's Work, and shall assume full responsibility to Owner for acts and omissions of Subcontractors. There shall be no contractual relation between Owner and any Subcontractor, and in no way shall Owner be obligated to pay any sums to any Subcontractor. At the completion of the Work, and before final payment shall be made, Contractor shall submit to Owner lien releases or notarized statements from any and all Subcontractors that full payment was received.

**18.2** Contractor agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Contract, without the prior written approval of the Owner. A copy of any proposed subcontract(s) shall be submitted to the Owner with Contractor's written request for approval. All such subcontracts shall contain provisions specifying:

**18.2.1** That the work performed by the subcontractor must be in accordance with this Contract;

**18.2.2** That nothing contained in the subcontract shall impair the rights of the Owner;

**18.2.3** That nothing contained in this subcontract or under this Contract shall create any contractual relation in law or equity between the subcontractor and the Owner; and

**18.2.4** Any terms, conditions, forms or other provisions that may be required by New York State or federal provisions specified in or incorporated by reference into this Contract, as applicable.

**18.3** Contractor agrees that it is fully responsible to Owner for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by its subcontractors, to the same extent as Contractor is responsible for acts and omissions employed by Contractor.

**18.4** Contractor shall not in any way be relieved of any responsibility under this Contract by any subcontract.

**19. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

**19.1** Identification Number(s). For granting, renewing, amending, supplementing or restating the license of any person, and for every invoice or other claim for payment submitted to Owner by Contractor under this Contract, the application, invoice or claim must include Contractor's payee identification number. This number is any or all of the following:

**19.1.1** the payee's federal employer identification number;

**19.1.2** the payee's federal social security number, and/or

**19.1.3** the payee's Contractor Identification Number assigned by Owner, if any.

**19.2** Failure to include applicable payee identification number(s), as required by Owner, may delay payment. Where Contractor does not have such number(s), on its application, invoice or other claim for payment, Contractor must give the reason or reasons why it does not have a payee identification number(s).

**19.2 Privacy Notification.**

**19.2.1** The Owner's authority to request the above personal information from Contractor, and its authority to maintain such information, is found in New York State Tax Law §5. Disclosure of this information by Contractor to Owner is mandatory. The principal purpose for collection of the information is for New York State to identify individuals, businesses and others who have been delinquent in filing tax returns, or may have understated their tax liabilities, and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

**19.2.2** The Owner may forward the personal information to the New York State Commissioner of Taxation and Finance upon that Commissioner's request pursuant to New York State Tax Law §5(3).

**20. RECORDKEEPING.** Contractor agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract.

**21. RETENTION OF RECORDS.** Contractor agrees to retain all paper and electronic invoices, payment receipts, books, records and other data and documents relevant to this Contract ("**Records**") for six (6) years after the final payment or termination of this Contract or such longer period as may be required the Contract Documents or by law or regulation, whichever later occurs. Owner, or any state and/or federal auditors, and any other persons duly authorized by Owner, shall have full access and the right to examine any records during the term of this Contract and the retention period, unless otherwise specified in schedule a or required by law or regulation.

**22. AUDIT BY THE OWNER AND OTHERS.** All records and accounts upon which the records are based are subject to inspection, review and audit by the Owner, New York State, United States, and/or other persons or entities duly authorized by Owner. Contractor, upon request, shall submit any and all documentation and justification in support of expenditures or fees under this Contract as may be required for evaluation of the reasonableness of the charges. Such audits may include examination and review of the source and application of all funds relevant to the performance of the Work, whether from the Owner, New York State, the federal government, private sources or otherwise. Contractor shall not be entitled to any interim or final payment under this Contract if any audit requirements and/or requests have not been satisfactorily met.

**23. SAFETY OF PERSONS AND PROPERTY.**

**23.1** Contractor assumes the risk of and shall be responsible for, any loss or damage to Owner property, including property and equipment leased by the Owner, used in the performance of this Contract and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of Contractor, its officers, directors, members, partners, employees, contractors, agents, assignees, or other representatives.

**23.2** To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the Owner and Architect/Engineer harmless from any and all claims, liabilities, expenses, costs, losses, damage or causes of action (including, without limitation, reasonable attorneys' fees and costs of litigation and/or settlement) arising out of, directly or indirectly, the services performed and/or the goods and materials provided pursuant to this Contract.

**23.3** In the event that any Owner property is lost, damaged (except for normal wear and tear), or destroyed, then Owner shall have the right to withhold payments for the purposes of set-off in sufficient sums to cover such loss or damage. This remedy, if effected, shall not constitute the sole or exclusive remedy afforded Owner, nor shall it constitute a waiver of that Owner's right to claim damages or otherwise refuse payment or to take any other action provided for by law, in equity or pursuant to this Contract.

**23.4** Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

**23.4.1** employees on the Work and other persons who may be affected thereby including, but not limited to, the Owner, Subcontractors, other contractors, Suppliers, delivery persons or other third parties;

**23.4.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody or control of Contractor or Subcontractors;

**23.4.3** other property at the Work Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and

**23.4.4** construction by Owner, Subcontractors or other contractors.

**23.5** Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

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

**23.8** Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in §23.4.1 through §23.4.4 caused in whole or in part by the Contractor, Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under §23.4.1 through §23.4.4 caused, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by it, or by anyone for whose acts Owner may be liable.

**23.9** Contractor shall designate a responsible member of Contractor's organization at the Work Site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to Owner.

**23.10** Contractor shall not load or permit any part of the construction or Work Site to be loaded so as to endanger its safety.

**23.11** Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner, other Subcontractors or separate contractors caused by the Contractor's or any of its Subcontractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

## **24. INSURANCE.**

**24.1** Prior to commencing performance of the Work, Contractor shall obtain and maintain in full force and effect during the term of this Contract, and any renewal or modification thereof, at its expense, insurance coverage of the types and, at minimum, in the coverage limits listed below. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers with an A.M. Best rating of A- or better and satisfactory to Owner, who have been fully informed as to the nature of the Work to be performed and any modification(s) thereto. This insurance shall cover the premises on operations of the Contractor and shall cover all Subcontractors. Policies for insurance must be written as to include contingent liability and contingent property damage insurance to protect Contractor against claims arising from the operations of Subcontractors. Owner may require Contractor to secure miscellaneous property insurance, elevator insurance or other forms of indemnity protection depending upon the Work to be performed. Additional coverage types or limits may be required by Owner if any policy contains a contractual liability exclusion. Policies must protect the Contractor, Subcontractors (as defined in the General Conditions), Owner, and Architect/Engineer from any and all claims which may arise out of or result from the Contractor's or any Subcontractor's performance under the Contract and for which

the Contractor or Subcontractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

**24.2** The insurance required hereunder shall be written for not less than the following amounts, or greater, if required by law:

**24.2.1** Workers Compensation & Disability: State Statutory Amounts

**24.2.2** Employer's Liability: \$1,000,000 aggregate and each occurrence

**24.2.3** Commercial General Liability (including Premises; Independent Contractor's Protective; Bodily Injury; Property Damage; Contractual Liability; and Products and Completed Operations to be maintained for two years after Final Payment): \$1,000,000 aggregate and each occurrence

**24.2.4** Business Automobile Liability with: \$1,000,000 aggregate and each occurrence

**24.2.5** Contractors Pollution Liability: \$1,000,000 aggregate and each occurrence

**24.2.6** Umbrella Excess Liability: \$3,000,000, aggregate and each occurrence which may be used to fund any portion of the insurances required above.

**24.3** Coverage listed in this Article 24, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of Final Payment and termination of any coverage required to be maintained after Final Payment. Claims-made policies shall be maintained for three (3) years from the date of Final Payment.

**24.4** Contractor and Subcontractors (through Contractor), within Ten (10) Days of the date of issuance of Notice of Intent to Award, shall supply the Owner with a Certificate(s) of Insurance, evidencing compliance with the minimum requirements listed above and shall within Thirty (30) Days thereafter furnish Owner with certified copies of the policies. The certificates and the insurance policies required by this §24.4 shall contain a provision that coverage will not be canceled or allowed to expire until at least Thirty (30) Days prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after Final Payment, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment as required by the Contract Documents. Information concerning reduction of coverage on account of revised limits or claims paid under occurrence, aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**24.5** With the exception of Workers Compensation, Disability and Professional Liability, Contractors and Subcontractors shall have the Owner and Architect/Engineer each added as an additional insured to all policies. The insurance policies shall be endorsed to indicate that they are primary as respects the Owner and Architect/Engineer of record and not contributory with any other insurance available to either of those parties. Each policy shall contain the following cross liability provision.

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may

be made in the same manner as if separate policies had been issued to each insured hereunder."

**24.6** Waivers of Subrogation: Each Contractor and Subcontractor waives all claims, losses, damages, or expenses against the Owner, Architect/Engineer, Contractor, the other Subcontractors and each of their respective officers, directors, members, partners, subcontractors, subconsultants, agents, and employees, as applicable, from risks actually insured. Insurance policies shall provide such waivers of subrogation by endorsement or otherwise.

**24.7** In accordance with New York State General Municipal Law §108 this Contract shall be void and of no effect unless the person or corporation making or performing such Contract shall secure compensation for the benefit of, and keep insured during the life of such Contract, such employees, in compliance with the provisions of the New York State Workers' Compensation Law.

**24.8** The Contractor shall not commence Work unless and until all required certificates have been submitted to and accepted by the Owner. Acceptance by the Owner of a certificate hereunder does not excuse the Contractor from securing a policy consistent with all provisions of this Article or of any liability arising from its failure to do so.

**24.9** The Contractor shall be responsible for providing continuous insurance coverage in the manner, form and limits required by this Contract and shall be authorized to perform Work only during the effective period of all required coverage.

**24.10** In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Contractor shall immediately stop all Work, and shall not recommence Work until authorized in writing to do so by the Owner. Upon quitting the Site, except as otherwise directed by the Owner, the Contractor shall leave all plant, materials, equipment, tools and supplies on the Site. Contract time shall continue to run during such periods, no extensions of time shall be granted, and Contractor shall be liable for any delays to the Project incurred by Owner or by other Contractors to their Work. The Owner may also declare the Contractor in default for failure to maintain required insurance.

**25. WORKER'S COMPENSATION AND DISABILITY INSURANCE.** Pursuant to General Municipal Law §108, this Contract shall be void and of no effect unless Contractor and each Subcontractor, if any, shall secure compensation for the benefit of, and keep insured during the life of this Contract, such employees, in compliance with the provisions of the Worker's Compensation Law, unless Contractor is exempt and provides the applicable New York State Workers Compensation Board certificate of exemption.

**26. UNEMPLOYMENT BENEFITS.** Contractor shall take out and maintain during the life of this Contract adequate unemployment benefits insurance, in compliance with New York Labor Law Article 18, for all employees and will also require all Subcontractors, if any, to maintain such insurance.

**27. INDEMNIFICATION.**

**27.1** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless Owner and its officers, employees, contractors, agents, assignees and other representatives, from and against any and all claims, liabilities, expenses, costs, losses, damages and causes of action (including without limitation, reasonable attorneys' fees and costs of litigation and/or settlement) arising out of, directly or indirectly, the services performed and/or goods provided pursuant to this Contract.

**27.2** Without limiting the foregoing, to the fullest extent permitted by law, Contractor specifically agrees to defend, indemnify and hold Owner harmless against claims, including claims by Contractor's customers and/or subcontractors, based on infringement of copyright, patent, trade secret, trademark, libel, slander, or invasion of privacy, arising out of, directly or indirectly, the services performed and/or goods provided by Contractor or its officers, directors, partners, members, employees, contractors, agents, assignees or other representatives pursuant to this Contract.

**27.3** In the event that any claim is made or any action is brought against Owner arising out of, in connection with or otherwise relating to this Contract either within or without the scope of Contractor's duties, obligations or applicable industry standards, or those of any of Contractor's respective officers, directors, partners, members, employees, contractors, agents, or other representative's; then Owner shall have the right to withhold further payments hereunder, for the purpose of set-off, in sufficient sums to cover the claims, liabilities, expenses, costs, losses, damages or causes of action. This remedy, if effected, shall not constitute the sole or exclusive remedy afforded the Owner, nor shall it constitute a waiver of that the Owner's right to claim damages or otherwise refuse payment or to take any other action provided for by law, in equity, or pursuant to this Contract.

## **28. WARRANTY.**

**28.1** The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**28.2** Contractor warrants to Owner that all construction and related services provided hereunder shall be performed in a good and workmanlike manner, by workers who are appropriately trained and experienced in the Work being performed, and in accordance with all requirements of the Contract Documents, industry standards for projects of similar type and quality, and all applicable laws, codes, regulations and other requirements, including safety requirements.

**28.3** If, within one (1) year after the date of Final Completion of the Work or designated portion thereof, any of the Work is found to be not in accordance with the requirements of the Contract Documents, regardless of prior acceptance by Owner, the Contractor shall correct it promptly, after receipt of written notice from the Owner to do so. Owner shall give such notice promptly after actual discovery of the condition. This period of one (1) year shall be extended with respect to portions of the Work first performed after completion of the Work by the period of time between completion and the actual performance of that portion of the Work. This obligation under this §28.3 shall survive acceptance of the Work and expiration or earlier termination of this Contract.

**28.4** The warranty in §28.3 is separate from the warranties in §28.1 and §28.2 and shall not be construed as a period of limitation on the warranties under §28.1 and §28.2.

## **29. SUSPENSION OR TERMINATION OF THE CONTRACT.**

### **29.1 Termination by the Contractor**

**29.1.1** Contractor may terminate the Contract if the Work is stopped for a period of ninety (90) consecutive Days through no act or fault of Contractor or its Subcontractor(s) or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with Contractor, for any of the following reasons:

- .1** issuance of an order of a court or other authority having jurisdiction over the Work or parties hereto which requires all Work to be stopped; or
- .2** an act of government, such as a declaration of national emergency which requires all Work to be stopped;

**29.1.2** Contractor may terminate the Contract if; through no act or fault of Contractor or its Subcontractor(s) or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with Contractor; repeated suspensions, delays or interruptions of the Work by Owner as described §29.0 constitute in the aggregate more than One Hundred (100) percent of the total number of Days scheduled for completion, or One Hundred Twenty (120) Days in any successive Three Hundred Sixty-Five (365)-Day period commencing from the start date of the Contract, whichever is less.

**29.1.3** In case of such termination, Contractor shall be entitled to receive payment for Work executed in accordance with the Contract Documents.

### **29.2 Termination by the Owner for Cause**

**29.2.1** Contractor shall be deemed in default, and Owner may terminate this Contract, if Contractor, or any of its Subcontractors, shall:

- .1** fail to begin Work within the time specified;
- .2** persistently or repeatedly refuse or fail to supply sufficient properly skilled workers or sufficient proper equipment or materials to insure the completion of the Work within the specified time as reasonably determined by Owner, which failure shall not be cured within Ten (10) Days after notice from Owner;
- .3** perform the Work in a manner reasonably deemed by Owner to be unsatisfactory, which failure shall not be cured within Ten (10) Days after notice from Owner;
- .4** fail or refuse to remove materials reasonably determined by Owner to be unsuitable, which failure shall not be cured within Ten (10) Days after notice from Owner;
- .5** fail or refuse to perform anew any Work reasonably determined by Owner to be defective or unacceptable, which failure shall not be cured within Ten (10) Days after notice from Owner;

- .6 fail to diligently proceed with the prosecution of the Work according to the agreed schedule for completion, which failure shall not be cured within Ten (10) Days after notice from Owner;
- .7 fail to make prompt payment to Subcontractors or Suppliers for labor or material furnished to or for the Work, which failure shall not be cured within Ten (10) Days after notice from Owner;
- .8 become insolvent or be declared bankrupt, commit any act of bankruptcy or insolvency, or make an assignment for the benefit of creditors;
- .9 violate any laws, ordinances, rules, regulations or orders of any authority having jurisdiction over the Work or the Project, which violation shall not be cured within Ten (10) Days after notice from Owner;
- .10 otherwise fail to perform its obligations hereunder, which failure shall not be cured within Thirty (30) Days after notice from the Owner; or
- .11 pursuant to New York State Finance Law §139-k(5) upon finding by Owner that the information and certification provided by Contractor in the Disclosure of Prior Non-Responsibility Determinations is intentionally false or intentionally incomplete.

**29.2.2** When Owner determines that any of the above reasons exist, Owner may, without prejudice to any other rights or remedies Owner may have, and after giving Contractor and Contractor's surety, if any, Seven (7) Days written notice:

- .1 terminate the Contract;
- .2 take possession of the Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by Contractor;
- .3 finish the Work by whatever method Owner, in its sole discretion may deem expedient; and
- .4 provide Contractor with instructions as described in §29.2.3.

**29.2.3** Upon receipt of notice of termination, Contractor shall immediately, in accordance with written instructions from Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this §29.2:

- .1 cease operations as specified in the notice;
- .2 place no further orders and enter into no further subcontracts for materials, equipment, labor, services or facilities, except as necessary to complete continued portions of the Contract;
- .3 promptly make every reasonable effort to procure cancellation upon terms satisfactory to Owner of all orders and subcontracts;

**.4** take actions that may be necessary, or that Owner may direct, for the protection and preservation of the terminated Work and to protect materials, plant and equipment on the Work Site or in transit thereto; and

**.5** execute and deliver such papers and documents and take such steps, including legal assignment of its contractual rights, as Owner may require in order to vest in Owner the rights and benefits Contractor may have under any obligations or commitments incurred or undertaken by Contractor in connection with the Work.

**29.2.4** In the event that Owner terminates this Contract under §29.2, Contractor shall not be entitled to receive further payment until the Work is finished. If the sum of the costs of finishing the Work; including compensation for the services, as applicable to this Contract, of Architect/Engineer, its consultants, Subcontractors, and any other contractors made necessary thereby; plus the amounts previously paid to Contractor prior to termination, exceed the Contract Sum, Contractor shall pay the difference to the Owner upon demand. If the foregoing costs together with all other costs incurred by Owner as a consequence of having to terminate the Contract are less than the Contract Sum, then upon completion of the Work, Contractor shall be paid the portion of such difference, if any, properly allocable to the portion of the Work completed by Contractor prior to termination by the Owner, and for which Contractor has not previously been paid. In no event, however, shall Contractor be entitled to receive more than the difference between the Contract Sum, minus all costs associated with completing the Work and terminating the employment of Contractor. In determining the amount owing to Contractor, allowances shall be made for claims which Owner has against Contractor under the Contract, and for the value of materials, supplies, equipment and other items that are part of the Cost of the Work to be disposed of by Contractor.

**29.2.5** By terminating the employment of Contractor, Owner does not forfeit the right to recover damages from Contractor.

### **29.3 Suspension by the Owner for Convenience**

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

**29.3.2** The Contract Sum and term shall be adjusted for increases in the cost and time caused by suspension, delay or interruption pursuant to bed in §29.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

**.1** that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or

**.2** that an equitable adjustment is made or denied under another provision of the Contract.

## **29.4 Termination by the Owner for Convenience**

**29.4.1** Owner may, at any time, terminate the Contract for Owner's convenience and without cause.

**29.4.2** Upon receipt of written notice from Owner of such termination for Owner's convenience, the Contractor shall:

- .1** cease operations as directed by Owner in the notice;
- .2** place no further orders and enter into no further subcontracts for materials, equipment, labor, services or facilities, except as necessary to complete continued portions of the Contract;
- .3** promptly make every reasonable effort to procure cancellation upon terms satisfactory to Owner of all orders and subcontracts;
- .4** take actions that may be necessary, or that Owner may direct, for the protection and preservation of the terminated Work and to protect materials, plant and equipment on the Work Site or in transit thereto; and
- .5** execute and deliver such papers and documents and take such steps, including legal assignment of its contractual rights, as Owner may require in order to vest in Owner the rights and benefits Contractor may have under any obligations or commitments incurred or undertaken by Contractor in connection with the Work.

**29.4.3** In case of such termination for Owner's convenience, Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on Work not executed.

## **30. CLOSEOUT PROCEDURES.**

Upon the expiration or earlier termination of this Contract, Contractor shall comply with any and all Owner closeout procedures, including, but not limited to:

**30.1** Accounting for and refunding to Owner within Thirty (30) Days, any unexpended funds which have been paid to Contractor pursuant to this Contract; and

**30.2** Furnishing within Thirty (30) Days an inventory to Owner of all equipment, appurtenances and property purchased by Contractor through or provided under this Contract and carrying out any Owner directive concerning the disposition thereof.

## **31. NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITIES.**

**31.1** To the extent required by Article 15 of the New York State Executive Law (also known as the Human Rights Law) and all other New York State and federal statutory and constitutional non-discrimination provisions, Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military

status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status.

**31.2** Furthermore, in accordance with §220-e of the New York State Labor Law, if the Work for this Contract includes construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within New York State, Contractor agrees that neither it nor its Subcontractors shall, by reason of race, creed, color, disability, sex, or national origin:

**31.2.1** discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or

**31.2.2** discriminate against or intimidate any employee hired for the performance of the Work under this Contract.

**31.3** If this is a building service contract as defined in §230 of the Labor Law, then, in accordance with §239 thereof, Contractor agrees that neither it nor its Subcontractors shall by reason of race, creed, color, national origin, age, sex or disability:

**31.3.1** discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or

**31.3.2** discriminate against or intimidate any employee hired for the performance of work under this contract.

**31.4** Contractor is subject to fines of \$50.00 per person per Day for any violation of §220-e or §239 of New York State Labor Law, as well as possible termination of this Contract and forfeiture of all moneys due hereunder for a second or subsequent violation. These remedies, if effected, shall not constitute the sole or exclusive remedies afforded the Owner, nor shall it constitute a waiver of that the Owner's right to claim damages or otherwise refuse payment or to take any other action provided for by law, in equity, or pursuant to this Contract.

**31.5** If this Contract involves the sale or rental of property, Contractor specifically agrees to abide by all applicable provisions of federal and state laws and regulations, as applicable to sale or rental of the property. With respect to any sale of the property and selection and treatment of tenants, Contractor shall not in any manner discriminate on the basis of race, color, religion, sex (including gender identity or expression), familial status, national origin, disability, age, sexual orientation, military status or marital status.

## **32. SECULAR PURPOSE.**

**32.1** Contractor agrees that no funds received pursuant to this Contract will be used for sectarian purposes or to further the advancement of any religion.

**32.2** Additionally, Contractor agrees that if it is, or is deemed to be, a religious or denominational institution or organization, or an organization operated for religious purposes which is supervised or controlled by, or in connection with, a religious or denominational institution or organization, in performing this Contract Contractor will:

**32.2.1** not discriminate against any employee or applicant for employment on the basis of religion, and will not limit or give preference in employment to persons on the basis of religion;

**32.2.2** not discriminate against any individual or entity, seeking to participate or participating in any program or activity funded under this Contract and will not limit the programs and activities or give preference to persons, on the basis of religion; and

**32.2.3** provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing and exert no other religious influence in the provision of services or the use of facilities or furnishings funded in whole or in part under this Contract or any other agreement with Owner.

**33. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.**

**33.1** Contractor certifies and warrants that all wood products to be used in performing the Work under this Contract, if any, will be in accordance with, but not limited to, the specifications and provisions of New York State State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by New York State or any governmental agency or political subdivision or public benefit corporation.

**33.2** In addition, when any portion of this Contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the Contractor will indicate and certify in the submitted bid or proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in New York State State Finance Law §165.

**33.3** Contractor certifies that any use of tropical hardwood in the Work meets with the exception requirements of New York State State Finance Law §165(2)(d)(iii), as established by the Contractor and was approved by Owner during the quote, bid or proposal process.

**34. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH NOTIFICATION ACT.**

Both during and after the performance of the Work under this Contract, with respect to all data involved in the performance of this Contract, Contractor shall comply with the New York State Information Security Breach and Notification Act (General Business Law §899-aa; State Technology Law §208, both as may be amended).

**35. COMPLIANCE WITH EXECUTIVE ORDER 38.**

Contractor is and shall remain in compliance with New York State Executive Order 38 of 2013, as may be amended. More information may be found at: <http://www.executiveorder38.ny.gov/>.

**35. COMPLIANCE WITH PROCUREMENT LOBBYING LAWS.**

**35.1** To the extent this Contract is a "procurement contract" as defined by New York State State Finance Law §139-j and §139-k, Contractor certifies and affirms that all disclosures made in accordance with New York State State Finance Law §139-j and §139-k are complete, true and accurate. In the event such

certification is found to be intentionally false or incomplete, Owner may terminate this Contract in accordance with §29.2 of this Contract.

**35.2** Notwithstanding any other provision of this Contract, Contractor shall not be relieved of liability to Owner for damages sustained by Owner by virtue of Contractor's breach of this §35. Owner may withhold payments to Contractor for the purposes of set-off until such time as the exact amount of damages due to Owner from Contractor is determined.

**35.3** These remedies, if effected, shall not constitute the sole or exclusive remedies afforded the Owner, nor shall it constitute a waiver of that the Owner's right to claim damages or otherwise refuse payment or to take any other action provided for by law, in equity, or pursuant to this Contract.

**36. COMPLIANCE WITH IRAN DIVESTMENT ACT.**

**36.1** Contractor certifies in accordance with New York State State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("**Prohibited Entities List**") posted at:  
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

**36.2** Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time this Contract is renewed or extended. Contractor also agrees that any proposed assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the assignment will be approved by Owner.

**36.3** During the term of this Contract, should Owner receive information that Contractor is in violation of the above-referenced certifications, Owner will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Iran Divestment Act (New York State State Finance Law §165-a) within Ninety (90) Days after the determination of such violation, then Owner shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring Contractor in default and terminating the Contract in accordance with §29.2 of this Contract. These remedies, if effected, shall not constitute the sole or exclusive remedies afforded the Owner, nor shall it constitute a waiver of that the Owner's right to claim damages or otherwise refuse payment or to take any other action provided for by law, in equity, or pursuant to this Contract.

**36.4** Owner reserves the right to reject any request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**37. SEXUAL HARASSMENT PREVENTION CERTIFICATION**

**37.1** Pursuant to State of New York State Finance Law §139-l, by execution of this Agreement, the Contractor and the individual signing this Agreement on behalf of the Contractor certifies, under penalty of perjury, that the Contractor has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the State of New York Labor Law. A model policy and training has been created by the New York State

Department of Labor and can be found on its website at:

<https://www.ny.gov/programs/combating-sexual-harassment-workplace>.

**37.2** The County's policy against sexual harassment and other unlawful discrimination and harassment in the workplace can be found on the County's website at:

<https://www.orangecountygov.com/1137/Human-Resources>.

**38. FORCE MAJEURE.**

**38.1** A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force Majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Owner in the performance of this Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

**38.2** The affected party shall provide the other party with written notice of any Force Majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the Force Majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the Force Majeure condition continues beyond Thirty (30) Days, the parties shall jointly decide on an appropriate course of action that will permit fulfillment of the parties' objectives hereunder.

**38.3** The Contractor agrees that in the event of a delay or failure in the performance of the Work by Contractor, due to a Force Majeure occurrence, the Owner may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the goods and/or services which are the subject of the delay, which purchases may be deducted from the quantities of this Contract, if any, without penalty or liability to the Owner.

**38.4** Neither the Contractor nor the Owner shall be liable to the other for any delay in or failure of performance under this Contract due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Owner to be necessary to enable complete performance by the Contractor and Owner if reasonable diligence is exercised after the cause of delay or failure has been removed.

**38.5** Notwithstanding the above, at the discretion of the Owner where the delay or failure will significantly impair the value of this Contract to the Owner, the Owner may terminate this Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of this Contract or the relative part thereof.

**39. GENERAL RELEASE.**

The acceptance by Contractor or its assignees of the final payment under this Contract (whether based on invoice, judgment of any court of competent jurisdiction, administrative or any other means) shall constitute and operate as a general release to Owner from any and all claims of Contractor arising out of the performance of this Contract.

**40. SET-OFF RIGHTS.**

**40.1** Owner shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, Owner's right to withhold for the purposes of set-off any monies otherwise due to Contractor:

**40.1.1** under this Contract;

**40.1.2** under any other agreement or contract with Owner, including any agreement or contract for a term commencing prior to or after the term of this Contract; or

**40.1.3** from Owner by operation of law.

**40.2** Owner also has the right to withhold any monies otherwise due under this Contract for the purposes of set-off as to any amounts due and owing to Owner for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

**41. DISPUTE RESOLUTION.** Any and all disputes involving this Contract, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed thereto in writing by the County Executive, or his or her designee, but must instead only be heard in the Supreme Court of the state of New York, with venue in Orange County or if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division.

**42. GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to its conflicts of law principles.

**43. BUSINESS AUTHORIZATION AND REGISTRATION; SERVICE OF PROCESS.**

**43.1** Contractor shall be properly authorized and registered to do business as required by the laws of the state of New York applicable to Contractor's business entity type.

**43.2** Regardless of the propriety or legality of Contractor's business authorization and registration status, as a condition of contract, Contractor shall agree to service of process as follows: In addition to the methods of service allowed by New York's Civil Practice Law and Rules, Contractor consents to service of process upon it by registered or certified mail, return receipt requested, to the address indicated in this Contract. Service shall be complete upon Contractor's actual receipt of process, or upon Owner's receipt of the return by the United States Postal Service as refused or undeliverable. Contractor shall immediately notify Owner, in writing, via registered or certified mail, return receipt requested, of each change or address to which service of process can be made. Service by Owner to the last known address shall be sufficient.

**44. NOTICE.**

**44.1** All notices permitted or required hereunder shall be in writing and shall be transmitted either:

**44.1.1** via certified or registered United States mail, return receipt requested;

**44.1.2** by personal delivery;

**44.1.3** by overnight delivery service with a nationally recognized carrier (e.g. FedEx, UPS);

**44.1.4** by fax (only as explicitly designated and required by the Contract Documents and when other provisions of this Contract do not control over this §44); or

**44.1.5** by email (only as explicitly designated and required by the Contract Documents and when other provisions of this Contract do not control over this §44).

**44.2** The parties agree to mutually designate individuals as their respective representative for the purposes of receiving notices under this Contract. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems, and/or for dispute resolution. Notices shall be addressed as follows or to such different addresses as the parties may from time to time designate in accordance with §44.2:

Owner

Name: Erik Denega, P.E.

Title: Commissioner of Public Works

Address: Department of Public Works

PO Box 509

2455-2459 Route 17M

Goshen, NY 10924

Phone Number: (845) 291-2750 Fax: (845) 291-2778

Email: edenega@orangecountygov.com

Contractor

Name: insert name

Title: insert title

Address: insert mailing address

Phone Number: insert phone number

Fax: insert fax number

Email: insert email

**44.3** Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the event of a Contract Document permits facsimile transmission or email notice but does not indicate when a notice takes effect, such notices shall be deemed given, upon receipt.

**44.4** The parties may, from time to time, specify any new or different contact person or address in the United States as their address for purpose of receiving notice by notifying Owner, in writing, via registered or certified mail, return receipt requested, of each change or address.

**45. SURVIVAL.**

The rights and obligations under §§ 5, 8, 9, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 27, 28, 29, 30, 34, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 shall survive the termination of this Contract.

**46. MODIFICATION.**

**46.1** No modification(s) of this Contract shall be valid unless reduced to writing and signed by both parties. Changes in the scope of Work for this Contract shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any additional Work, the County Executive, or his or her designee, after consultation with the Department Head, executes a modification to this Contract, which specifically sets forth the additional Work; the amount of compensation; and the extension of the time for performance, all as may be applicable to the change in the Work, at the Owner's discretion.

**46.2** Unless otherwise specifically provided for in the modification(s), the provisions of this Contract shall remain in full force and effect and applicable to the modified scope of Work.

**47. COMPLIANCE.**

**47.1** Contractor and its officers, directors, partners, members, employees, Subcontractors, agents, assignees, Suppliers or other representatives shall at all times comply with all applicable state and federal laws and regulations in the performance of the Work.

**47.2** Contractor understands that it may be necessary for Owner to submit to governmental agencies or to a court of law part of or all of the data, analyses and/or conclusions developed in the performance of the Work as well as certification, payment applications or other documentation certified and/or signed by Contractor or its officers, directors, partners, members, employees, Subcontractors, agents, assignees, Suppliers, or other representatives. Contractor is aware that there are significant state and/or federal civil and criminal penalties for submitting false information, including the possibility of fines and imprisonment. Contractor is responsible for such penalties resulting from false information submitted by Contractor or its officers, directors, partners, members, employees, Subcontractors, agents, assignees, Suppliers or other representatives and shall, to the fullest extent permitted by law, defend, indemnify and hold harmless Owner and its officers, employees, contractors, agents, assignees and other representatives, from and against any and all claims, liabilities, expenses, costs, losses, damages and causes of action (including without limitation, reasonable attorneys' fees and costs of litigation and/or settlement) arising out of, directly or indirectly, any such submission of false information.

**48. WAIVER.** No covenant, condition or undertaking contained in this Contract may be waived except by the written agreement of the parties. Forbearance or indulgence in any form by either party in regards to any covenant, condition or undertaking to be kept or performed by the other party shall not constitute a waiver thereof, and until complete satisfaction or performance of all such covenants, conditions and undertakings, the other party may be entitled to invoke any remedy available under this Contract, despite any such forbearance or indulgence.

**49. EXECUTORY CONTRACT.** Owner shall have no liability under this Contract to Contractor or to anyone else beyond the extent of funds accepted and actually received by Owner from any funding source for this Contract and that are in turn appropriated and made available for this Contract by the Owner.

**50. BINDING EFFECT.** This Contract shall be binding upon the parties hereto and their respective successors and assigns.

**51. SEVERABILITY.** If any part, term or provision of this Contract is declared or found to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations arising under such provisions, but the remainder of this Contract shall be interpreted so as to carry out the intent of the parties in an equitable manner.

**52. ENTIRE AGREEMENT.** This Contract sets forth the entire agreement between the Owner and Contractor with regard to the subject matter hereof, and supersedes all prior representations, agreements and understandings, written or oral and shall bind the successors, assigns, and representatives of the parties hereto.

**IN WITNESS WHEREOF,** the parties hereto have executed this Contract as of date above written. The undersigned each represent that he or she is dually authorized to sign this Agreement on behalf and bind the party he or she represents.

**COUNTY OF ORANGE**

**CONTRACTOR**

BY: \_\_\_\_\_  
STEFAN (STEVEN) M. NEUHAUS  
COUNTY EXECUTIVE

BY: \_\_\_\_\_  
Name:  
Title: