



OLYMPIC REGIONAL
NEW YORK
DEVELOPMENT AUTHORITY

Project Manual

PIN: EXO.21.017

Project Name: Job Order Contracting Services

CIN: EXO.21.017.104

**Contract Name: Facility Job Order Contracting Services
for Heavy Civil – Ulster County**

**Olympic Regional Development Authority
Olympic Center, Lake Placid, New York, 12946**

Date: 08 March 2022

Presented By:

Olympic Regional Development Authority
Office of Environmental, Planning & Construction
2634 Main Street, Lake Placid New York 12946

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NOT FOR BIDDING

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Use the following link to access the Appendices:

<https://fortive.box.com/s/nr95d34ys76c0ha2hwv8vi3u81bigzcx>

Note: In order to view the appendices, Bidders must log into the Box file sharing platform. There is no charge to sign up for an individual account.

SECTION 00 11 14

NOTICE TO BIDDERS

Notice is hereby given that sealed bids will be received by the Olympic Regional Development Authority up to the date and time as identified in the **Schedule of Important Dates and Times** and will be publicly opened and read at the Olympic Center, 2608 - 2634 Main Street, Lake Placid, NY 12946, in the Conference Center at the "Third Floor – South Lobby".

Directions to the Third Floor – South Lobby: Enter through the OLYMPIC CENTER – 1932 ARENA ENTRANCE, 2608 Main Street, Lake Placid, NY 12946, take stairs or elevator to third floor. The South Lobby is at the top of the stairs. The elevator car doors open directly to the South Lobby.

Mailing Address: Olympic Regional Development Authority
Olympic Center
Attn: Office of Environmental Planning and Construction
2634 Main Street
Lake Placid, NY 12946

*(Overnight postal service to Lake Placid is typically not guaranteed by most carriers)
(Mailed bids shall be identified on the exterior of the envelope with the Project Identification Number and Name, and the Contract Identification Number and Name)*

Pursuant to Public Buildings Law § 8(6), effective January 11, 2020, for any projects where the project design commenced on or after January 1, 2020 and for any contracts over \$5,000 for the work of construction, reconstruction, alteration, repair, or improvement of any State building, a responsible and reliable NYS-certified Minority or Women-Owned Business Enterprise that submits a bid within ten percent of the lowest bid will be deemed the apparent low bidder provided that the bid is \$1,400,000 or less, as adjusted annually for inflation beginning January 1, 2020. If more than one responsible and reliable MWBE firm meets these requirements, the MWBE firm with the lowest bid will be deemed the apparent low bidder.

PIN: EXO.21.017

Project Name: Job Order Contracting Services

CIN: EXO.21.017.104

**Contract Name: Job Order Contracting Services for Heavy Civil
Ulster County**

See Part One: JOC Instructions to Bidders contained in Document 00 80 00 JOC Supplemental Conditions for a general description but, in a general, an overview of the contract scope includes: All labor, tools, equipment, materials, temporary facilities and profit & overhead to complete the Job Order Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

Time is of the essence. Therefore, the completion of the Detailed Scope of Work within the Job Order Completion Time is critical to other Job Orders or other Contracts which are to be let at a later date. The completion of the Detailed Scope of Work and subsequent Job Orders/Contracts is critical to the financial stability and success of ORDA and to the financial stability the region. Therefore, all Job Orders will include the provisions for Liquidated Damages as identified in Section 00 73 05 Liquidated Damages.

Schedule of Important Dates and Times

- Notice to Bidders: *08 March 2022*
- Pre-Bid: *18 March 2022 at 2:00 PM* (Local Time)
- End of Questions: *28 March 2022 at 4:00 PM* (Local Time)
- Addendum*: *30 March 2022 at 4:00 PM*(Local Time)
- Bids Due: *6 April 2022 at 2:00 PM* (Local Time)

*Projected latest date of Addendum release. Owner may release Addendum prior to or after said date if need be.

Bidding Documents and Registered Bidders

Only Registered Bidders shall be allowed to submit a Bid. To become a Registered Bidder and to obtain Bidding Documents the following information shall be submitted: Organizational Name and Mailing Address, Primary and Secondary Contact Names, Phone Numbers and Email Addresses. (Secondary Contact is **MANDATORY**)

Requests shall be sent in writing to:

Olympic Regional Development Authority
Office of Environmental, Planning and Construction
EXO.21.017 Job Order Contracting Services for Heavy Civil in Ulster
2634 Main Street, Lake Placid, NY 12946
or email* to projects@orda.org

**ORDA cannot be held responsible for email requests that are not received.*

Bidding documents will be distributed electronically. Use the following link to access the Appendices including: the Prevailing Wage Rates, the Construction Task Catalog[®], and Technical Specifications.

<https://fortive.box.com/s/nr95d34ys76c0ha2hvw8vi3u81bigzcx>

Note: In order to view the appendices, Bidders must log into the Box file sharing platform. There is no charge to sign up for an individual account.

Designated Contacts

In compliance with the Procurement Lobbying Law Section 139-J, Designated Contacts have been assigned by ORDA for this procurement solicitation and may be reached by email for all inquiries regarding this solicitation.

Kirk Bassarab
Olympic Regional Development Authority
2634 Main Street
Lake Placid, NY 12946
E-Mail: Projects@orda.org

In the event that the designated contact is not available, the ALTERNATE designated contact(s) are:

Dane Doucette
Gordian
30 Patewood Drive, Suite 350
Greenville, SC 29615
E-Mail: d.doucette@gordian.com

ORDA reserves the right to cancel the Bidding Process and to not accept any and all Bids received in response to this Request for Bids without explanation.

Bidding Documents may be examined at the following locations:

The New York State Contract Reporter
<https://www.nyscr.ny.gov>

ORDA Website
<https://orda.org/do-business/environmental-planning-construction/>

Bidding Contract Documents have been shared with the following organizations:

CMD (formerly Reed)
(subscribers only) view: www.cmdgroup.com

Dodge Reports
www.dodgeprojects.construction.com

iSqFt
www.isqft.com

Bid Clerk
www.bidclerk.com

Construction Journals
www.constructionjournals.com

Southern Tier Builders Association, Inc.
65 East Main Street, Falconer, NY 14733-1397

Construction Contractors Association of the Hudson Valley, Inc.
330 Meadow Avenue, Newburgh, NY 12550

Syracuse Builders Exchange
6563 Ridings Road, Syracuse NY 13206

Minority Contractors Association of Central NY
2610 South Salina Street, Suite 7, Syracuse, NY 13205
Email: stevencoker@rocketmail.com

Northern NY Builders Exchange www.nnybe.com

Mohawk Valley Builders Exchange
10 Main Street, Suite 202, Whitesboro, NY 13492

Associated Bldg. Contractors of the Triple Cities, Inc.
15 Belden Street, Binghamton NY 13903-2159

Eastern Contractors Association
6 Airline Drive, Albany NY 12205

NYS Association of Minority Contractors
Brooklyn Navy Yard Bldg. 280, 4th Fl, Brooklyn NY 11205

By Order of the Olympic Regional Development Authority

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BID FORM

DETACH AND USE THIS FORM

BID FORM FOR:

PIN: EXO.21.017

Project Name: Job Order Contracting Services

CIN: EXO.21.017.104

Contract Name: Job Order Contracting Services For Heavy Civil,
Ulster County

New York State
Olympic Regional Development Authority
Olympic Center
Office of Environmental, Planning and Construction
2634 Main Street
Lake Placid, NY 12946

THIS IS A * PAGE BID FORM. ALL PAGES MUST BE COMPLETED.

THE NYS OLYMPIC REGIONAL DEVELOPMENT AUTHORITY RESERVES THE RIGHT TO REJECT ANY OR ALL BIDS. EACH BID FORM SHALL BE ACCOMPANIED BY BID SECURITY IN THE AMOUNT STATED IN THE INSTRUCTION TO BIDDER.

The Undersigned agrees to complete the Detailed Scopes of Work within the Job Order Completion Time.

The Undersigned acknowledges their understanding of the social policy concerning minority and women business participation in the State building construction program, and pledges to cooperate with the State in the implementation of this policy, and further pledges to exert good faith efforts to achieve participation of minority and female employees.

The Undersigned certifies, as to each of the occupations listed in the Prevailing Rate Schedule applicable to this Project, the ability and willingness to exert good faith efforts to achieve the goal for minority and women workforce participation set forth in the Supplementary Conditions. The Undersigned certifies the ability and willingness to exert good faith efforts to achieve the goal for Minority and Women-Owned Business Enterprise participation set forth in the Supplementary Conditions.

The Undersigned certifies the ability and willingness to exert good faith efforts to achieve the goal for Minority and Women-Owned Business Enterprise and Service-Disabled Veteran-Owned Businesses participation set forth in the Supplementary Conditions.

The Undersigned declares that the Bidding and Contract Documents have been carefully examined and that all things necessary for the completion of the Work shall be provided and understands that time is of the essence.

The Undersigned agrees that the bid security shall be subject to forfeiture if this bid is accepted by the ORDA and the undersigned does not submit executed copies of the Agreement **WITHIN 48 HOURS OF RECEIPT OF A WRITTEN REQUEST TO PROVIDE SUCH AGREEMENT.** A Performance Bond and a Labor and Material Bond, each in an amount equal to \$500,000, shall be supplied with the executed Agreement and shall be the statutory form of public bonds required by Sections 136 and 137 of the State Finance Law.

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of signatory's knowledge and belief:

- (1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such prices with any other bidder or with any competitor.
- (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor.
- (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
- (4) This contract shall not cause or result in a violation of Section 74(3)(e) of the Public Officers Law which states: "No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the State with any business entity in which he/she has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties."
- (5) The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with ORDA's procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b).

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Bid Form – Job Order Contracting

Federal Employer I.D. No.

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(6) The bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the state finance law (NYS Iran Divestment Act of 2012). The list can be viewed at the following link: <https://ogs.ny.gov/iran-divestment-act-2012>

(7) New York State businesses will will not be used in the performance of this contract (refer to Document 00 73 24).

(8) The New York State Human Rights Law (Human Rights Law), Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

(9) In accordance with State Finance Law § 139-l, by submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder 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 labor law.

If the bidder cannot make the foregoing certification, such bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the bidder cannot make the certification.

(10) In accordance with Section 165(5) of the State Finance Law, the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either (answer yes or no to one or both of the following, as applicable):

1. have business operations in Northern Ireland Yes No and if yes:
2. shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland and shall permit independent monitoring of compliance with such principles.
Yes No

Addendum to the Contract Documents are available from the Designated Contact.

The Undersigned acknowledges receipt and review of all Addenda and has included 00 21 11 Addendum Acknowledgment with the Bid.

Olympic Regional Development Authority
Bid Form – Job Order Contracting

Federal Employer I.D. No.

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The Undersigned proposes to perform the Work required for this Contract in accordance with the Contract Documents. The undersigned shall enter the Adjustment Factors in legible figures in the spaces provided below. Failure to enter all Adjustment Factors will result in the Bid being deemed non-responsive.

	Adjustment Factor Name	Adjustment Factor Bid	X Multiplier	= Extended Total
1.	For Projects Equal to or Less than \$10,000, Normal Working Hours Adjustment Factor	__ . __ _ _ _ _	X 0.20	= __ . __ _ _ _ _
2.	For Projects Equal to or Less than \$10,000, Other Than Normal Working Hours Adjustment Factor	__ . __ _ _ _ _	X 0.10	= __ . __ _ _ _ _
3.	For Projects Greater than \$10,000, Normal Working Hours Adjustment Factor	__ . __ _ _ _ _	X 0.50	= __ . __ _ _ _ _
4.	For Projects Greater than \$10,000, Other Than Normal Working Hours Adjustment Factor	__ . __ _ _ _ _	X 0.20	= __ . __ _ _ _ _
5.	Sum the Extended Total column. The Sum is the Award Criteria Figure.			= __ . __ _ _ _ _

Notes to Bidder:

1. Adjustment Factors and extended totals should be rounded to four (4) decimal places. Use conventional rounding methodology (i.e., if the number in the 5th decimal place is 0-4, the number in the 4th decimal remains unchanged; if the number in the 5th decimal place is 5-9, the number in the 4th decimal is rounded upward).
2. **The Other Than Normal Working Hours Adjustment Factor must be greater than or equal to the corresponding Normal Working Hours Adjustment Factor.**
3. The Owner reserves the right to correct arithmetic errors in the event of a discrepancy, the Adjustment Factors listed in the column titled "Adjustment Factor Bid" shall take precedence and be used to calculate the extended totals.
4. The weighted percentages (x multiplier) presented above are only for calculating the Award Criteria Figure. There is no guarantee that the work ordered will be consistent with the weighted percentages. The Award Criteria Figure is only used

to compare bids. It is not used to prepare Price Proposals. When preparing Price Proposals, the Bidder shall use one or more of the Adjustment Factors written above.

Is your firm a NYS-Certified Minority/Women-Owned Business Enterprise (MWBE)?

Yes No

MWBE Certification file No. _____

Is your firm a NYS-Certified Service-Disabled Veteran Owned Business (SDVOB)?

Yes No

SDVOB Certification file No. _____

SIGN BID HERE _____
Authorized Signature

PRINT NAME OF SIGNER _____

TITLE OF SIGNER _____

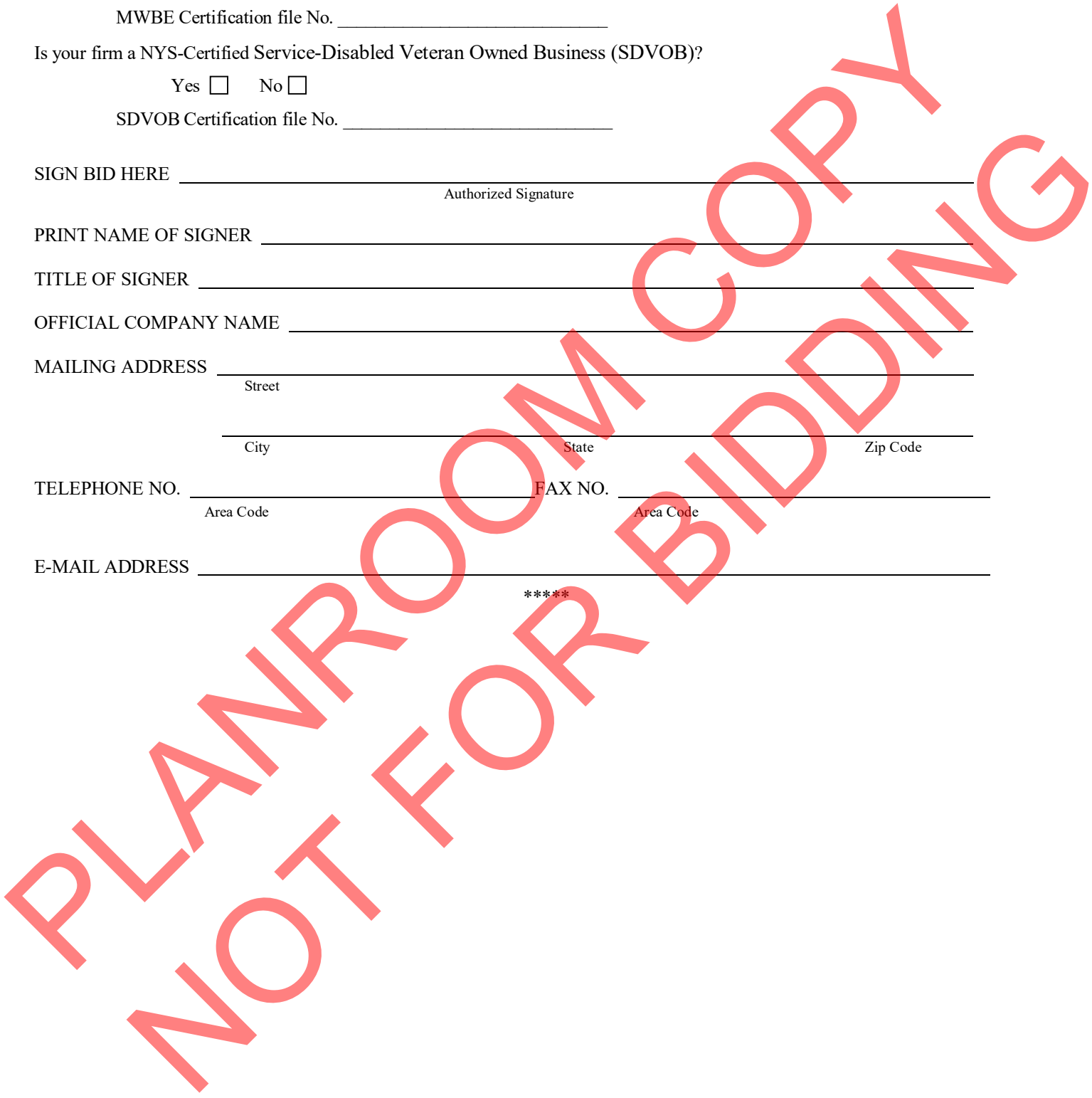
OFFICIAL COMPANY NAME _____

MAILING ADDRESS _____
Street

City State Zip Code

TELEPHONE NO. _____ FAX NO. _____
Area Code Area Code

E-MAIL ADDRESS _____



Addendum Acknowledgment

PIN: EXO.21.017

Project Name: Job Order Contracting Services

CIN: EXO.21.017.104

Contract Name: Job Order Contracting Services for Heavy Civil – Ulster County

I, the undersigned, do hereby affirm that I have received and fully reviewed the information provided in the below Addendum and that these documents are now incorporated into the Project Bid Documents.

Addendum 1 Acknowledgment (as needed) _____

Addendum 2 Acknowledgment (as needed) _____

Addendum 3 Acknowledgment (as needed) _____

Addendum 4 Acknowledgment (as needed) _____

Addendum 5 Acknowledgment (as needed) _____

Signature

Printed Name

Title

Company

Date

Olympic Regional Development Authority

Addendum Acknowledgement

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Offerer Disclosure of Prior Non-Responsibility Determinations

See instructions on next page before completing this form.

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address: _____

Name and Title of Person Submitting this Form: _____

Contract Procurement Number: _____ Date: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below and attach additional pages as necessary.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

6. If yes, please provide details below and attach additional pages as necessary.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Signature

Olympic Regional Development Authority

OEPC-3

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Instructions for Completing the OEPC-3

Offerer Disclosure of Prior Non-Responsibility Determinations

Background:

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

Instructions:

ORDA's Office of Environmental Planning and Construction includes this disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract, Supplement or Change Order. It shall be submitted to the Office of Environmental Planning and Construction.

This document must accompany each Bid Form, Letter of Interest, or Proposal submitted by an offerer and will be required for any contract amendments over \$15,000. This document must also accompany each Emergency Contract Bid Form.

DOCUMENT 00 21 13
INSTRUCTIONS TO BIDDERS

1. EXAMINATION OF DOCUMENTS

- 1.1. The Project Manual will be issued by ORDA's Office of Planning and Construction (OEPC) to Registered Bidders as specified in the Notice to Bidders (Document 00 11 14). ORDA reserves the right to release these documents electronically or in hard copy.
- 1.2. Carefully examine and be familiar with the Bidding and Contract Documents.

2. VISIT TO THE SITE

- 2.1. At the time of bid, no projects are identified. Therefore, a site specific examination is not possible.
- 2.2. A site visit will be conducted prior to the issuance of a Job Order. Prior to the site visit, the Contractor shall become familiar with restrictions and regulations established by the facility. Existing restrictions and regulations will not be considered as grounds for any adjustment to the Job Order Price.
- 2.3. The Contractor shall assume the risk of encountering any subsurface or other latent physical condition that can be reasonably anticipated on the basis of documentary information provided by ORDA and from inspection and examination of the Site.
- 2.4. Interpretations of contract documents by facility personnel are not binding.

3. DESIGNATED, PERMISSIBLE, IMPERMISSIBLE CONTACTS AND QUESTIONS

- 3.1. The designated contacts during the restricted period for this Project will be:
 - **Project Primary and Alternates:** As presented in Document Number 00 11 14 Notice to Bidders.
 - **Alternate:** (In the event that the Project Primary and/or Alternates Designated Contact(s) are unavailable, the below Alternate Contracts may be contacted:
 - Robert W. Hammond, Director of Environmental, Planning & Construction, telephone – (518) 302-5332
 - Kirk Bassarab, PE, Assistant Director of Environmental, Planning & Construction, telephone – (518) 302-5374
- 3.2. State Finance Law §139-j recognizes a series of permissible contacts that can go to other than the designated contacts, as follows:
 - 3.2.1. The submission of written proposals in response to a request for proposals, invitation for bids or any other method for soliciting a response from offerers intending to result in a procurement contract.
 - 3.2.2. The submission of written questions to a designated contact set forth in a request for proposals, or invitation for bids, or any other method for soliciting a response from offerers intending to result in a procurement contract, when all written questions and responses are to be disseminated to all offerers who have expressed an interest in the request for proposals, or invitation for bids, or any other method for soliciting a response from offerers intending to result in a procurement contract.

- 3.2.3. Participation in a conference provided for in a request for proposals, invitation for bids, or any other method for soliciting a response from offerers intending to result in the procurement contract.
 - 3.2.4. Complaints by an offerer regarding the failure of the person or persons designated by the procuring governmental entity pursuant to this section to respond in a timely manner to authorized offerer contacts made in writing to ORDA, provided that any such written complaints shall become a part of the procurement record.
 - 3.2.5. Offerers who have been tentatively awarded a contract and are engaged in communication with a governmental entity solely for the purpose of negotiating the terms of the procurement contract after being notified of tentative award.
 - 3.2.6. Contacts between designated governmental staff of the procuring governmental entity and an offerer to request the review of a procurement contract award.
 - 3.2.7. Contacts by offerers in protests, appeals or other review proceedings (including the apparent successful bidder or proposer and his or her representatives) before the governmental entity conducting the procurement seeking a final administrative determination, or in a subsequent judicial proceeding.
 - 3.2.8. Complaints of alleged improper conduct in a governmental procurement to the attorney general, inspector general, district attorney, or court of competent jurisdiction.
 - 3.2.9. Written protests, appeals or complaints to the New York State Office of the State Comptroller (OSC) during the process of contract approval, where OSC's approval is required by law, and where such communications and any response thereto are made in writing and shall be entered in the procurement record pursuant to §163 of the State Finance Law.
 - 3.2.10. Complaints of alleged improper conduct in a governmental procurement conducted by a municipal agency or local legislative body to OSC's office.
 - 3.2.11. Permissible Contacts are only with the procuring agency unless specifically excepted.
- 3.3. Impermissible contacts include those that a reasonable person would infer are intended to influence a governmental procurement and occur during the restricted period of a governmental procurement between the offerer and any member, officer or employee of any governmental entity; provided, however, that nothing in this section shall be deemed to prohibit an offerer from communicating with a member of the state legislature or legislative staff about a governmental procurement. Contacting a person or entity other than the designated contact person during the restricted period, when such contact does not fall within one of the exemptions, is also an impermissible contact.

Direct all conflicts, errors, discrepancies or questions regarding the intent or meaning of the drawings or specifications to the Olympic Regional Development Authority in writing, by the date identified in the **Schedule of Important Dates and Times**. Such requests shall be sent by email in PDF format with receipt request, or by postal service to:

Olympic Regional Development Authority
Olympic Center
2634 Main Street
Attn: Office of Environmental, Planning and Construction
Lake Placid, NY 12946
Projects@orda.org

- 3.3.1. Prospective bidders shall examine the Bidding and Contract Documents carefully and, before bidding, shall make written request for an interpretation or correction of any ambiguity, inconsistency or error therein which should be discovered by a reasonably prudent bidder. Such interpretation or correction as well as any additional Contract provision ORDA shall decide to include will be issued in writing by the Consultant/OEPC as an Addendum.
- 3.3.2. Prospective bidders are responsible for ensuring that all Addendum have been incorporated into the bid. The requirements contained in all Bidding and Contract Documents shall apply to all Addendum.
- 3.4. Only questions answered by formal written Addendum will be binding. Oral and other interpretations or clarification will be without legal effect.
- 3.5. Addendum, if any, will only be issued to Registered Bidders and shall be distributed via E-Mail unless full size plan sheets are required.
- 3.6. Pre-bid inquiries answered by means other than Addendum will not be binding.

4. PREPARATION OF BIDS

- 4.1. Prepare each bid on the official form furnished by ORDA (Document 00 21 00). **Enter all amounts in numerals.** Make no erasures, cross-outs, whiteouts, write-overs, obliterations, or changes of any kind in the Bid Form phraseology, in the entry of unit prices, or anywhere on the Bid Form. Fill in all blank spaces legibly. An illegible entry may disqualify the bid in its entirety. If a mistake is made, use a new Bid Form. No post bid meetings will be afforded to any bidder to explain or clarify illegible or changed entries.
 - 4.1.1. Any Proposal may be considered informal which does not contain all Adjustment Factors in all of the spaces provided or which is not accompanied by a bid security in proper form. In case any price shown in words and its equivalent shown in figures do not agree, the written words shall be binding upon the bidder. In case of a discrepancy in the prices contained in the Proposal forms submitted in duplicate by the bidder, the Proposal form which contains the lower bid shall be deemed the bid of the bidder; provided, however, ORDA at its election may consider the Proposal of such bidder informal.
- 4.2. Bids shall be submitted in duplicate in a sealed envelope clearly and distinctly marked with the Project Name, the contract number and the contractor's name; and for multiple prime job include the Trade being bid.
- 4.3. Bids shall not include sales and compensating use taxes on materials incorporated into the work.
- 4.4. Bidders shall be solely responsible for the delivery of their Bids in the manner and time prescribed.
- 4.5. If the Project Manual contains alternates, indicate the amounts to be added to or deducted from the base bid in the spaces provided on the Bid Form. If the Work is to be performed at no change in cost, indicate the word "NONE". Any bid which fails to indicate an amount with the words "ADD" or "DEDUCT" or the word "NONE", for each alternate, will be held to be informal and may be rejected.
- 4.6. Sign the Bid Form in the space provided. An officer or a principal of a corporation or a partnership signing for the bidder shall print or type the legal name of the person, partnership, or corporation on the line provided and place his/her signature after "SIGN BID HERE". The same procedure shall apply to the bid of joint venture by two or more firms, except that the signature and title of an officer or a principal of each member firm of the joint venture shall be required. All signatures must be original. Mechanically reproduced signatures or copies are not acceptable. Submitted Bid Forms that do not conform to these requirements will be disqualified.

- 4.7. Mailing Address: Include street address. Addendum sent by other than US Postal Service cannot be delivered to Post Office Boxes.
- 4.8. Each Bid must be accompanied with the following. Bids received without these items may be rejected:
 - 4.8.1. Bid Form – Signed by a duly authorized officer of the company,
 - 4.8.2. Acknowledgement of Addendum,
 - 4.8.3. Bid Security per Section 5 below, and
 - 4.8.4. OEPC-3 Offerer Disclosure of Prior Non-Responsibility Determinations (Document 00 21 12).

5. BID SECURITY INFORMATION

- 5.1. Bid security is required as a guarantee that the bidder will enter into the Contract within the time specified on the Bid Form. Submit bid security in the amount indicated in the Advertisement for Bids in one of the following forms:
 - 5.1.1. Certified check or bank check for a sum equal to \$10,000.00 drawn upon a legally incorporated bank or trust company and payable to the New York State Olympic Regional Development Authority).
 - 5.1.2. Bid Bond (ORDA Document 00 43 13) to be issued by a Surety licensed in the State of New York.
- 5.2. Upon submission of Bid Security in the form of a certified check or bank check, the Bid Security of the successful bidder will be returned, without interest, upon acceptance of the required bonds and the execution of Contract. The second low bidder's Bid security will be returned after the successful bidder executes the Contract. The Bid Security of all other bidders with a Bid Security in the form of checks will be returned as soon as possible after the apparent low bidder has been determined.
- 5.3. Bid Bonds, due to their nature, will not be returned.
- 5.4. Sign the Bid Bond in the space provided. An officer or a principal of a corporation or a partnership signing for the bidder shall print or type the legal name of the person, partnership, or corporation on the line provided and place his/her signature above "Principal". The same procedure shall apply to the bid security of a joint venture by two or more firms, except that the signature and title of an officer or a principal of each member firm of the joint venture shall be required. The same procedure shall apply to the signature for the Attorney-in-Fact. All signatures must be original. Electronic, mechanically-reproduced or stamped signatures, or copies, are not acceptable for either signature. Submitted Bid Security that does not conform to these requirements will be disqualified.

6. SUBMISSION OF BID

- 6.1. Submit Bid Form, Bid Security and form OEPC-3 – Offerer Disclosure of Prior Non-Responsibility Determinations in a sealed envelope. Telephone or fax bids will not be accepted.
- 6.2. All bids must be received before the time specified, and at the place designated for the receipt of bids as listed on Document 00 11 14 Notice to Bidders **"Schedule of Important Dates and Times"**.
- 6.3. A late bid will be considered if: (1) its arrival at the place designated after the time specified can be shown by documentary or other proofs to be due to mishandling by ORDA and (2) that absent such mishandling, the bid would have arrived timely. Delays in the mail or any other means of transmittal, including couriers or agents of the State, other than employees of ORDA, will not suffice to excuse late arrival.

6.4. A late bid not eligible for consideration will be returned unopened with notification of the reason for its refusal.

7. MODIFICATION OF BID

7.1 Bid modifications by amendment will only be considered on condition that: (1) the amendment is received before the time specified, and at the place designated for receipt of bids, (2) the amendment is in writing and executed by a principal of the bidder firm, and (3) the bid, as amended, conforms in all respects with the Contract Documents. Bid modifications may be hand-delivered or mailed to the ORDA Office of Environmental, Planning and Construction at the address in Section 3.3 of these Instructions to Bidders, or faxed to “518-523-4309.” Bidders may use a bid modification to acknowledge addendum and/or change the bid amount. Bid modifications received must be on company letterhead and signed by a principal of the bidder firm. DO NOT use the ORDA Bid Form to submit bid modifications. Indicate any amounts to be added to or deducted from any part of the bid amount with the words “ADD” or “DEDUCT” next to the amount. The **only** amounts listed on a bid modification should be the amounts to be added or deducted. **DO NOT** expose the new bid amount on the bid modification. If the bid amount is shown on the bid modification, or otherwise exposed at any time before the bid opening, **the bid shall be disqualified.**

8. WITHDRAWAL OF BID

- 8.1. A bid may be withdrawn at any time prior to the time specified for receipt of bids. Should a bidder decide to withdraw its bid before the bid opening, the request must be prepared on company letterhead, signed by a principal of the bidder firm, and faxed to (518) 523-4309, or hand-delivered or mailed to the ORDA Office of Environmental, Planning and Construction at the address in Section 3.3 of these Instructions to Bidders. ORDA will fax and/or e-mail an acknowledgment of the withdrawal request that includes an indication that the unopened bid will be returned. Should the withdrawal request be in error, the bidder must call OEPC at (518) 302-5332 immediately. The unopened bid will be returned by mail to the bidder.
- 8.2. Not more than five (5) business days after the bid opening or a scheduled pre-award meeting, whichever comes later, a low bidder may request the withdrawal of its bid based on a mistake. The request must be submitted via certified or registered mail to the address to which the bid was directed. OEPC may conduct or have conducted on the bidder’s behalf a fact-finding proceeding to develop information concerning the request for withdrawal. A request for withdrawal of a bid made after the specified number of days allowed shall result in automatic forfeiture of the bid security.
- 8.3. Following a timely request for withdrawal of a bid, the Bid Security will be returned if the bidder establishes by credible evidence, including original documents when requested, the following:
- 8.3.1. An error, clerical as opposed to judgmental in nature and verifiable by written evidence, occurred in the computation of the bid,
 - 8.3.2. The error constitutes either an unintentional and substantial computational error or an unintentional omission of a substantial quantity of labor and/or material from the final bid computation,
 - 8.3.3. The absence of gross negligence in the preparation of the bid. For the purposes of this subparagraph, gross negligence may include,
 - i. the apparent failure of a bidder to account for two or more categories (divisions) of work,
 - ii. the use of multiple erroneous quotations from subcontractors or suppliers,
 - iii. submission to OEPC of a bid withdrawal request within the preceding six (6) months.

- 8.3.4. If the bidder fails to meet its burden of proof, the request to withdraw without penalty shall be denied and its Bid Security will be forfeited and become the property of the ORDA. The decision of OEPC shall be final and conclusive.
- 8.3.5. Once a request to withdraw is made, the bidder is ineligible for award. OEPC shall continue to progress the award process considering only the remaining bids.
- 8.4. A bidder may withdraw its bid if no award is made within sixty (60) days after the receipt of bids. A written notice must be submitted via certified or registered mail to the address in Section 3.3 of these Instructions to Bidders prior to approval of the contract by ORDA. The notice must clearly state that the withdrawal is based on the fact that the contract was not awarded within 60 days after the receipt of bids.

9. DISQUALIFICATION

- 9.1. Any bid which fails to conform to the requirements of the Bidding and Contract Documents may be rejected.
- 9.2. The Director may waive any informality or afford the bidder an opportunity to remedy any deficiency resulting from a minor informality or irregularity.
- 9.3. ORDA reserves the right to disqualify bidders, before or after bid opening, upon evidence of collusion with third parties or other illegal practices upon the part of the bidder.
- 9.4. ORDA reserves the right to disqualify bidders, before or after bid opening including but not limited to any of the following which may be considered just cause to disqualify a bid:
- 9.4.1. Evidence of collusion, directly or indirectly,
 - 9.4.2. Any attempt to improperly influence any staff,
 - 9.4.3. Bidder's prior work and/or performance on past contracts,
 - 9.4.4. Incomplete or incorrect information submitted as part of the bid,
 - 9.4.5. Evidence of Bidder's inability to successfully complete the responsibilities and obligations of the proposal; and
 - 9.4.6. Bidder's default under any agreement, which results in termination of the Agreement.
- 9.5. Prohibition of Gifts: ORDA officials are subject to several legal and policy limitations regarding receipt of gifts from persons, firms, or corporations either engaged in business with the ORDA, or proposing to do business with the ORDA. The offering of any illegal gift shall be grounds to disqualify a Bidder. To avoid even the appearance of impropriety, Bidder should not offer any gifts or souvenirs, even of minimal value, to ORDA officers or employees.

10. GOVERNING LAWS AND REGULATIONS ADMINISTERED BY OTHER DEPARTMENTS

- 10.1. Taxes: All taxes pertaining to the Work must be paid. Address inquiries regarding taxes to the Tax Collecting Agency. For information regarding sales and use taxes contact the Sales Tax Bureau, Department of Taxation and Finance.
- 10.2. While all applicable laws, rules and regulations of the State of New York are incorporated by reference in this Contract, take special note of the provisions of the Labor Law and Industrial Code Rule 23 relative to the safety of workers and of persons lawfully occupying or using the premises. Address inquiries regarding labor law provisions to the New York State Department of Labor.
- 10.3. Anti-Discrimination Clause: Discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status is prohibited.

11. OPENING OF BIDS

Bids will be publicly opened as announced in Document 00 11 14 Notice to Bidders.

12. DETERMINATION OF BIDDER'S/CONTRACTOR'S RESPONSIBILITY

12.1. The State Public Buildings Law requires that contracts for public work in the State of New York be awarded to the lowest responsible and reliable bidders as will best promote the public interest.

12.2. Each apparent low bidder, and each proposed subcontractor (for subcontract work of \$100,000 or more) will be required to submit form CCA-2 - *New York State Vendor Responsibility Questionnaire For Profit Construction* prior to contract award or subcontractor approval. ORDA reserves the right to request CCA-2 forms from proposed subcontractors for work of less than \$100,000 if it is determined to be in the best interest of the State. Submission of these forms will assist ORDA in determining the responsibility and reliability of the vendor.

ORDA recommends that vendors file the required CCA-2 form online via the New York State VendRep System. Use of this system requires that the vendor have a New York State Vendor Identification Number (Vendor ID). Please note that the Vendor ID is not the Taxpayer ID number.

If bidders do not already have a Vendor ID, they are encouraged to obtain one *in advance of* the bid opening.

To obtain a Vendor ID, contact the OSC Help Desk at 866-370-4672 or 518-408-4672, or by e-mail at ITServiceDesk@osc.state.ny.us.

To enroll in and use the VendRep System, see the **VendRep System** page at:

http://www.osc.state.ny.us/vendrep/info_vrsystem.htm

If you already have a User ID and password, go directly to the VendRep System online at:

<https://portal.osc.state.ny.us>.

For direct VendRep System user assistance, contact the OSC Help Desk; the help desk phone numbers and e-mail address are shown above.

Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website at http://www.osc.state.ny.us/vendrep/forms_vendor.htm or may telephone the OSC Help Desk.

12.3. After the bids are opened, the apparent low bidder shall complete and file the CCA-2 within 5 days. Vendors using the online system may certify (or recertify) and file the CCA-2 electronically via the VendRep System (<https://portal.osc.state.ny.us>).

12.4. It is recommended that all bidders become familiar *in advance* with all of the requirements of the CCA-2. As mentioned in 12.2, bidders who do not have a Vendor ID are encouraged to obtain one in advance of the bid opening.

12.5. All bidders must submit a completed form OEPC-3 - *Offerer Disclosure of Prior Non-Responsibility Determinations* (Document 00 21 12) with their Bid Form.

12.6. The determination of responsibility will include a review to ensure the Contractor has not knowingly and willfully violated the provisions of the Procurement Lobby Law or New York State Finance Law §139-j and §139-k.

12.7. New York State Finance Law §139-k (2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State

Finance Law §139-k, a Contractor must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity.

- 12.8. As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether a Contractor fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no procurement contract shall be awarded to any Contractor that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary time frame.

13. SUBMISSION OF POST-BID INFORMATION

- 13.1. Within two (2) business days after the opening of bids, each of the apparent three (3) lowest bidders, unless otherwise directed by ORDA or otherwise provided in the Bidding and Contract Documents, shall submit to ORDA:

13.1.1. The names, addresses and phone number of the bidder's proposed subcontractors.

13.1.2. A breakdown of the amount of the bidder's Proposal. Such breakdown shall be prepared in accordance with industry standards.

13.1.3. The following forms, completed as required:

- i. Code of Business Ethics (Document 00 62 00)
- ii. Certificate of Non-Collusion (Document 00 64 00)
- iii. Procurement Lobbying Law – Certification (Document 00 63 00)
- iv. Executive Order 177 (Document 00 65 00)
- v. Affidavit of Worker's Compensation (Document 00 65 10)
- vi. Evidence of Bidder's qualifications to do business in New York State if the bidder is a non-New York State company
- vii. W-9 (Document 00 66 00)

- 13.2. In order to demonstrate qualification to perform the Work, each Bidder must be prepared to submit within five (5) business days of ORDA's request written evidence of:

13.2.1. Financial data, previous experience, present commitments and such other data as requested by ORDA in accordance with the General and Supplemental Conditions, including insurances and bonding.

13.2.2. Determination of Safety of Operating and Experience of Work for Projects that require special skills due to environmental conditions or other conditions that are non-typical.

- 13.3. The Bidder's compliance with the Non-Discrimination Requirements and ORDA's Affirmative Action Policy are precondition to entering into a valid and binding Contract with ORDA.

- 13.4. The above information and such other information as ORDA or the Consultant/OEPC may request or obtain will be used by ORDA in determining the reliability and responsibility of the bidder. Each bidder must comply promptly with all requests by ORDA and the Consultant/OEPC for information and must actively cooperate with ORDA and the Consultant/OEPC in their efforts to determine the qualifications of the bidder.

14. QUALIFICATIONS OF BIDDERS

- 14.1. All prospective bidders are hereby notified that, on request of ORDA, they must be able to prove to the satisfaction of ORDA that they have the skill and experience, as well as the necessary facilities, ample financial resources, organization and general reliability to do the work to be performed under the provisions of the Contract in a satisfactory manner and within the time specified.
- 14.2. Each bidder must be prepared to show to the satisfaction of ORDA that it has working capital available for the Project upon which it is bidding in an amount equal to 15 percent of the first \$100,000 of the amount of its Base Bid plus 10 percent of the next \$900,000 plus 5 percent of the remainder of its Base Bid. Working capital is defined as the excess of current assets over current liabilities. ORDA defines current assets as assets which can be reasonably expected to be converted into cash within a year, and current liabilities as debts which will have to be paid within a year.
- 14.3. A bidder must also be prepared to prove, to the satisfaction of ORDA, that it has successfully completed a contract of similar work in an amount of not less than 50 percent of the amount of its Base Bid. Refer to Document 00 22 19 for additional requirements, if any, which shall supersede the requirements of this Section 14.3.

15. AWARD OF CONTRACT

- 15.1. The Contract may be awarded to the lowest responsible and reliable bidder as will best promote the public interest.
- 15.2. If alternates are included in the bidding documents, ORDA reserves the right to accept or reject any or all alternates. ORDA shall determine the lowest bid by adding to or deducting, from the Base Bid Amount of the bidders, the additive or deductive alternates, if any, that ORDA elects to accept after the opening of the bids. Alternates will be accepted in the order they are set forth in the contract documents.
- 15.3. The State reserves the right to reject any or all bids, and advertise for new bids, if in its opinion the best interest of the State will thereby be promoted. In the event that all bids are rejected, each bidder will be so notified.
 - 15.3.1. A Proposal may be rejected if the bidder fails to furnish the required bid security or to submit the data required with or after its Proposal.
 - 15.3.2. A Proposal may be rejected if the bidder cannot show to the satisfaction of ORDA: (i) that it has the necessary capital, skill and experience; or (ii) that it owns, controls or can procure the necessary plant and equipment to commence the work at the time prescribed in the Contract and thereafter to prosecute and complete the work at the rate, or within the time specified; or (iii) that it is not already obligated by the performance of so much other work as is likely to delay the commencement, prosecution or completion of the work contemplated by the Contract.
 - 15.3.3. A Proposal will be rejected if it does not provide for the completion of the work by the date of completion specified in the Proposal.
- 15.4. Pursuant to Public Buildings Law § 8(6), effective 11 January 2020, for any projects where the project design commenced on or after 01 January 2020 and for any contracts over \$5,000 for the work of construction, reconstruction, alteration, repair, or improvement of any State building, a responsible and reliable NYS-certified Minority or Women-Owned Business Enterprise (“MWBE”) that submits a bid within ten percent of the lowest bid will be deemed the apparent low bidder provided that the MWBE bid is \$1,400,000 or less, as adjusted annually for inflation beginning January 1, 2020. If more than one responsible or reliable NYS-certified MWBE firm meets these requirements, the MWBE firm with the lowest bid will be deemed the apparent low bidder. Refer to the Advertisement for Bids for applicability of projects subject to these criteria.

16. MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND SERVICE-DISABLED VETERAN-OWNED BUSINESSES

- 16.1. Pursuant to New York State Executive Law Article 15-A and the rules and regulations promulgated thereunder, ORDA is required to promote opportunities for the maximum feasible participation of NYS-certified Minority- and Women-owned Business Enterprises and the employment of minority group members and women in the performance of ORDA contracts.
- 16.2. The Minority / Women Owned Business Sub-Contracting / Supplier Goals and Service-Disabled Veteran-Owned Businesses goals for this solicitation are presented in Document 00 22 13 – Supplemental Information and Instructions to Bidders MWBE EEO & SDVOB
- 16.3. Information on MWBEs, including a directory of MWBE's, is available from:

NYS Empire State Development
Minority and Women's Business Development Division
30 South Pearl Street
Albany, NY 12245
Telephone: (518) 292-5252
Website: <https://esd.ny.gov/doing-business-ny/mwbe>

- 16.4. Pursuant to New York State Executive Law Article 17-B enacted in 2014, the State acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at:

http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf

- 16.5. Bidders need to be aware that contractors will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.
- 16.6. Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated public procurements.
- 16.7. Public procurements can drive and improve the State's economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects bidders/proposers to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers.

17. SURETY BOND

- 17.1. Prior to the award of the Contract, the Contractor shall provide a Payment Bond and a Performance Bond. Each bond shall have a penal sum equal to \$1,000,000 as security for the faithful performance of this Contract, and for the payment of all persons performing labor or furnishing materials in connection with this contract. These bonds are to be executed on ORDA's forms (Documents 00 43 14 and 00 43 15) and the surety company must be licensed in the State of New York, have a Best Rating of

A- or better and appear on the most recent published Department of the Treasury's Listing of Approved Sureties (Department Circular 570) at the time of filing the bonds.

- 17.2. If, at any time, the total value of outstanding Job Orders exceeds the penal sum of the Performance and Payment Bonds then in effect, the Owner may, at its discretion, require the Contractor to submit a new Performance and Payment Bond in the amount of \$1,000,000 or the penal sum equal to such total value of outstanding Job Orders, whichever is greater.
- 17.3. The cost of all bonds is to be included in the Contractor's Adjustment Factors.

18. POLICY ON TIED BIDS

- 18.1. A tie-bid is defined as an instance where bids are received from two or more bidders who are the apparent low responsive and reliable bidders with identical offers, or who are MWBEs with identical offers with bids of \$1,400,000 or less and whose bids are within ten percent of the lowest bid. A tie-bid does not exist when an apparent low bidder has an identical offer to an MWBE, as the MWBE is deemed the apparent low bidder pursuant to Public Buildings Law § 8(6). It is the policy of ORDA to settle the outcome of tie-bids between two contractors where the Bid includes Alternates, to determine the Low Bid based on the selected Alternates in combination with the Base Bid. For Tie-bids between two contractors, where there are no monetary means to differentiate via Alternates to settle the tie-bids either drawing a name from a hat or flipping a coin within 24 hours of the bid opening. All affected firms will be notified of the tie and the time and place of the resolution of the tie and shall be invited to witness the outcome. Attendance is not mandatory. The drawing/flip will be held at the address in Paragraph 3.3. Two impartial witnesses will be provided and shall be present. All attendees will acknowledge the results of the tiebreaker on the bid tabulation sheet. All firms affected by the tied bids will be notified of the results. The results pursuant to this provision shall be considered final.

19. INSURANCE REQUIREMENTS

- 19.1. Prior to the commencement of work the Successful Bidder will provide, at its sole cost and expense, Certificates of Insurance in accordance with New York State Olympic Regional Development Authority Insurance Requirements (Most Recent Version). Such Certificates of Insurances shall be from an insurance company licensed by the New York State Department of Insurance with a rating of at least "A-" as published with Standard & Poor's, and a liability insurance policy with limits no less than provided for on the above referenced document per claim. If during the term of the policy, the carrier's rating falls below "A-", the liability insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the State of New York. Such policies shall name the NEW YORK STATE OLYMPIC REGIONAL DEVELOPMENT AUTHORITY and the STATE OF NEW YORK as additional insured, and the other entities as required on the above reference form. The policy shall designate the New York State Olympic Regional Development Authority as the loss payee and shall contain a provision that the New York State Olympic Regional Development Authority shall receive at least thirty (30) days' notice prior to material change, cancellation or expiration of any such policy.

20. WORKERS' COMPENSATION INSURANCE AND DISABILITY BENEFITS REQUIREMENTS

- 20.1. Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts provide proof that they have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in a rejection of the vendor's bid or renewal.

- 20.2. Proof of Compliance with Workers' Compensation Coverage Requirements: In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall: (1) obtain such coverage from an insurance carrier; or (2) be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan; or (3) be legally exempt from obtaining Workers' Compensation insurance coverage.

An ACORD 25 form is **NOT** acceptable as proof of workers' compensation coverage.

A Contractor seeking to enter into a contract with the State of New York **MUST** provide **ONE** of the following forms to ORDA upon request, prior to award:

20.2.1. CE-200, *Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage*, which is available on the Workers' Compensation Board's website, www.wcb.ny.gov, under the heading "Forms"; **OR**

20.2.2. C-105.2 – *Certificate of Workers' Compensation Insurance* (the contractor's insurance carrier will send this form to ORDA upon request); contractors insured through the New York State Insurance Fund should use their version of the form, the U-26.3; **OR**

20.2.3. SI-12 – *Certificate of Workers Compensation Self-Insurance* (the contractor should call the Workers' Compensation Board's Self-Insurance Office at 518 402-0247), **OR** GSI-105.2 – *Certificate of Participation in Workers' Compensation Group Self-Insurance* (the contractor's Group Self-Insurance Administrator will send this form to ORDA upon request).

- 20.3. Proof of Compliance with Disability Benefits Coverage Requirements: In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, a contractor shall: (1) obtain such coverage from an insurance carrier; or (2) be a Board-approved self-insured employer; or (3) be legally exempt from obtaining disability benefits coverage.

An ACORD 25 form is **NOT** acceptable as proof of disability benefits coverage.

A Contractor seeking to enter into a contract with the State of New York **MUST** provide **ONE** of the following forms to ORDA upon request, prior to award:

20.3.1. CE-200 – *Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage*, which is available on the Workers' Compensation Board's website, www.wcb.ny.gov, under the heading "Forms"; **OR**

20.3.2. DB-120.1 – *Certificate of Disability Benefits Insurance* (the contractor's insurance agent, broker or carrier will send this form to ORDA upon request); **OR**

20.3.3. DB-155 – *Certificate of Disability Benefits Self Insurance* (the contractor should call the Workers' Compensation Board's Self-Insurance Office at 518 402-0247).

20.3.4. All of the above-referenced forms, except the CE-200, SI-12 and DB-155, must show the following as the Entity Requesting Proof of Coverage (entity being listed as the Certificate Holder). Please refer to 007302 Supplemental Conditions – Insurance for Additional Insureds: Olympic Regional Development Authority, 2634 Main Street, Lake Placid, NY 12946

21. GENERAL ADMINISTRATION

- 21.1. The successful bidder shall be required to comply with all provisions of the Federal Government Equal Employment Opportunity clause issued by the Secretary of Labor on May 21, 1968 and published in the Federal Register (41 CFR Part 60-1, 33 F.2 7804).

- 21.2. All work must be performed in accordance with the rules, regulations and variances set forth by the New York State Department of Labor Industrial Code 56, EPA, OSHA and other regulatory agencies for asbestos removal and disposal.
- 21.3. Prevailing Wage Rates shall be paid to workers on the project. The Olympic Regional Development Authority is exempt from paying sales and compensating use taxes of the State of New York, cities and counties, on materials to be incorporated into the work.
- 21.4. The successful bidder shall provide ORDA a W-9 (Document 00 66 00) within five (5) days of the Notice of Award.
- 21.5. Words of the masculine and feminine genders shall be deemed and construed to include the neuter gender. Unless the context otherwise indicates, the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms, as used in this RFP, refer to this RFP.

22. GENERAL TERMS AND CONDITIONS

- 22.1. The following items will be incorporated into, and made part of, the formal agreement: (1) ORDA’s Invitation for Bid; (2) the Successful Bidder’s Bid; (3) the Standard Form of Agreement, (4) Exhibits to the Agreement, (5) Notice to Proceed, (6) General Conditions, (7) Supplementary or Special Conditions, (8) the Construction Task Catalog® and Technical Specifications, (9) Addenda, (10) Documentation submitted by Contractor prior to Notice of Award/ to Proceed, (11) Standard Contract Terms, (12) Sub-Contractor Site Access Agreement(s), Procurement Lobbying Form and Code of Business Ethics, (13) MWBE/SDVOB Supplier Goals and Forms, (14) Executive Order 177, and (15) JOC Supplemental Conditions.
- 22.2. In the event of any inconsistency in or conflict among the document elements of the agreement described above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order: (1) Standard Contract Terms, (2) Standard Form of Agreement, (3) Supplementary and Special Conditions, (4) JOC Supplemental Conditions, (5) General Conditions, (5) Addenda, (7) Specifications bearing the Project Name/Title, (8) Exhibits to the Agreement, (9) Notice of Award/ to Proceed, (10) Successful Bidder’s Bid.

23. ADDITIONAL TERMS AND CONDITIONS

- 23.1. The terms and conditions of ORDA Standard Form of Agreement shall apply and is provided as an attachment to this Request for Bids (RFB).
- 23.2. The resulting agreement shall be binding upon its execution by both parties and, if required by New York State law.
- 23.3. the agreement may be revised at any time upon mutual consent of the parties in writing. Such written consent will not be effective until signed by both parties.
- 23.4. The relationship of the Successful Bidder to ORDA shall be that of independent contractor.
- 23.5. Compliance with the post-employment restrictions of the Ethics in Government Act is required.
- 23.6. The submission of a proposal constitutes a binding offer to perform and provide said services.
- 23.7. In the event the Successful Bidder uses partners, subcontracts or subcontractors, the Successful Bidder will remain responsible for compliance with all specifications and performance of all obligations under the contract resulting from this RFB. For the resulting agreement, the Successful Bidder will be the prime contractor.

- 23.8. ORDA will not be liable for any costs associated with the preparation, transmittal, or presentation of any Bids or materials submitted in response to this RFB.
- 23.9. Public announcements or news releases regarding this RFB or any subsequent award of a contract must not be made by any Bidder without the prior written approval of ORDA.
- 23.10. The Successful Bidder is responsible for compliance with all applicable rules and regulations pertaining to cities, towns, counties and State where the services are provided, and all other laws applicable to the performance of the resulting contract. The Successful Offerer shall provide all necessary safeguards for safety and protection as set forth by the United States Department of Labor, Occupational Safety and Health Administration.
- 23.11. The Successful Bidder will be responsible for the work, direction and compensation of its employees. Nothing in the resulting agreement or the performance thereof by the Successful Bidder will impose any liability or duty whatsoever on ORDA including, but not limited to, any liability for taxes, compensation, commissions, Workers' Compensation, disability benefits, Social Security, or other employee benefits for any person or entity.
- 23.12. In the event the Successful Bidder is required to be reimbursed for travel, (Professional Contracts) Bidder shall be reimbursed at rates not to exceed the current NYS Schedule of Allowable Reimbursable Travel Expenses. Refer to the U.S. Government Administration Rates for Travel at: <http://www.gsa.gov>
- 23.13. In addition, ORDA reserves the right to:
- 23.13.1. Not accept any and all Bids received in response to this RFB.
 - 23.13.2. To terminate any resulting contract for: (1) unavailability of funds; (2) cause; (3) convenience; (4) in the event it is found that the certification filed by the Bidder in accordance with State Finance Law §§139-j and 139-k are found to be intentionally false or intentionally incomplete; and if applicable, the Department of Taxation and Finance Contractor Certification Form ST-220CA was false or incomplete. Upon such finding ORDA may exercise its termination right by providing written notification to the Bidder in accordance with the written notification terms of the contract.
 - 23.13.3. Request certified audited financial statements for the past three (3) completed fiscal years and/or other appropriate supplementation including, but not limited to, interim financial statements and credit reports.
 - 23.13.4. Contact any or all references.
 - 23.13.5. Request clarifications from Bidders for purposes of assuring a full understanding of responsiveness, and further to permit revisions from all Bidders determined to be susceptible to being selected for contract award, prior to award.
 - 23.13.6. Advise Bidder of any objectionable employee(s) and/or subcontractor(s) and request their removal from the project. Such removal shall not be reasonably withheld by the Bidder.

24. BIDDER DEBRIEFING

- 24.1. Upon notification of the selection and award of a contract unsuccessful bidders may request in writing a debriefing of the results of their response to this solicitation. Requests for debriefing must be received within a reasonable timeframe, not more than thirty (30) days after notice of award.

25. QUALIFICATION AND PROPOSAL CONFIDENTIALITY

- 25.1. All qualifications and proposals information submitted for ORDA's consideration will be held in confidence upon request, in writing. However, all information submitted by a Bidder is subject to the

New York State Freedom of Information Law (FOIL). Therefore, if a Bidder believes that any information in its proposal constitutes a trade secret or should otherwise be treated as confidential and wishes such information not to be disclosed the Bidder shall submit with its proposal a separate letter to the designated contact. The letter shall specifically identify the page number(s), line(s) or other appropriate designation(s) containing such information, explaining in detail why such information is a trade secret and formally requesting that such information be kept confidential. Failure by a Bidder to submit such a letter will constitute a waiver by the Bidder of any rights it may have under Section 89(5) of the Public Officers' Law relating to protection of trade secrets.

- 25.2. The proprietary nature of the information designated confidential by the Bidder may be subject to disclosure if ordered by a court of competent jurisdiction. A request that an entire proposal be kept confidential is not advisable since a proposal cannot reasonably consist of all data subject to FOIL proprietary status.

26. HEALTH AND SAFETY REQUIREMENTS AND COVID-19

- 26.1. The Bidder agrees it is responsible for complying with any and all health and safety requirements issued by federal, state, county and local entities, including but not limited to ORDA, New York State Governor Office Executive Orders, New York State Department of Health rules, regulations and guidance, and all other laws, rules, regulations or requirements that exist or may be issued and/or amended during the bidding and/or performance of work on this Project. Bidder specifically acknowledges that the foregoing includes all laws, rules, regulations or requirements related to the COVID-19 pandemic.

27. IRAN DIVESTMENT ACT

- 27.1. By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, bidder/Contractor (or any assignee) certifies 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" list ("Prohibited Entities List") posted on the OGS website at

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

- 27.2. During the term of the Contract, should ORDA receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, ORDA 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 Act within 90 days after the determination of such violation, then ORDA shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

28. INFORMATION SECURITY BREACH AND NOTIFICATION ACT

- 28.1. The Bidder shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa and State Technology Law, Section 208). The Bidder shall be liable for the costs associated with such breach if caused by its negligent or willful acts or omissions, or the negligent or willful acts or omissions of its agents, officers, employees or subcontractors.

28.2. ORDA reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, 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.

29. QUALIFICATIONS OF BIDDERS

29.1 The Contracting Officer or their representative will schedule a pre-award meeting to consider the bid responsiveness of the bid submitted by the apparent low bidder generally within fifteen (15) working days of the bid opening. Bidders will be notified of the time and place of the meeting. On a case by case basis, ORDA will examine and evaluate the bid as responsive by considering the contractors understanding of: the overall scope, estimated cost, utilization of proposed sub-contractors, expertise, workmanship and past performance in completing similar contracts.

29.2 The Contracting Officer or their respective representative will conduct an investigation to determine the responsibility of any Bidder, including the ability of any Bidder to perform the Work. Bidders shall furnish to the Officer all information and data requested, including complete financial data, within the time and in the form and manner requested. The Contracting Officer reserves the right to reject any bid if the evidence required by the Officer is not submitted as requested, or if the evidence submitted by or the investigation of any Bidder fails to satisfy the Contracting Officer that the Bidder is responsible, or is able and qualified to carry out the obligations of the Contract, or to complete the Work as indicated in the Contract Documents, or able to reasonably perform the Work for the Bid Amount.

29.3 The criteria contained in Executive Order No. 170.1 Uniform Guidelines for Determining the Responsibility of Bidders will be applied in the evaluation of Bidders. Special criteria that will be considered in establishing the responsibility of the Bidders shall include, but not be limited to established experience in performing the Work required by the Contract Documents. Experience will be viewed from comparable projects as well as experience and knowledge of construction by the firm's personnel.

30. MANDATORY PRE-AWARD SUBMITTAL REQUIREMENTS

30.1 The apparent low bidder must submit the required pre-award submittal package outlined below to the Contracting Office within five (5) working days after the bids are opened.

Olympic Regional Development Authority
Olympic Center
2634 Main Street
Attn: Office of Environmental, Planning and Construction
Lake Placid, NY 12946
Projects@orda.org

Submissions must be emailed and must include the Project Identification Number (PIN) of this contract in the Subject Line of the Pre-Award submission email (i.e. PIN: EXO.19.001).

Pre-award Submittal Package:

1. References and Experience:
 - a. List of all past contracts with ORDA. Include ORDA PIN and date.

- b. Provide three (3) references (Name, Title, and Phone Number) associated with three (3) different projects (ORDA, public, or private sector) of similar scope and size to the one identified in this contract. "Scope" shall mean the Work required by the Contract Documents and "size" shall mean the Contract Price for this Contract.

Additionally, include the names of two (2) major suppliers and; if used, two (2) major subcontractors, used for each of these three (3) projects. Provide a full description of the project including the year of the work, the final costs, listing of all project elements in CSI format, listing of all subcontractors, the Engineer/Architect of Record, and the Owner's Representative on the site.

Provide a copy of recent past experience as required under the filing of the NYS Vendor Responsibility Questionnaire (CCA-2 document) with the Office of the State Comptroller. Provide only Attachment A: Completed Construction Contracts and Attachment B: Uncompleted Construction Contracts. For additional information, see:

<http://www.osc.state.ny.us/vendrep/form cca2.htm>

- c. Provide résumés for Contractor's proposed supervisory staff setting forth established experience in performing the Work required by the Contract Documents together with qualifications for specialized expertise or any certification(s) required to perform the Work.
- d. Provide Submittal Coordinator qualifications when required by Section 01 33 00.
2. Provide information for any other special requirements at the request of the Director's Representative.
- 30.2 When requested by the Director or the Director's Representative, Bidders shall, within the time specified by the Director or the Director's Representative, submit to the Director the names of the Subcontractors the Bidder proposes to use on the Contract. The Director reserves the right to disapprove the use of any proposed Subcontractor. In such an event the Bidder shall submit the name of another Subcontractor in like manner within the time specified by the Director or the Director's Representative. The Bidder shall have and will make no claim for compensation if the Director disapproves any proposed Subcontractor. The Director reserves the right to reject any bid if the names of proposed Subcontractors, or additional subcontract information, are not submitted as required.

END OF DOCUMENT

DOCUMENT 00 22 13

**Supplemental Information and Instructions to Bidders
M/WBE/EEO/SDVOB**

Job Order Contracting

SUPPLEMENTARY CONDITIONS – M/WBE/EEO/SDVOB

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

I) REQUIREMENTS FOR UTILIZATION OF MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES (M/WBEs) AND SERVICE-DISABLED VETERAN BUSINESS OWNED ENTERPRISES (SDVOB)

A) Participation by Minority Group Members and Women and Service-Disabled Veteran Business Owned Enterprises with Respect to State Contracts: Requirements and Procedures: General Provisions:

- 1) ORDA is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“M/WBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction (the “Work”).
- 2) ORDA is required to implement the provisions of New York State Executive Law Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. ORDA recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ORDA contracts.
- 3) In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, the Contractor is expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.
- 4) The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to ORDA, to fully comply and cooperate with ORDA in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for M/WBEs. The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.
- 5) Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, a breach of contract, leading to the withholding of funds, liquidated damages pursuant to Sections III.11 and III.12 herein, and/or enforcement proceedings as allowed by the Contract and applicable law.

B) Contract Goals:

- 1) For the purposes of this solicitation, ORDA hereby establishes the following goals (“Contract Goals”):
 - 3% for “MBE” participation, 20% for “WBE” participation, and 6% for SDVOB.
 - For each Job Order with a Job Order Price less than \$100,000.00, there will be no goals for MBE, WBE and SDVOB participation and the Job Order Price will not be included when determining the Contractor’s compliance with the Contract Goals.
 - The Contract Goals shall be applicable to each Job Order with a Job Order Price greater than or equal to \$100,000 (“Applicable Job Order”).
 - a. For purposes of providing meaningful participation by M/WBEs on the Contract and achieving the Contract Goals established in Section I.B.1 hereof, the Contractor should reference the directory of NYS Certified M/WBEs found at the following internet address:
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.
 - b. For purposes of providing meaningful participation by SDVOBs, the Contractor should refer to the List of Certified NYS Service-Disabled Veteran-Owned Businesses, which can be accessed from the OGS website page at the following link:
<https://ogs.ny.gov/veterans>
 - c. The M/WBE Regulations are located at 5 NYCRR §§ 140 – 145.
- 2) **For each Applicable Job Order, the Contractor is required to submit with its Job Order Proposal a M/WBE/SDVOB Utilization Plan on Form A and Form A Supplemental.** Any modifications or changes to the M/WBE/SDVOB Utilization Plan after the issuance of the Job Order and during the term of the Job Order must be reported on a revised M/WBE/SDVOB Utilization Plan and submitted to ORDA.
- 3) Staffing Plan (“From C”) shall be submitted by the Contractor with its Job Order Proposal.
- 4) Pursuant to 5 NYCRR §142.8, the Contractor must document “good faith efforts” to provide meaningful participation by M/WBEs as subcontractors or suppliers in the performance of the Contract. The Contractor must also document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.
- 5) In accordance with Executive Law Section 316-a and 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the M/WBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to ORDA for liquidated or other appropriate damages, as set forth herein.
- 6) In accordance with 5 NYCRR § 142.8, the Contractor must document their good faith efforts toward utilizing M/WBEs on the Contract. In accordance with 9 NYCRR § 252.2(n), the Contractor must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:
 - a. A list of the general circulation, trade, and M/WBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified M/WBE/SDVOBs as subcontractors/suppliers, copies of such solicitations, and any responses thereto. Solicitation shall include posting to the New York State Contract Reporter.

- b. A list of certified M/WBEs appearing in the Empire State Development (“ESD”) M/WBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified M/WBEs. Describe specific reasons that responding certified M/WBEs were not selected.
- c. A list of certified SDVOBs appearing in the OGS List of Certified NYS Service-Disabled Veteran-Owned Businesses that were solicited for the Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified SDVOBs. Describe specific reasons that responding SDVOBs were not selected.
- d. Descriptions of the Contract documents/plans/specifications made available to certified M/WBE/SDVOBs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified M/WBE/SDVOBs.
- e. A description of the negotiations between the Contractor and certified M/WBE/SDVOBs for the purposes of complying with the M/WBE/SDVOB goals of the Contract.
- f. Dates of any pre-bid, pre-award, or other meetings attended by the Contractor, if any, scheduled by ORDA with certified M/WBE/SDVOBs whom ORDA determined were capable of fulfilling the Contract Goals.
- g. Other information deemed relevant to the request.
- 7) The goal for participation in the conduct of the Work is expressed as a percentage equal to the dollar value of the Work performed divided by the total of the Job Order Prices for all Applicable Job Orders (“Job Order Prices Total”). Where the cost to the Contractor of a single item of equipment exceeds twenty-five percent (25%) of the Job Order Prices Total and where the Contractor has shown good faith efforts to obtain such equipment from M/WBE manufacturers and suppliers, and was unsuccessful in obtaining the equipment from an M/WBE, the cost of such equipment shall be deducted from the Job Order Prices Total prior to computing the M/WBE participation.
- 8) The M/WBE utilization credit for Work performed by M/WBEs providing a commercially useful function will be determined as follows:
- a. Where an M/WBE is not the Contractor – M/WBE utilization credit will vary depending on how the M/WBE performs Work under the Contract, as follows:
 - i. Where the M/WBE performs Work under the Contract as a subcontractor, MBE or WBE utilization credit will be 100% of the dollar value of the Work performed by the MBE or WBE.
 - ii. Where the M/WBE performs Work under the Contract as a manufacturer, MBE or WBE utilization credit will be 100% of the dollar value of the Work performed by the MBE or WBE.
 - iii. Where the M/WBE assists in the performance of the Work under the Contract as a supplier, MBE or WBE utilization credit will be 60% of the dollar value of the Work performed by the MBE or WBE.
 - iv. Where the M/WBE assists in the performance of the Work under the Contract as a broker, MBE or WBE utilization credit will be equal to the percentage of the commission, or the mark-up percentage, of the items brokered, applied to the dollar value of the Work performed by the MBE or WBE.

- b. Where the Contractor is a joint venture including one or more M/WBEs as joint venturers, MBE or WBE utilization credit will be the Job Order Prices Total multiplied by the percentage of the joint venture's profits (or losses) that are to accrue to the M/WBE joint venturer(s) under the joint venture agreement.
- c. Where any M/WBE is the Contractor or where the Contractor is a joint venture consisting entirely of M/WBEs, and the Contractor can document good faith efforts to subcontract to M/WBE subcontractors and/or suppliers - the Job Order Prices Total.

II) EQUAL EMPLOYMENT OPPORTUNITY (EEO)

- 1) The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Bidder/Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed, or rendered or furnished to, the contracting State agency ("the Work") except where the Work is for the beneficial use of the Bidder/Contractor.
 - a. Bidder/Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
 - b. By entering into this Contract, Bidder/Contractor certifies that the text set forth in Form #4, attached hereto and made a part hereof, is Bidder's/Contractor's equal employment opportunity policy. In addition, Bidders/Contractor agrees to comply with the Non-Discrimination Requirements set forth.

The Bidder/Contractor will include the provisions of Section II.1.a and Section II.1.b which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

- 2) Form EEO -101 Workforce Utilization Reporting Form (Construction) ("Form EEO-101-Construction")

The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Construction throughout the term of this Contract, by the 10th day of each month to report the actual workforce utilized during the previous month in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported.

The Form EEO-101-Construction must be submitted with your payment application to ORDA. Separate forms shall be completed by Contractor and all subcontractors. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from

its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Construction and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Construction and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

- 3) Contractor shall comply with the provisions of the Human Rights Law and all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

III) M/WBE/SDVOB COMPLIANCE

- 1) For each Applicable Job Order, the Contractor certifies that it has submitted a completed M/WBE/SDVOB Utilization Plan ("Form A and Form A Supplemental") prior to the issuance of the Job Order and will follow such Plan for the attainment of the Contract Goals on the Job Order. The Utilization Plan shall list the M/WBE/SDVOBs the Contractor intends to use to perform the Job Order, a description of the Detailed Scope of Work the Contractor intends the M/WBE/SDVOB to perform to meet the goals on the Job Order, and the estimated, or if known, actual dollar amounts to be paid to an M/WBE/SDVOB. Changes to the agreed participation by M/WBE/SDVOBs after the issuance of the Job Order and during the term of the Job Order must be reported on a revised M/WBE/SDVOB Utilization Plan submitted to ORDA.
- 2) By entering into this Contract, the Contractor understands that only sums paid to M/WBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the Contract Goals. When an M/WBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the M/WBE.
- 3) ORDA will review the submitted M/WBE/SDVOB Utilization Plan and advise the Contractor of ORDA's acceptance or issue a notice of deficiency prior to the issuance of the Job Order. The Contractor understands that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments.
- 4) The Contractor further agrees that a failure to submit and/or use such M/WBE/SDVOB Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ORDA shall be entitled to any remedy provided herein, including but not limited to, a finding of contractor non-responsiveness.
- 5) If the Contractor, after making good faith efforts, is unable to comply with M/WBE/SDVOB goals, the Contractor may submit an Application for M/WBE/SDVOB Waiver form ("Form B") documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, ORDA shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.

- 6) If ORDA, upon review of the M/WBE/SDVOB Utilization Plan and updated Contractor list of Subcontractors and Suppliers, determines that the Contractor is failing or refusing to meet the Contract Goals and no waiver has been issued in regards to such non-compliance, ORDA may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within five (5) business days of receipt by submitting to ORDA:

ORDA Compliance
New York State Olympic Regional Development Authority
Olympic Center
2634 Main St.
Lake Placid, NY 12946

Such response may include a request for partial or total waiver of M/WBE/SDVOB Job Order Goals.

The Contractor must submit a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ORDA to be inadequate, ORDA shall notify the Contractor and direct the Contractor to submit, within five (5) business days, a request for a partial or total waiver of M/WBE/SDVOB participation goals on Form B. Failure to file the waiver form in a timely manner may be grounds for termination of the Contract.

- 7) ORDA may reject the Contractor's Job Order Proposal as being non-responsive and/or terminate a Job Order under the following circumstance:

- a. If a Bidder fails to submit a compliant M/WBE/SDVOB Utilization Plan;
- b. If a Bidder fails to submit a written remedy to a notice of deficiency;
- c. If a Bidder fails to submit a request for waiver; or
- d. If ORDA determines that the Bidder has failed to document good faith efforts.

- 8) Contractors shall attempt to utilize, in good faith, any MBE, WBE, and SDVOB identified within its M/WBE/SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to issuance of a Job Order may be made at any time during the term of the Contract to ORDA, but must be made no later than prior to the submission of a request for final payment on the Contract.

9) **Monthly/Quarterly M/WBE/SDVOB Contractor Compliance Report**

- a. In accordance with 5 NYCRR § 142.10, and 9 NYCRR § 252.2(q), Contractor is required to report Monthly and Quarterly M/WBE / SDVOB Contractor Compliance to ORDA during the term of the Contract for the preceding month's/quarter's activity, documenting progress made towards achievement of the Contract M/WBE/SDVOB goals.
- b. When a Contractor receives a payment from ORDA under an ORDA contract, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner.
- c. Contractor must submit to ORDA the Contractor's Monthly M/WBE / SDVOB Compliance Report on Form M/WBE 102 by the 10th day of each month during the term of the Contract for the preceding month's activity with their payment application.
- d. Contractor must submit to ORDA the Contractor's Quarterly M/WBE / SDVOB Compliance Report on Form M/WBE 102 by the 10th day of the month following the end of a quarter for the preceding month's activity with their payment application.

Olympic Regional Development Authority
Supplemental Information and Instructions to Bidders M/WBE/EEO/SDVOB

00 22 13

10) Access to the Contractor's Books: The Contractor shall permit access to its books, records and accounts by the State for purposes of investigation to ascertain compliance with the provisions of these supplemental conditions. The contractor shall include this provision in every subcontract so that such provision will be binding upon each subcontractor.

11) Liquidated Damages – MWBE Participation

- a. Where ORDA determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay liquidated damages to ORDA.
- b. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - i. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - ii. All sums actually paid to MWBE/s for work performed or materials supplied under the Contract.
- c. In addition, failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.
- d. After the Contractor has been afforded the process it is due, if ORDA determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by ORDA, Contractor shall pay such liquidated damages to ORDA within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

12) Damages – SDVOB Participation

- a. Where ORDA determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the SDVOB participation goals, Contractor shall be obligated to pay damages to ORDA pursuant to 9 NYCRR § 252.2(s).

Damages shall be calculated based on the actual cost incurred by the State agency related to the State agency's expenses for personnel, supplies and overhead related to establishing, monitoring, and reviewing certified service-disabled veteran-owned business enterprise programmatic goals.

- b. In addition, failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

- c. After the Contractor has been afforded the process it is due, if ORDA determines that Contractor is liable for damages and such identified sums have not been withheld by ORDA, Contractor shall pay such liquidated damages to ORDA within sixty (60) days after they are assessed.
- 13) Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

PLAN ROOM COPY
NOT FOR BIDDING



FORM A

M/WBE/SDVOB UTILIZATION PLAN

INSTRUCTIONS: This form must be submitted in compliance with Section 002113 Instruction to Bidders, Section 12 – Submission of Post-Bid Information. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) and Service-Disabled Veteran Owned businesses under the contract. Attach additional sheets if necessary.

Offeror's Name:
 Address:
 City, State, Zip Code:
 Telephone No.:

Federal Identification No.:
 Project/Contract No.:

M/WBE/SDVOB Goals in the Contract:
 MBE ___% WBE ___% SDVOB ___%
 (Refer to Document #00 22 13 Supplemental Information MWBE-SDV for Goal Determination)

Region/Location of Work:

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts/Supplies/Services and intended performance dates of each component of the contract.
A.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB			
B.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB			

6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM C.

PREPARED BY (Signature): DATE: NAME AND TITLE OF PREPARER (Print or Type): SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.	TELEPHONE NO.:	EMAIL ADDRESS:
	FOR M/WBE USE ONLY	
	REVIEWED BY:	DATE:
	UTILIZATION PLAN APPROVED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ Contract No.: _____ Project No. (if applicable): _____ Contract Award Date: _____ Estimated Date of Completion: _____ Amount Obligated Under the Contract: _____ Description of Work: _____ NOTICE OF DEFICIENCY ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ NOTICE OF ACCEPTANCE ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____	



**FORM B
REQUEST FOR WAIVER**

INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.

Offeror/Contractor Name:		Federal Identification No.:	
Address:		Solicitation/Contract No.:	
City, State, Zip Code:		M/WBE – SDVOB Goals: MBE % WBE % SDVOB %	
By submitting this form and the required information, the offeror/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.			
Contractor is requesting a:			
1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial			
2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial			
3. <input type="checkbox"/> SDVOB Waiver- A waiver of the SDVOB Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial			
4. <input type="checkbox"/> Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development.) Date of such filing with Empire State Development: _____			
PREPARED BY (Signature):		Date:	
SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.			
Name and Title of Preparer (Printed or Typed):		Telephone Number:	Email Address:
Submit with the bid or proposal or if submitting after award submit to: New York State Olympic Regional Development Authority		***** FOR M/WBE USE ONLY *****	
		REVIEWED BY:	DATE:
		Waiver Granted: <input type="checkbox"/> YES MBE: <input type="checkbox"/> WBE: <input type="checkbox"/>	
		<input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued _____ *Comments:	



REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the request:

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and M/WBE-SDVOB oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals. **Solicitation shall include posting on the New York State Contract Reporter.**
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs or SDVOBs appearing in the NYS Directories of Certified Firms that were solicited for purposes of complying with your certified M/WBE and SDVOB participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBE and SDVOBs.
6. Provide copies of responses made by certified M/WBEs and SDVOBs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs/SDVOBs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the M/WBEs-SDVOBs have undertaken for purposes of complying with the certified M/WBE and SDVOB participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number, and email address of offeror/contractor's representative authorized to discuss and negotiate this waiver request.
11. Copy of notice of MWBE or SDVOB application receipt issued by Empire State Development (ESD) or the Office of General Services (OGS).

Note:

Unless a Total Waiver has been granted, Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate ORDA, to determine M/WBE and SDVOB compliance.



FORM C STAFFING PLAN

Submit with Bid or Proposal – Instructions on page 2

Solicitation No.:	Reporting Entity:	Report includes Contractor's/Subcontractor's: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force
Offeror's Name:		<input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor Subcontractor's name _____

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification								Disabled		Veteran			
		Total Male (M)	Total Female (F)	White (M)	White (F)	Black (M)	Black (F)	Hispanic (M)	Hispanic (F)	Asian (M)	Asian (F)	Native American (M)	Native American (F)	Disabled (M)	Disabled (F)	Veteran (M)	Veteran (F)
Officials/Administrators																	
Professionals																	
Technicians																	
Sales Workers																	
Office/Clerical																	
Craft Workers																	
Laborers																	
Service Workers																	
Temporary /Apprentices																	
Totals																	

PREPARED BY (Signature):	TELEPHONE NO.:
	EMAIL ADDRESS:
NAME AND TITLE OF PREPARER (Print or Type):	Submit completed with bid or proposal

General instructions: All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (FORM B) and submit in **compliance with Section 002113 Instruction to Bidders, Section 12 – Submission of Post-Bid Information**. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor’s and/or subcontractor’s total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor’s and/or subcontractor’s total work force, the Offeror shall complete this form for the contractor’s and/or subcontractor’s total work force.

Instructions for completing:

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors’ total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading ‘Work force by Gender’
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading ‘Work force by Race/Ethnic Identification’. Contact the ORDA Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

OTHER CATEGORIES

- **DISABLED INDIVIDUAL** any person who:
 - has a physical or mental impairment that substantially limits one or more major life activity(ies)
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female



**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT (Form #4)**

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

M/WBE This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from the contracting agency and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, pregnancy or pregnancy-related conditions, gender identity, familial status, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this _____ day of _____, 2_____

By: _____

Print: _____ Title: _____

Laura Beck is designated as the Minority Business Enterprise Liaison responsible for administering the Minority and Women-Owned Business Enterprises - Equal Employment Opportunity (M/WBE-EEO) program.

MONTHLY M/WBE / SDVOB COMPLIANCE REPORT

As evidence of the progress made toward achievement of the minority, women and service-disabled veteran owned business enterprise goal(s), **REPORTING PERIOD Month/Year** _____ contractor is required to complete and submit the following for each NYS-certified MWBE/SDVOB (please use additional sheets if necessary). Beginning THIRTY (30) days after a contract is awarded Quarterly MWBE Contractor Compliance Reports are due on The 10th of each month to report MWBE and SDVOB utilization for the preceding month.

Contract Overview

Offeror/Contractor Name: _____	Telephone: _____	M/WBE/SDV NYS Certified Firm?
Address _____	Federal ID No: _____	<input type="checkbox"/> Y If Yes, proceed to box A
City, State, Zip: _____	Project No: _____	<input type="checkbox"/> N If No, proceed to box B

Please place the name of your company in Box A only if you are a NYS-Certified M/WBE/SDV and include quarterly contract payments received.

A Name: _____	Actual ORDA Contract payment(s) received by the NYS-Certified M/WBE/SDV Contractor during the reporting period:	\$ _____
FEIN: _____	Actual total of payments made over the life of this contract:	\$ _____
<input type="checkbox"/> MBE <input type="checkbox"/> DUAL <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB		

In boxes B thru E, please include quarterly expenditures your company made to NYS-certified M/WBE/SDV companies only. Check the DIRECT box for expenditures required to meet ORDA Contract obligations, and INDIRECT box for expenditures not specific to contract obligations.

B Name: _____	Actual payment(s) made to the NYS-Certified M/WBE/SDV Contractor during the reporting period:	\$ _____
FEIN: _____	Actual total of payments made over the life of this contract:	\$ _____
<input type="checkbox"/> MBE <input type="checkbox"/> DUAL <input checked="" type="checkbox"/> DIRECT <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> INDIRECT	Description of Work: _____	
	Dates of Services: _____	

C Name: _____	Actual payment(s) made to the NYS-Certified M/WBE/SDV Contractor during the reporting period:	\$ _____
FEIN: _____	Actual total of payments made over the life of this contract:	\$ _____
<input type="checkbox"/> MBE <input checked="" type="checkbox"/> DUAL <input type="checkbox"/> DIRECT <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> INDIRECT	Description of Work: _____	
	Dates of Services: _____	

In boxes B thru E, please include quarterly expenditures your company made to NYS-certified M/WBE/SDV companies only. Check the DIRECT box for expenditures required to meet ORDA Contract obligations, and INDIRECT box for expenditures not specific to contract obligations.

D Name: _____
FEIN: _____
 MBE DUAL DIRECT
 WBE SDVOB INDIRECT

Actual payment(s) made to the NYS-Certified M/WBE/SDV Contractor during the reporting period: \$ _____
Actual total of payments made over the life of this contract: \$ _____
Description of Work: _____
Dates of Services: _____

E Name: _____
FEIN: _____
 MBE DUAL DIRECT
 WBE SDVOB INDIRECT

Actual payment(s) made to the NYS-Certified M/WBE/SDV Contractor during the reporting period: \$ _____
Actual total of payments made over the life of this contract: \$ _____
Description of Work: _____
Dates of Services: _____

- I hereby affirm that the information supplied in this quarterly compliance report is true and correct to the best of my knowledge.
- I hereby affirm that the information supplied in the previous quarterly report is true and correct. If not, attached is a revised compliance report for the previous quarter.

SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE and SDVOB REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 142, AND THE ABOVE REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.

Signature _____ Date _____
Print Name _____ Sworn to before me this _____ day of _____ 20____
Title _____ Notary Public
Email _____ Telephone _____ Seal: _____

FOR AUTHORIZED USE ONLY

Reviewed by: _____
Date Received: _____

Use additional sheets as needed.

Quarterly M/WBE / SDVOB COMPLIANCE REPORT

As evidence of the progress made toward achievement of the minority, women and service-disabled veteran owned business enterprise goal(s), contractor is required to complete and submit the following for each NYS-certified MWBE/SDVOB (please use additional sheets if necessary). Beginning THIRTY (30) days after a contract is awarded Quarterly MWBE Contractor Compliance Reports are due on the 10th of the month following the preceding quarter. January 10, April 10, July 10 and October 10.

Reporting Period:

April 1- June 30	_____	Oct 1- Dec 31	_____
July 1 - Sept 30	_____	Jan 1- Mar 30	_____

Contract Overview:

Offeror/Contractor Name _____ Telephone: _____ M/WBE/SDV NYS Certified Firm? _____ Federal ID No: _____
 If Yes, proceed to box A If No, proceed to box B

City, State, Zip: _____ Project No: _____

Please place the name of your company in Box A only if you are a NYS-Certified M/WBE/SDV and include quarterly contract payments received.

A Name: _____ Actual ORDA Contract payment(s) received by the NYS-Certified M/WBE/SD Contractor during the reporting period: \$ _____

FEIN: _____ MBE DUAL
 WBE SDVOB Actual total of payments made over the life of this contract: \$ _____

In boxes B thru E, please include quarterly expenditures your company made to NYS-certified M/WBE/SDV companies only. Check the DIRECT box for expenditures required to meet ORDA Contract obligations, and INDIRECT box for expenditures not specific to contract obligations.

B Name: _____ Actual payment(s) made to the NYS-Certified M/WBE/SDV Contractor during the reporting period: \$ _____

FEIN: _____ Actual total of payments made over the life of this contract: \$ _____

MBE DUAL DIRECT
 WBE SDVOB INDIRECT

Description of Work: _____

Dates of Services: _____

C Name: _____ Actual payment(s) made to the NYS-Certified M/WBE/SDV Contractor during the reporting period: \$ _____

FEIN: _____ Actual total of payments made over the life of this contract: \$ _____

MBE DUAL DIRECT
 WBE SDVOB INDIRECT

Description of Work: _____

Dates of Services: _____

In boxes B thru E, please include quarterly expenditures your company made to NYS-certified M/WBE/SDV companies only. Check the DIRECT box for expenditures required to meet ORDA Contract obligations, and INDIRECT box for expenditures not specific to contract obligations.

D Name: _____

FEIN: _____

MBE DUAL DIRECT

WBE SDVOB INDIRECT

Actual payment(s) made to the NYS-Certified M/WBE/SDV Contractor during the reporting period: \$ _____

Actual total of payments made over the life of this contract: \$ _____

Description of Work: _____

Dates if Services: _____

E Name: _____

FEIN: _____

MBE DUAL DIRECT

WBE SDVOSB INDIRECT

Actual payment(s) made to the NYS-Certified M/WBE/SDV Contractor during the reporting period: \$ _____

Actual total of payments made over the life of this contract: \$ _____

Description of Work: _____

Dates of Services: _____

- I hereby affirm that the information supplied in this quarterly compliance report is true and correct to the best of my knowledge.
- I hereby affirm that the information supplied in the previous quarterly report is true and correct. If not, attached is a revised compliance report for the previous quarter.

SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 142, AND THE ABOVE REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.

Signature _____ Date _____

Print Name _____ Sworn to before me this _____ day of _____ 20____

Title _____ Notary Public

Email _____ Telephone _____ Seal: _____

FOR AUTHORIZED USE ONLY

Reviewed by: _____

Date Received: _____

Use additional sheets as needed.

00 43 13 Form of Bid Security Bond
00 43 14 Form of Labor and Payment Bond
00 43 15 Form of Performance Bond

PLANROOM COPY
NOT FOR BIDDING

**FORM OF BID BOND – BID SECURITY STATE
OF NEW YORK
OLYMPIC REGIONAL DEVELOPMENT AUTHORITY - DESIGN AND CONSTRUCTION**

Sub. 3, Sec. 8 - Public Buildings Law

KNOW ALL MEN BY THESE PRESENTS, That _____

(Name of Contractor)

(Address)

(hereinafter called the "Principal") and _____ a
corporation created and existing under the Laws of the State of _____ having its principal office in the
City of _____ duly licensed as an insurance
company in the State of New York, (hereinafter called the "Surety"), are held and firmly bound unto The People of the State of New
York (hereinafter called the "State"), in the full and just sum of \$ _____ good and lawful money of the United States of America, for
the payment of which said sum of money, well and truly to be made, and done, the Principal binds themselves (himself, itself), their
(his, its) heirs, executors and administrators, successors and assigns, and the Surety binds itself, its successors and assigns jointly and
severally, firmly by these presents:

WHEREAS, the Principal has submitted to the New York State Olympic Regional Development Authority, a
proposal for **ORDA Project No. and Name** dated *, _____

AND

WHEREAS, the Principal intends to file this bond to guarantee that the Principal will execute a contract and furnish performance and
labor and material bonds required by the terms of the Principal's proposal.

NOW, THEREFORE, the condition of the foregoing obligation is such, that if the Principal shall promptly submit an
executed agreement and furnish performance and labor and material bonds required by the terms of the Principal's proposal, then this
obligation shall be null and void, otherwise to remain in full force and virtue.

NOW, THEREFORE, the condition of the foregoing obligation is such that if the Principal fails to promptly submit and
executed agreement and furnish performance and labor and material bonds required by the terms of the Principal's proposal, then the
Surety itself, its successors and assigns, jointly and severally, shall pay the whole sum of money previously set forth in this document
to the State.

IN TESTIMONY WHEREOF, the Principal has hereunto set their (his, its) hand and seal and the Surety has caused this instrument
to be signed by its Attorney-in-fact, _____ and
its corporate seal to be hereunto affixed.

Signed, sealed and delivered in the presence of:

(Corporate seal of Principal if a corporation)

(L.S)

(L.S)

Principal

Company

(Corporate seal of Surety Co.)

Attorney-in-fact

Witness

Name

Name

(Acknowledgement by principal, unless it be a corporation)

Olympic Regional Development Authority

00 43 13

Page 1 of 2

STATE OF NEW YORK

SS.:

COUNTY OF _____

On this ____ day of _____ 20____, before me personally came _____ to me known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same.

Notary Public

County

(Acknowledgment by principal, if a corporation)

STATE OF NEW YORK

SS.:

COUNTY OF _____

On this ____ day of _____ 20____, before me personally came _____ to me known, who being by me duly sworn, did depose and say that he resides in _____; that he is the _____ of the _____; the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Notary Public

County

(Acknowledgment by Surety Company)

STATE OF NEW YORK

SS.:

COUNTY OF _____

On this ____ day of _____ 20____, before me personally came _____ to me known, who being by me duly sworn, did depose and say that he resides in _____; that he is the _____ of the _____; the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that is was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Notary Public

County

STATE OF NEW YORK
PERFORMANCE BOND

Known all persons by these presents, that

Contractor: _____

Address: _____

(hereinafter called the "PRINCIPAL") and the _____ a corporation created and existing under the laws of the State of _____ having its principal office in the city of _____ (hereinafter called the "SURETY"), are held and firmly bound unto the people of the New York State Olympic Regional Development Authority, (hereinafter called "ORDA"), in the full and just sum of AWARDED CONTRACT AMOUNT (\$ _____) Dollars good and lawful money of the United States of America, for the payment of which said sum of money, well and truly to be made and done, the said PRINCIPAL binds itself, its successors and assigns, and the said SURETY binds itself, its successors and assigns jointly and severally, firmly by these presents:

Signed, sealed and dated this _____, 20____ A.D.

WHEREAS, said PRINCIPAL has entered into a certain written contract with ORDA, **ORDA Project No. and Name** dated: _____

NOW, THEREFORE, THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH, that if the said Principal shall well, truly and faithfully comply with and perform all the terms, covenants and conditions of said contract on its part to be kept and performed, according to the true intent and meaning of said contract, and shall protect the said ORDA against, and pay any and all amounts, damages, costs and judgments which may or shall be recovered against said ORDA or its officers or agents or which the said ORDA may be called upon to pay to any person or corporation by reason of any damages arising or growing out of the doing of said work, or the repair or maintenance thereof, or the manner of doing the same, or the neglect of the said PRINCIPAL, or its agents or servants, or the improper performance of the said work by the said PRINCIPAL, or its agents or servants, or the infringement of any patent or patent rights by reason of the use of any materials furnished or work done as aforesaid or otherwise, then this obligation shall be null and void, otherwise to remain in full force and virtue.

And the said SURETY, for value received, hereby stipulates and agrees, if requested to do so by ORDA to fully perform and complete the work mentioned and described in said contract and specifications, pursuant to the terms, conditions and covenants thereof, if for any cause, said PRINCIPAL fails or neglects to so fully perform and complete said work; the said SURETY further agrees to commence said work of completion within forty five days after notice thereof from ORDA, and to complete the same with all due diligence.

And the said SURETY for value received hereby stipulates and agrees that no change, extension, alteration or addition to the terms of this said contract or specifications accompanying the same, shall in any way affect its obligation of this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN TESTIMONY WHEREOF, the said PRINCIPAL has hereunto set his (her, their, its) hand and seal and the said Surety has caused this instrument to be signed by its Attorney-in-Fact and its corporate seal to be hereunto affixed, the day and year first above written.

Signed, sealed and delivered

in the presence of

Corporate seal
of Principal of

_____ [L.S.]

_____ [L.S.]

_____ [L.S.]

Principal

Company

Of _____

(Corporate seal of Surety Co.)

By _____

Attorney-in-Fact

Witness _____

(Acknowledge of bond by contractor, if not a corporation)

STATE OF NEW YORK

COUNTY OF _____ SS:

On this _____ day of _____, 20____, before me the undersigned, a Notary Public in and for said State, personally appeared _____, personally known or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to this instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, (check one) _____ the individual(s), or _____ the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

County

(Acknowledgement of bond by contractor, if a corporation)

STATE of NEW YORK)

:ss.:

County of _____)

On this _____ day of _____ 20____, before me personally came _____ to me known, who being by me duly sworn, did depose and say that ___ he resides in _____; that ___ he is the _____ of the _____ the corporation described in and which executed the foregoing instrument; that ___ he knew the seal of said corporation, that he seal affixed to said instrument was such corporate seal; that it was affixed by order of the Board of Directors of said corporation, and that ___ he signed his/her name thereto by like order.

Notary Public County

(Acknowledgement of bond by Surety Company)

STATE of NEW YORK)

:ss.:

County of _____)

On this _____ day of _____ 20____, before me personally came _____ to me known, who being by me duly sworn, did depose and say that ___ he resides in _____; that ___ he is the Attorney in Fact of the _____ the corporation described in and which executed the foregoing instrument; that ___ he knew the seal of said corporation, that the seal affixed to said instrument was such corporate seal; that it was affixed by order of the Board of Directors of said corporation, and that ___ he signed his/her name thereto by like order.

Notary Public County

Known all persons by these presents, that

Contractor: _____

Address: _____

(hereinafter called the "PRINCIPAL") and the _____ a corporation created and existing under the laws of the State of _____ having its principal office in the city of _____ (hereinafter called the "SURETY"), are held and firmly bound unto the people of the New York State Olympic Regional Development Authority, (hereinafter called "ORDA"), in the full and just sum of AWARDED CONTRACT AMOUNT (\$ _____) Dollars good and lawful money of the United States of America, for the payment of which said sum of money, well and truly to be made and done, the said PRINCIPAL binds itself, its successors and assigns, and the said SURETY binds itself, its successors and assigns jointly and severally, firmly by these presents:

Signed, sealed and dated this _____, 20__ A.D.

WHEREAS, said PRINCIPAL has entered into a certain written contract with ORDA, **ORDA Project No. and Name** dated: _____

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall promptly pay all moneys due to all persons furnishing labor or materials to him or his subcontractors in the prosecution of the work provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect;

Provided, however, that the Comptroller of the State of New York having required the said Principal to furnish this bond in order to comply with the provisions of Section 137 of the State Finance law, all rights and remedies on this bond shall inure solely to such persons and shall be determined in accordance with the provisions, conditions and limitations of said Section to the same extent as if they were copied at length herein; and

Further, provided, that the place of trial of any action on this bond shall be in the county in which the said contract was to be performed, or if said contract was to be performed in more than one county, then in any such county, and not elsewhere.

IN TESTIMONY WHEREOF, the said PRINCIPAL has hereunto set his (her, their, its) hand and seal and the said Surety has caused this instrument to be signed by its Attorney-in-Fact and its corporate seal to hereunto affixed, the day and year first above written.

Signed, sealed and delivered
in the presence of

Corporate Seal
Of Principal of _____ [L.S.]

Principal

Company
Of _____

(Corporate seal
off Surety Co.)

By _____
Attorney-in-Fact
Witness _____

(Acknowledge of bond by contractor, if not a corporation)

STATE OF NEW YORK

COUNTY OF _____ SS:

On this _____ day of _____ 20 , before me the
undersigned, a Notary Public in and for said State, personally appeared _____
, personally known or proved to me on the basis of satisfactory evidence to be the individual(s) whose
name(s) is (are) subscribed to this instrument and acknowledged to me that he/she/they executed
the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument,
(check one) _____ the individual(s), or _____ the person upon behalf of which the individual(s) acted,
executed the instrument.

Public County Notary

(Acknowledgement of bond by contractor, if a corporation)

STATE of NEW YORK)

County of) :ss.:

On this _____ day of _____ 20 _____, before me personally came _____ to me known, who being by me duly sworn, did depose and say that ___he resides in _____; that ___he is the _____ of the _____ the corporation described in and which executed the foregoing instrument; that ___he knew the seal of said corporation, that the seal affixed to said instrument was such corporate seal; that it was affixed by order of the Board of Directors of said corporation, and that ___he signed his/her name thereto by like order.

Notary Public County

(Acknowledgement of bond by Surety Company)

STATE of NEW YORK)

County of) :ss.:

On this _____ day of _____ 20 _____, before me personally came _____ to me known, who being by me duly sworn, did depose and say that ___he resides in _____; that ___he is the Attorney in Fact of the _____ the corporation described in and which executed the foregoing instrument; that ___he knew the seal of said corporation, that the seal affixed to said instrument was such corporate seal; that it was affixed by order of the Board of Directors of said corporation, and that ___he signed his/her name thereto by like order.

Notary Public County

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
JOB ORDER CONTRACTING SERVICES**

THIS AGREEMENT is dated as of the ___ of MONTH in the year 2022 by and between the New York State Olympic Regional Development Authority, 2634 Main Street, Lake Placid, NY 12946 (ORDA) and Contractor Name and Address (CONTRACTOR).

ORDA and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1 WORK

CONTRACTOR shall complete all work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The work of this Contract will be set forth in the Detailed Scopes of Work referenced in the individual Job Orders. The Contractor is required to complete each Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

Article 2 Presented

The Project has been presented by: New York State Olympic Regional Development Authority
The Project had been prepared by:

Article 3 CONTRACT TIMES

3.1 The Base Term of the Contract is one year. There are two bilateral Option Terms. Both parties must agree to extend the Contract for an Option Term. The duration of each Option Term is one year.

3.2 ORDA and the Contractor may agree to extend the term of an Option Term.

3.3 All Job Orders issued during any term of this Contract shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue, after such period has expired. All terms and conditions of the Contract apply to each Job Order.

Article 4 CONTRACT PRICE

ORDA shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraph 4.1 below:

4.3 The Contractor shall perform all Prepriced Tasks for the Unit Prices set forth in the Construction Task Catalog® multiplied by one of the following Adjustment Factors:

Adjustment Factor For Projects Equal to or Less than \$10,000, Normal Working Hours Adjustment Factor: Monday through Friday 7:00 am to 5:00 pm except ORDA holidays

Adjustment Factor For Projects Equal to or Less than \$10,000, Other Than Normal Working Hours Adjustment Factor: Monday through Friday 5:01 pm to 6:59 am and all-day Saturday, Sunday and ORDA holidays.

Adjustment Factor For Projects Greater than \$10,000, Normal Working Hours Adjustment Factor: Monday through Friday 7:00 am to 5:00 pm except ORDA holidays.

Adjustment Factor For Projects Greater than \$10,000, Other Than Normal Working Hours Adjustment Factor: Monday through Friday 5:01 pm to 6:59 am and all-day Saturday, Sunday and ORDA holidays.

Article 5 PAYMENT PROCEDURES

CONTRACTOR shall submit Application for Payment using the AIA Billing Forms G702 and G703 or equivalent.

5.1 ORDA will make one payment for all Job Orders that have a Job Order Completion Time of 45 days or less, or a Job Order Price of \$25,000 or less. For all other Job Orders, ORDA will make partial, monthly payments based on the percentage of the work completed in accordance with Section 5.2 below.

5.2 *Progress Payments; Retainage.* ORDA shall make progress payments on account of the Job Order Price on the basis of CONTRACTOR's Applications for Payment, one a month during construction as provided in paragraphs 5.2.1 and 5.2.2 below.

5.2.1 For Bonded Projects, prior to Substantial Completion payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ORDA shall determine, or ORDA may withhold, in accordance with Document 00 72 13 General Conditions for Construction Contracts (General Conditions). Each and every progress payment is subject to a 5% retainage, such that CONTRACTOR is only paid 95% of the approved amount in each application for payment.

5.2.2 For Bonded Projects, upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 95% of the Job Order Price (with the balance being

retainage), less such amounts as ORDA shall determine, or ORDA may withhold, in accordance with the General Conditions.

5.2.3 For non-Bonded Projects, prior to Substantial Completion payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ORDA shall determine, or ORDA may withhold, in accordance with the General Conditions. Each and every progress payment is subject to a 10% retainage, such that CONTRACTOR is only paid 90% of the approved amount in each application for payment.

5.2.4 For non-Bonded Projects, upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 90% of the Job Order Price (with the balance being retainage), less such amounts as ORDA shall determine, or ORDA may withhold, in accordance with the General Conditions.

5.3 *Final Payment.* Upon final completion and acceptance of the Work in accordance with the General Conditions, ORDA shall pay the remainder of the Job Order Price.

Article 6 CONTRACTOR'S REPRESENTATIONS

In order to induce ORDA to enter into this Agreement CONTRACTOR makes the following representations:

6.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addendum listed in paragraph 8) and the other related data identified in the Bidding Documents including "technical data."

6.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance or furnishing of the Work.

6.3 CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

6.4 CONTRACTOR is aware of the general nature of work to be performed by ORDA and others at the site that relates to the Work as indicated in the Contract Documents.

6.5 CONTRACTOR has correlated the information known to CONTRACTOR, information and observation obtained from visits to the site, reports, and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

6.6 CONTRACTOR has given ORDA written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ORDA is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

6.7 CONTRACTOR agrees to be responsible for initiating, maintaining and supervising all

safety precautions and programs in connection with the performance of this Agreement. CONTRACTOR shall 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. CONTRACTOR shall provide reasonable protection to prevent damage, injury or loss to employees on the Work and other persons who may be affected thereby, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. CONTRACTOR specifically acknowledges and agrees that the foregoing includes all laws, ordinances, rules, regulations and lawful orders related to the COVID-19 pandemic and that the cost thereof is included in the Job Order Price.

Article 7 CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between ORDA and CONTRACTOR concerning the Work consist of the following:

- 7.1 This Agreement.
- 7.2 Exhibits attached to this Agreement.
- 7.3 General Conditions.
- 7.4 Supplementary or Special Conditions.
- 7.5 The following documents which are incorporated by reference herein as if attached hereto in their entirety:
 - 1) The Construction Task Catalog[®] and Technical Specifications
 - 2) Prevailing Wage Schedule
 - 3) ORDA Standard Contract Terms (00 7214)
 - 4) Standard Clauses for Contractor Default and Surety Takeover (00 72 15)
- 7.6 Addenda: # , _____
- 7.7 The following documents submitted by CONTRACTOR prior to Notice of Award which are incorporated which are incorporated by reference herein as if attached hereto in their entirety.
 - 1) Bid Form (00 21 00)
 - 2) OEPC-3 (00 21 12)
 - 3) Addendum Acknowledgement (00 21 11)
 - 4) Code of Business Ethics (00 62 00)
 - 5) Certificate of Non-Collusion (00 64 00)
 - 6) Procurement Lobbying Law (00 63 00)
 - 7) EO 177 Certification (00 65 00)
 - 8) Affidavit – Workers’ Compensation (00 65 10)
 - 9) Form of Bid Bond (00 43 13)
 - 10) W-9 (00 66 00)Vendor Responsibility Questionnaire (00 73 23)

7.8 The following which may be delivered or issued after the Effective Date of this Agreement and are not attached hereto:

- 1) All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to the General Conditions.
- 2) All Job Orders including all related documentation, including, but not limited to the Detailed Scope of Work including any Drawings and Specifications, the Job Order Proposal, and any Supplemental Job Orders.
- 3) Notice to Proceed issued after issuance of Job Order and receipt of Bonds, as required.

There are not Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided for in the General Conditions.

Article 8 INDEMNIFICATION

8.1 CONTRACTOR shall be responsible for bodily injury (including exposure to toxic substances), sickness, disease or death sustained by any person, or to injury to or destruction of tangible property (including loss of use), arising out of or resulting from the performance of this Agreement or negligent or otherwise tortious acts, errors or omissions and/or willful misconduct of CONTRACTOR and its agents, consultants, subcontractors, guests, invitees, employees, servants, lessees and/or concessionaries and anyone directly or indirectly employed by any of them or anyone for whose acts any may be liable (each a "Responsible Party"), regardless of whether or not a claim arises under Labor Law Sections 200, 240 and/or 241, Industrial Code Rule 23 and/or common law negligence, or by reason of liability imposed by operation of law.

8.2 To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify, hold harmless and release ORDA, the State of New York, the record owner of the real property on which the Work is being performed, any public benefit corporation, railroad or public utility whose property or facilities are affected by the Work, and/or their respective affiliates, members, partners, directors, officers, employees, consultants, contractors and/or agents (individually, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against any and all suits, claims, liabilities, fines, damages and/or any types of action whatsoever, including attorneys' fees, defense costs and legal costs, for bodily injury (including exposure to toxic substances), sickness, disease or death sustained by any person, or to injury to or destruction of tangible property (including loss of use), arising out of or resulting from the performance of this Agreement or negligent or otherwise tortious acts, errors or omissions and/or willful misconduct of any Responsible Party, or by reason of liability imposed by operation of law.

8.3 ORDA may retain such monies from the amount due CONTRACTOR as may be necessary to satisfy any claim for damages recovered against the Indemnified Parties. CONTRACTOR's obligation under this paragraph shall not be deemed waived by the failure of ORDA to retain the whole or any part of such monies due CONTRACTOR, or

where such suit, action, damages, and/or costs have not been resolved or determined prior to release of any monies to CONTRACTOR under this Agreement.

8.4 The obligation of CONTRACTOR to indemnify the Indemnified Parties (a) shall not be limited in any manner by any limitation of the amount of insurance coverage or benefits, including workers' compensation or other employee benefit acts, provided by CONTRACTOR, and (b) shall not be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the Indemnified Parties.

8.5 CONTRACTOR has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the Indemnified Parties. This obligation shall include the cost of attorneys' fees, disbursements, costs and other expenses incurred in connection with such action or proceeding. Notwithstanding the foregoing, ORDA reserves the right to join such action or proceeding, at its sole expense, when it determines there is an issue involving a significant public interest.

8.6 The obligation of CONTRACTOR to indemnify does not extend to those suits, claims, liabilities, fines, damages and types of action which arise out of the sole negligence of an Indemnified Party.

8.7 The provisions of this Article shall survive the expiration or termination of this Agreement.

Article 9 MISCELLANEOUS

9.1 Terms used in this Agreement which are defined in Article I of the General Conditions will have the meanings indicated in the General Conditions.

9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 ORDA and CONTRACTOR each bind itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.4 Any provisions or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon ORDA and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, ORDA and CONTRACTOR (an officer or principal of the corporation, partnership or sole proprietorship) have signed this Agreement in triplicate. One counterpart each has been delivered to ORDA, and CONTRACTOR. All portions of the Contract Documents have been signed, initialed or identified by ORDA and CONTRACTOR, or identified by ENGINEER on their behalf. This Agreement will be effective on __ of MONTH in the year 20XX (which is the Effective Date of this Agreement).

ORDA

Michael Pratt, CEO/President

Date

CONTRACTOR

Signature

Printed Name

Title

Date

License number (if applicable): _____

PLAN ROOM COPY
NOT FOR BIDDING

STATE OF NEW YORK)
): ss.:
COUNTY OF ESSEX)

On the ___ day of _____ in the year 20____, before me, the undersigned, personally appeared, Michael Pratt, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she/he/they executed the same in her/his/their capacity, and that by her/his/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
): ss.:
COUNTY OF _____)

On the ___ day of _____ in the year 20____, before me, the undersigned, personally appeared, _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she/he/they executed the same in her/his/their capacity, and that by her/his/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public



**SITE ACCESS AGREEMENT
SUB-CONTRACTOR**

The Prime Contractor's _____,
[Enter Name and Address of Prime Contractor]
hereinafter referred to as the "Prime Contractor", and the

Sub-Contractor, _____,
[Enter Name and Address of Sub-Contractor],
hereinafter referred to as the "Sub-Contractor".

WITNESSETH:

NOW, THEREFORE, in consideration of the promises and covenants contained within the Project Contract between the Owner and the Prime Contractor, the Sub-Contractor agrees as follows:

The Sub-Contractor agrees to be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. The Sub-Contractor shall 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. The Sub-Contractor shall provide reasonable protection to prevent damage, injury or loss to employees on the Work and other persons who may be affected thereby, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. All work shall be completed according to all federal, state and local laws and with required licenses. Sub-Contractor specifically acknowledges and agrees that the foregoing includes all laws, ordinances, rules, regulations and lawful orders related to the COVID-19 pandemic.

The Sub-Contractor shall be responsible for bodily injury (including exposure to toxic substances), sickness, disease or death sustained by any person, or to injury to or destruction of tangible property (including loss of use), arising out of or resulting from the performance of the Work or negligent or otherwise tortious acts, errors or omissions and/or willful misconduct of the Sub-Contractor and its agents, consultants, sub-subcontractors, guests, invitees, employees, servants, lessees and/or concessionaries and anyone directly or indirectly employed by any of them or anyone for whose acts any may be liable (each a "Responsible Party"), regardless of whether or not a claim arises under Labor Law Sections 200, 240 and/or 241, Industrial Code Rule 23 and/or common law negligence, or by reason of liability imposed by operation of law.

To the fullest extent permitted by law, the Sub-Contractor shall defend, indemnify, hold harmless and release the Owner, the State of New York, the record owner of the real property on which the Work is being performed, any public benefit corporation, railroad or public utility whose property or facilities are affected by the work, and/or their respective affiliates, members, partners, directors, officers, employees, consultants, contractors and/or agents (individually, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against any and all suits, claims, liabilities, fines, damages and/or any types of action whatsoever, including attorneys' fees, defense costs and legal costs, for bodily injury (including exposure to toxic substances), sickness, disease or death sustained by any person, or to injury to or destruction of tangible property (including loss of use), arising out of or resulting from the performance of the Work or negligent or otherwise tortious acts, errors or omissions and/or willful misconduct of any Responsible Party, or by reason of liability imposed by operation of law.

The obligation of the Sub-Contractor to indemnify the Indemnified Parties (1) shall not be limited in any manner by any limitation of the amount of insurance coverage or benefits, including workers' compensation or other employee benefit acts, provided by the Sub-Contractor, and (2) shall not be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the Indemnified Parties.

The Sub-Contractor has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the Indemnified Parties. This obligation shall include the cost of attorneys' fees, disbursements, costs and other expenses incurred in connection with such action or proceeding. Notwithstanding the foregoing, the Owner reserves the right to join such action or proceeding, at its sole expense, when it determines there is an issue involving a significant public interest.

The obligation of the Sub-Contractor to indemnify does not extend to those suits, claims, liabilities, fines, damages and types of action which arise out of the sole negligence of an Indemnified Party. The provisions of this Agreement shall survive the expiration or termination of the agreement between the Prime Contractor and the Sub-Contractor.

The Sub-Contractor shall procure and maintain all of the insurance required under this provision until all work, including punch list items, is complete. The Sub-Contractor every tier shall provide insurance as required by the Contract Documents between the Owner and the Prime Contractor.

The Sub-Contractor shall enforce strict discipline and good order among its employees and other persons carrying out the Work at the Owner's sites.

This Agreement may not be amended or modified except in writing by the parties hereto nor may any obligations hereunder be waived orally.

This Agreement shall be governed by the laws of the State of New York.

It is mutually agreed between the parties that an Independent Contractor relationship is hereby established under the terms and conditions of the Contract Documents between the Owner and the Prime Contractor.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first written below.

Date: _____
Print Name of Authorized Person of Sub-Contractor

Authorized Signature of Sub-Contractor Title

Date: _____
Print Name of Authorized Person of Contractor

Authorized Signature of Prime Contractor Title



**OLYMPIC REGIONAL
NEW YORK
DEVELOPMENT AUTHORITY**

CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Upon receipt by the undersigned Contractor ("Contractor") of payment from the Olympic Regional Development Authority ("ORDA") in the sum of \$ _____ (the "Payment"), this document shall become effective as to the following:

1. The Contractor hereby certifies that all bills and claims of every nature incurred by it for the period ending _____ ("Period End Date"), in connection with the Project have been paid and satisfied and/or will be fully paid and satisfied from the Payment.

2. The Contractor, for and in consideration and on receipt of the Payment, as payment less retainage for all labor, equipment, materials, services, fixtures, apparatus or machinery furnished or work performed for the Project by the Contractor through the Period End Date, does hereby waive and release any and all lien or claim or right of lien under the statutes of the State of New York relating to liens and the Project, and on the monies or other considerations due or to become due from ORDA, on account of all labor, equipment, materials, services, fixtures, apparatus or machinery furnished or work performed for the Project by the Contractor through the Period End Date.

3. The Contractor agrees to indemnify and hold ORDA harmless from all costs and damages including, but not limited to, reasonable attorneys' fees, concerning or relating to claims, actions and/or liens filed by subcontractors, sub-subcontractors, suppliers and/or laborers on account of labor, equipment, materials, services, fixtures, apparatus or machinery furnished or work performed by them for the Project directly or indirectly to the Contractor through the Period End Date, and to defend all actions arising therefrom, paying any costs, expenses and fees incident thereto, including reasonable attorneys' fees, costs and expenses.

IN WITNESS WHEREOF, the Contractor has caused this Conditional Waiver and Release Upon Progress Payment to be executed by one of its duly authorized officers.

Print Name of Company: _____

Signature of Officer: _____

Print Name of Officer: _____

Print Title: _____

Date: _____

[Acknowledgment on following page]

Olympic Regional Development Authority

00 54 01

Page 1 of 2



**OLYMPIC REGIONAL
NEW YORK
DEVELOPMENT AUTHORITY**

WAIVER AND RELEASE UPON FINAL PAYMENT

Upon receipt by the undersigned Contractor ("Contractor") of payment from the Olympic Regional Development Authority ("ORDA") in the sum of \$ _____ (the "Payment"), this document shall become effective as to the following:

1. The Contractor hereby certifies that all bills and claims of every nature incurred by it in connection with the Project have been paid and satisfied and/or will be fully paid and satisfied from the Payment.
2. The Contractor hereby certifies that the Contract Price for the Project is in the total amount of \$ _____, including change orders.
3. The Contractor, for and in consideration of the amounts and sums previously received, and the Payment, as full and final payment for all labor, equipment, materials, services, fixtures, apparatus or machinery furnished or work performed for the Project by the Contractor, does hereby (a) waive and release any and all lien or claim or right of lien under the statutes of the State of New York relating to liens and the Project, and on the monies or other considerations due or to become due from ORDA, on account of all labor, equipment, materials, services, fixtures, apparatus or machinery furnished or work performed for the Project by the Contractor, and (b) release and discharge ORDA from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, admiralty or equity, which, against ORDA the Contractor and its successors and/or assigns ever had, now have or hereafter can, shall or may have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this Waiver and Release Upon Final Payment.
4. The Contractor agrees to indemnify and hold ORDA harmless from all costs and damages including, but not limited to, reasonable attorneys' fees, concerning or relating to claims, actions and/or liens filed by subcontractors, sub-subcontractors, suppliers and/or laborers on account of labor, equipment, materials, services, fixtures, apparatus or machinery furnished or work performed by them for the Project directly or indirectly to the Contractor, and to defend all actions arising therefrom, paying any costs, expenses and fees incident thereto, including reasonable attorneys' fees, costs and expenses.

[Signature and acknowledgment on following page]

Olympic Regional Development Authority

Code of Business Ethics – Certification

The bidder (or Proposer) shall submit this form at time of bid (or with RFP).

A. Ethics Programs

1. The Olympic Regional Development Authority (the “Authority”), a public-benefit corporation, expects the highest degree of ethical business conduct by its employees and the many contractors, consultants and vendors with whom it interacts on behalf of its clients, bondholders and the people of the State of New York. The Authority, by mandate of its Board of Directors, administers a comprehensive corporate integrity program to ensure that, as public officers, Authority employees at all levels perform their official duties consistent with the requirements of the *New York State Public Officers Law*; other applicable laws, rules, and regulations; and policies of the Authority.
2. The Authority encourages and supports a fair, open and honest business relationship with its contractors, consultants and vendors based on quality, service and cost. Moreover, the Authority believes that a “level playing field” in the marketplace can only be achieved through adherence to ethical business practices by all participants involved in the process.
3. To promote a working relationship with the Authority based on ethical business practices, contractors, consultants and vendors are expected to:
 - a. furnish all goods, materials and services to the Authority as contractually required and specified;
 - b. submit complete and accurate reports to the Authority and its representatives as required;
 - c. not seek, solicit, demand or accept any information, verbal or written, from the Authority or its representatives that provides an unfair advantage over a competitor;
 - d. not engage in any activity or course of conduct that restricts open and fair competition on Authority-related projects and transactions;
 - e. not engage in any course of conduct with Authority employees or representatives that constitutes a conflict of interest or creates the appearance of a conflict of interest;
 - f. not offer any unlawful gifts or gratuities to Authority employees or representatives, or engage in bribery or other criminal activity; and
 - g. report to the Authority any activity by an Authority employee or contractor, consultant or vendor of the Authority that is inconsistent with the Authority’s *Code of Business Ethics*.
4. The Authority encourages its contractors, consultants and vendors to advance and support ethical business conduct and practices among their respective directors, officers and employees, preferably through the adoption of corporate ethics awareness training programs and written codes of conduct. In addition to considering technical competence and financial stability, the Authority will consider the *corporate integrity* of all contractors, consultants and vendors prior to the awarding of contracts or issuing of purchase orders.

B. Conduct of Authority Employees

Authority employees are expected to conduct business with contractors, consultants and vendors in a fair, consistent and professional manner. The Authority's Code of Business Ethics and Employee Conduct entitled *Serving Responsibly*, and other Authority policies and procedures, guide the manner in which Authority employees are required to interact with contractors, consultants and vendors. Additionally, the New York State Public Officers Law sets forth legal parameters within which Authority employees must perform their official duties with respect to, among other things, conflicts of interest and the acceptance of gifts.

C. Limits on Gifts to Authority Employees

1. Pursuant to Section 73(5) of the Public Officers Law, no person shall offer any gift having more than a nominal value to an Authority employee under circumstances in which it:
 - a. could be reasonably inferred the gift was intended to influence the employee in the performance of his or her official duties; or
 - b. could reasonably be expected to influence the employee in the performance of his or her official duties; or
 - c. was intended as a reward for any official action on the part of the employee.
2. A gift is anything more than nominal in value, in any form, given to an Authority employee. Gifts include, but are not limited to, money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise. Any firm or its agents, either doing business or seeking to do business with the Authority (contractors, consultants, vendors, etc.), is prohibited from directly or indirectly offering or giving any gifts, even gifts of nominal value, to Authority employees as such gifts are deemed to be *per se* improper.
3. As is stated in the *Prohibited Interests* section of the Construction and Consultant Contract documents, violations of these gift provisions may be grounds for immediate contract termination and/or referral for civil action or criminal prosecution.

D. Employing Relatives of Authority Employees

Although contractors, consultants and vendors may employ relatives of Authority employees, the Authority must be made aware of such circumstances as soon as possible, preferably in writing, to ensure a conflict of interest situation does not arise. The Authority reserves the right to request that contractors, consultants and vendors modify the work assignment of an Authority employee's relative where a conflict of interest, or the appearance thereof, is deemed to exist. Please be advised that Authority employees are required to disclose information regarding the hiring of relatives by contractors, consultants and vendors and recuse themselves from matters that may present a conflict of interest. For purposes of this document, the term "relatives" refers to spouses, domestic partners, parents, children, sisters, brothers, sisters-in-law, brothers-in-law, parents-in-law, sons/daughters-in-law, stepparents, stepchildren, aunts, uncles, nieces, nephews, first cousins, grandparents by blood relationship or by marriage, or persons residing in the same household.

E. Hiring Former Authority Employees

Contractors, consultants and vendors may hire former Authority employees. However, as a general rule, former employees of the Authority may neither appear nor practice before the

Authority, nor receive compensation for services rendered on a matter before the Authority, for a period of *two years* following their separation from Authority service. In addition, former Authority employees are subject to a “lifetime bar” from appearing before the Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the Authority. Violations will be referred to the New York State Commission on Public Integrity for appropriate action.

F. Certification

I have read the foregoing and agree to comply with the Authority’s Code of Business Ethics. I further acknowledge that failure to comply shall justify contract termination by the Authority and may result in the rejection of bids or proposals for future work with the Authority.

_____ (Officer’s Signature) _____ (Date)

Firm’s Legal Name: _____

Print Officer’s Name: _____

Title: _____

Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

By: _____ Date: _____
Signature

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

PLAN ROOM COPY
NOT FOR BIDDING

Certificate of Non-Collusion
Individual

Non-Collusive Certification is required of all bidders under Section 103-d of the General Municipal Law as amended by Chapter 751 of the Laws of 1965 and Chapter 675 of the Laws of 1966 effective September 1, 1966.

By submission of this bid, the bidder and each person signing on behalf of the bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

I hereby affirm under the penalties of perjury that the foregoing statement is true.

Individual

STATE OF)
) ss:
COUNTY OF)

On this day of _____, 20____, before me personally came the person who executed the foregoing instrument, and s/he duly acknowledged to me that s/he executed the same.

Notary Public

PROHIBITING CONTRACTS WITH ENTITIES THAT SUPPORT DISCRIMINATION

EO 177 Certification

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Contractor: _____

By: _____

Name: _____

Title: _____

Date: _____



DISCRIMINATION AND SEXUAL HARASSMENT POLICY

It is the policy of the Olympic Regional Development Authority to provide and maintain a working environment free of sexual and/or any other illegal harassment, discrimination, and/or intimidation of any employee, job applicant, or non-employee. We do not accept or condone illegal discriminatory actions nor actions of sexual harassment by management or any employee of ORDA, or by non-employees.

Discrimination and sexual harassment are illegal under Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), and the New York State Human Rights Law, as amended ("Human Rights Law").

The Human Rights Law applies to all State agencies and employees, and provides very broad anti-discrimination coverage. The Law provides, in section 296.1(a), that it is an unlawful discriminatory practice "[f]or an employer or licensing agency, because of the age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status or domestic violence victim status of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment." The Law further provides, in sections 296.15 and 296.16, protections from employment discrimination for persons with prior conviction records, or prior arrests, youthful offender adjudications or sealed records.

The Olympic Authority will not tolerate any discriminatory and/or harassment of its employees which is in violation of either Title VII and/or the Human Rights Law, and will take affirmative steps to stop it. All personnel actions and conditions of employment are administered without regard to race, color, religion, national origin, age, sex, disability, veteran status or sexual preference, and any other protected class under Title VII and/or the Human Rights Law as they may be amended from time to time. Furthermore, Sexual harassment in any form is prohibited and will not be tolerated. Anyone who engages in illegal discrimination/ harassment, or sexual harassment will be subject to discipline up to and including discharge. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other conduct, either verbal or physical, of a sexual nature that is offensive to another individual.

You have the right to make a complaint if you feel you have been discriminated against, harassed, or sexually harassed. A complaint form may be obtained from the Office of the Director of Environmental Planning and Construction. Directions on how to file a complaint and who to submit it to are contained on the form itself. An immediate investigation of the allegations will be conducted and corrective action taken where warranted. To the extent possible, this investigation will be conducted in a confidential manner that protects the identity of both the person filing the complaint and the person accused.

If it is determined that an employee is guilty of harassing another employee, or non- employee, appropriate disciplinary action will be taken against the offending person.

ORDA prohibits any form of retaliation against any contractors or employee who files a bona fide complaint or witnesses assisting in an investigation.

You may request further information about the policy and procedure for investigating claims of sexual harassment and/or discrimination from the Human Resource Office.

I have read the foregoing and agree to comply with the ORDA's Discrimination and Sexual Harassment Policy. I further acknowledge that failure to comply shall justify contract termination by ORDA and may result in the rejection of bids or proposals for future work with ORDA.

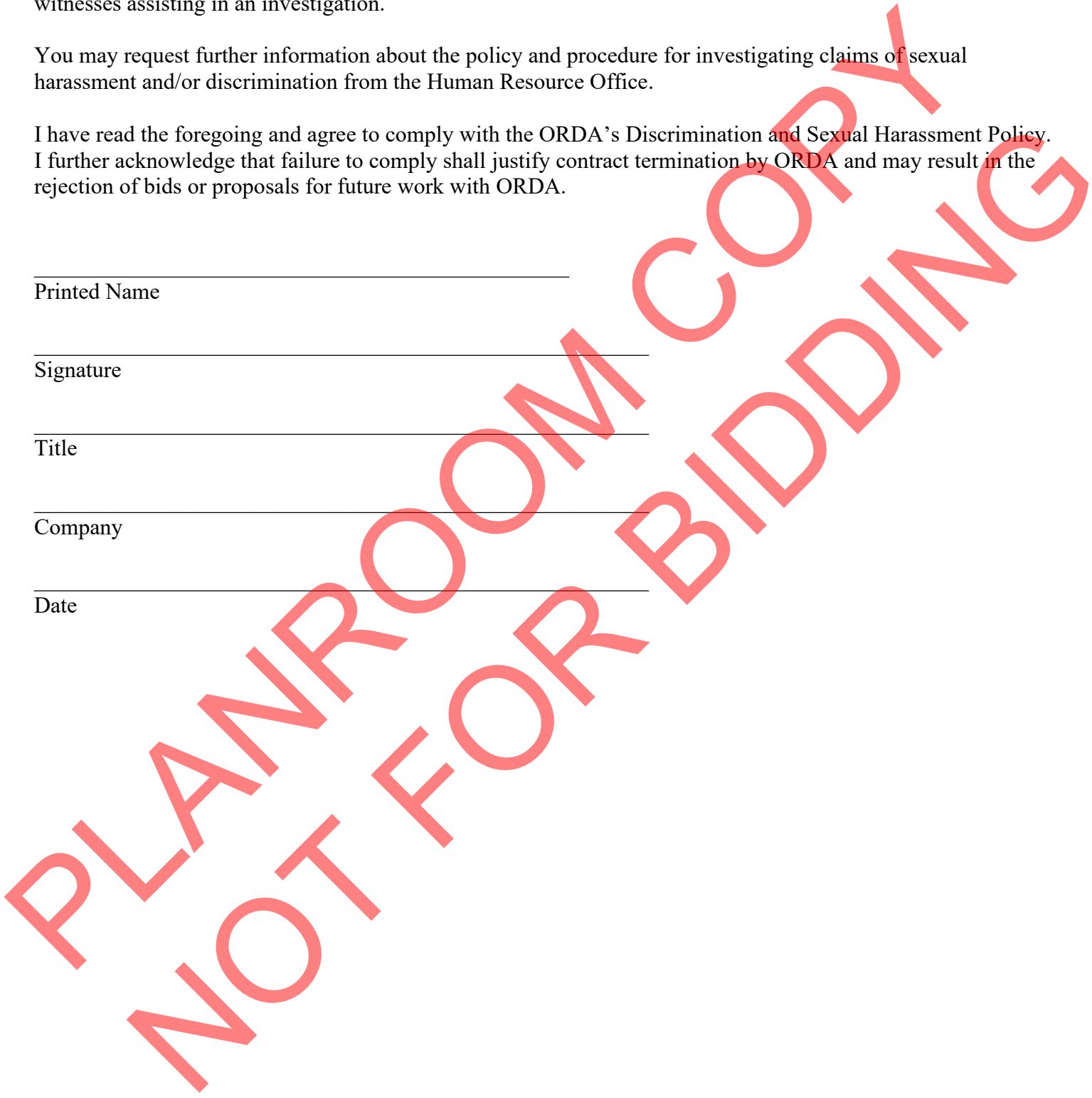
Printed Name

Signature

Title

Company

Date



Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	<p>1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.</p> <hr/> <p>2 Business name/disregarded entity name, if different from above</p> <hr/> <p>3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.</p> <p> <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate </p> <p> <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____ </p> <p>Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.</p> <p> <input type="checkbox"/> Other (see instructions) ▶ _____ </p>	<p>4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from FATCA reporting code (if any) _____</p> <p><small>(Applies to accounts maintained outside the U.S.)</small></p>
	<p>5 Address (number, street, and apt. or suite no.) See instructions.</p> <hr/> <p>6 City, state, and ZIP code</p> <hr/> <p>7 List account number(s) here (optional)</p> <hr/>	<p>Requester's name and address (optional)</p> <hr/>

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Social security number									
-				-					
or									
Employer identification number									
-									

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

New York State Olympic Regional Development Authority

GENERAL CONDITIONS

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GENERAL CONDITIONS

ARTICLE 1 - THE CONTRACT DOCUMENTS and ITEMS PRECEDENT TO AWARD

- 1.1 The Contract Documents consist of the Agreement, the Performance and Payment Bonds, the General Conditions, the Supplementary Conditions, Appendix A, the JOC Supplemental Conditions, the Construction Task Catalog, the Specifications for Divisions 0 and 1 and all Technical Specifications, Addenda issued prior to the receipt of bids, all subsequent modifications and changes issued pursuant to the General Conditions, all Job Orders and all related documentation including, but not limited to, the Detailed Scope of Work and any Drawings and Specifications, the Job Order Proposal, and any Supplemental Job Orders.
- 1.2 The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, either written or oral including the bidding documents.
- 1.3 The Contract may not be modified except in accordance with the General Conditions.
- 1.4 The project will be designed in accordance with the Building Codes of New York State and its reference standards. In no instance shall the Contractor deviate from the Contract Documents except as provided for in the Detailed Scope of Work. The Contractor shall notify the State of any deviations or conflicts observed that may violate the Building Codes.
- 1.5 The following documents shall be distributed as required:
- 1.5.1 When the Contractor delivers the executed Agreements to ORDA, the Contractor shall also deliver to ORDA such Bonds as the Contractor may be required to furnish in accordance with these General Conditions.
 - 1.5.1 ORDA shall furnish to the Contractor a copy of the Contract Documents in electronic format. Any other copies as are reasonably necessary for the execution of the Work will be the responsibility of the Contractor to reproduce.
 - 1.5.2 With the Job Order Proposal (unless otherwise specified in the Job Order) the Contractor shall submit to OWNER for review:
 - 1.5.2.1 a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 - 1.5.2.2 a preliminary Schedule of Submittals, includes Shop Drawings and Sample which will list each required submittal and the times for submitting, reviewing and processing such submittal;
 - 1.5.2.3 a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Job Order Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction.
 - 1.5.3 A pre-construction conference attended by the Contractor, ORDA and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 1.5.2.3, procedures for handling Shop Drawings, and other submittals, processing Applications for Payment and maintaining required records.
 - 1.5.4 Before any Work at the site is started, the Contractor and ORDA shall each deliver to the other, with copies to each Additional Insured identified in Division 0 and Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which the Contractor and ORDA respectively are required to purchase and maintain in accordance with Division 0 and

Supplementary Conditions.

1.6 Reuse of Documents: The Contractor and any subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with ORDA (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of the Consultant or the Consultant's consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies on extensions of the Project or any other project without written consent of ORDA and the Consultant and specific written verification or adaption by the Consultant.

ARTICLE 2 - DEFINITIONS

2.1 The following terms shall have the meanings ascribed to them in this Article, wherever they appear in the Contract Documents.

2.2 The term "Agency" means the officer, board, department, commission, authority, fund or public benefit corporation executing the Agreement.

2.3 The term "Commissioner" means the Commissioner of the New York State Office of General Services.

2.4 The term "Comptroller" means the Comptroller of the State of New York.

2.5 The term "Contracting Officer" means the President/CEO for the Olympic Regional Development Authority, or his representative designated in writing.

2.5.1 The term "Contracting Agency" means the New York State Olympic Regional Development Authority (ORDA).

2.6 The term "Contractor" means the person, firm or corporation executing the Agreement or the successor or assignee of the Contractor approved in writing by the Contracting Officer. If the text requires, the term includes the person, firm or corporation executing any Agreement in furtherance of the Project or the successors or assigns approved in writing by the Contracting Officer.

2.7 The term "Consultant" means the design professional responsible for the design of the Project.

2.8 The term "days" means calendar days.

2.9 The term "Director" means ORDA's Director of Environmental, Planning and Construction, who will have general direction and supervision of the Work.

2.10 The term "Director's Representative" means the employee or agent of the office Environmental, Planning and Construction designated in writing by the Director as such. Under the general supervision of the Director, the Director's Representative shall have complete charge of the Work and shall exercise full supervision and direction of the Work. Where the Contract Documents specifically designate a person to perform a function or duty, that person shall be the Director's Representative but only for the performance of that function or duty. Where the word "directed" appears in the Contract Documents, the words "by the Director's Representative" shall be deemed inserted thereafter in each case, except where it is obviously inappropriate in context.

2.11 The term "Director's Project Manager" means the employee of the office Environmental, Planning and Construction who has been appointed by the Director to manage the day to day tasks of the project team. Under the general supervision of the Director, the Director's Project Manager shall have charge of the project design team and the Director's Representative.

2.12 Work Change Directive – A written directive to the Contractor issued on or after the issuance of a Job Order and signed by the Director, ordering an addition, deletion or revision in the Work, or responding to emergencies under paragraph 25.10. A Work Change Directive will not change the Job Order Price or the Job Order Completion Time, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Supplemental Job Order following negotiations by the parties as to its effect, if any, on the Job Order Price or Job Order Completion Time as provided in Article 10.

2.13 The term "liquidated damages" means the amount of money to be assessed against the Contractor should the Contractor fail to

- substantially complete and/or physically complete the Detailed Scope of Work within the Job Order Completion Time.
- 2.14 The term Office of Environmental, Planning and Construction (OEPC) shall mean the Department of ORDA responsible general direction and supervision of the Work.
- 2.15 The term “physical completion” means the date upon which the Director’s Representative certifies that all deficiencies noted on the Final Inspection List have been corrected and is evidenced by issuance of the Physical Completion Report.
- 2.16 The term “premises” means all land, buildings, structures and all other things of any kind located on or adjacent to the Site and owned, occupied or otherwise used by the State.
- 2.17 The term “President/CEO” shall mean the President/CEO of the Olympic Regional Development Authority.
- 2.18 The term “product data” means manufacturer’s catalog sheets, brochures, standard diagrams, illustrations, schedules, performance charts, test data, standard schematic drawings, specifications and installation instructions.
- 2.19 The term “Project” means the Work carried out pursuant to one Job Order or multiple Job Orders.
- 2.20 The term “provide” means furnish and install complete, in place and ready for operation and use.
- 2.21 The term “sample” means physical examples submitted by the Contractor of materials, equipment or workmanship to establish a standard which the Contractor is required to meet and to show the quality, type, range of color, finish, and texture of the material intended to be furnished for the Work.
- 2.22 The term “shop drawing” means an original drawing prepared by the Contractor or a subcontractor, supplier or distributor which illustrates some portion of the Work showing fabrication, layout, fitting or erection details.
- 2.23 The term “Site” means the area within the contract limit, as indicated by the Contract Documents, including all land, buildings, structures and other things located within those limits.
- 2.24 The term “State” means the State of New York.
- 2.25 The term “substantial completion” means that the Work or major milestones there of as contemplated by the terms of this Contract are sufficiently complete so that the Work can be used for the purpose for which it is intended.
- 2.26 The term “Work” means all that which is required of the Contractor by the Contract Documents including labor, materials, tools and equipment.
- 2.27 The term “offerer” shall mean the individual or entity, or any employee, agent, consultant or person acting on behalf of such individual or entity, that contacts a governmental entity about a governmental procurement during the restricted period of such governmental procurement.
- 2.28 The term “ORDA” shall mean the Olympic Regional Development Authority and the term “Owner” shall mean ORDA.
- 2.29 The terms “Written Notice” shall mean the individual or entity shall either hand deliver the notice to the person identified to receive such notice or shall be sent via US Mail or other applicable methods which shall require a return receipt.
- 2.30 Individually, the term “Indemnified Party” and collectively, the term “Indemnified Parties” shall mean ORDA, the State of New York, each Additional Insured identified in Division 0 and Supplementary Conditions, the record owner of the real property on which the Work is being performed, any public benefit corporation, railroad or public utility whose property or facilities are affected by the Work, and/or their respective affiliates, members, partners, directors, officers, employees, consultants, contractors and/or agents.
- 2.31 The term “Responsible Party” shall mean the Contractor and its agents, consultants, subcontractors, guests, invitees, employees, servants, lessees and/or concessionaries and anyone directly or indirectly employed by any of them or anyone for whose acts any may be liable.

ARTICLE 3 - INTERPRETATION OF CONTRACT DOCUMENTS

- 3.1 The Contract Documents are complementary, such that what is called for by one shall be as binding as if called for by all. It is not intended to include work not properly inferable from the Contract Documents.
- 3.2 Upon the Contractor's written request, the Director's Representative may issue written interpretation or drawings necessary for the proper execution or progress of the Work which interpretation shall be consistent with and reasonably inferable from the Contract Documents.
- 3.3 The language of the Contract Documents is directed at the Contractor unless specifically stated otherwise.
- 3.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade.
- 3.5 In the event of conflicting provisions in the Contract Documents, the drawings will take precedence over the specifications.
- 3.6 In the event of conflicting provisions within the drawings, the following order of precedence for resolution of the conflict shall apply: the more specific provision will take precedence over the less specific; if not resolved, the more stringent will take precedence over the less stringent; if not resolved, the more expensive item will take precedence over the less expensive. On all drawings, figures take precedence over scaled dimensions.
- 3.7 In the event of conflicting provisions within the specifications, the following order of precedence for resolution of the conflict shall apply: the more specific provision will take precedence over the less specific; if not resolved, the more stringent will take precedence over the less stringent; if not resolved, the more expensive item will take precedence over the less expensive.
- 3.8 If during the performance of the work, the Contractor identifies a conflict in the Detailed Scope of Work, the Contractor shall promptly notify the Director's Representative in writing of the conflict and advise as to the course of action the Contractor proposes to follow. The Director's Representative shall promptly

acknowledge the notification in writing and advise the Contractor, pursuant to Paragraph 3.2 of these General Conditions, as to the interpretation to be followed in the performance of the Work.

ARTICLE 4 - SUBMITTALS

- 4.1 The Contractor and the Director shall adhere to the submittal and scheduling requirements specified in Division 01 - General Requirements.
- 4.2 The Contractor shall approve all submittals before submitting them. By such approval, the Contractor represents that it has determined and verified field measurements, field construction criteria, materials, catalog numbers, and similar data and that it has checked and coordinated shop drawings, product data and samples with the requirements of the Contract Documents and that it has verified the completeness, correctness, and accuracy of the submittal.
- 4.3 The Director's review of shop drawings, product data and samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has previously informed the Director of any anticipated deviation in accordance with Division 1 at the time of submission. Written approval of the specific deviations as outlined on the request form shall be required. The Director's review process shall not relieve the Contractor from responsibility for errors or omissions in the shop drawings, product data or samples.
- 4.4 Portions of the Work requiring shop drawings, product data, quality assurance information, or sample submittals shall not be commenced until the appropriate submittals have been reviewed by the Director.
- 4.5 The Contractor shall deliver to the Director, in the detail and form and at the time the Director shall require, information concerning the Contractor's operations and proposed operations upon the Project all in accordance with Division 01 - General Requirements.
- 4.6 During the term of this Project, the Director may require any Contractor to modify any schedules which it has submitted either before or after they are approved so that the Work of any contract in furtherance of the Project may be properly progressed and so that changes in the Work or the work of related contracts is properly reflected

in the schedules.

- 4.7 Where indicated under the specific submittal requirements of the specifications, a re-evaluation fee of \$250.00 may be assessed against the Contractor for each re-evaluation required of any submittal package that is deemed incomplete, or lacking appropriate content or required format as required by the individual specification section.

ARTICLE 5 - MATERIALS AND LABOR

- 5.1 All materials, equipment and articles used permanently in the Work which become the property of ORDA shall be new unless specifically stated otherwise.
- 5.2 Asbestos Free Materials: All materials used for construction shall be free of asbestos containing materials unless the materials containing the asbestos have been previously approved for use by ORDA. If asbestos is found in installed products not previously approved by ORDA, it will be the responsibility of the Contractor to abate the asbestos containing material and replace the work with new asbestos free materials in compliance with the requirements of the Contract at no cost to ORDA.
- 5.3 Except where specifically provided otherwise, whenever any product is specified by brand name, i.e., manufacturer's or supplier's name or trade name and catalog or model number or name, the intent is not to limit competition but to establish a standard of quality which the Director has determined is necessary. The words "or equal" shall be deemed inserted in each instance. The Contractor may use any product equal to that named in the Contract Documents which is approved by the Director and which meets the requirements of the Contract Documents providing the Contractor gives timely notice of the Contractor's intent in accordance with the submittal and scheduling requirements of Division 01 - General Requirements.

- 5.3.1 The Contractor shall have the burden of proving at the Contractor's own cost and expense, to the satisfaction of the Director, that the proposed product is equal to the named product. The Director may establish criteria for product approval. The Director shall determine with absolute discretion whether a proposed product is to be approved.

- 5.3.2 If the Contractor fails to comply with the provisions of this Article, or if the Director determines that the proposed product is not equal to that named, the Contractor shall supply the product named.

- 5.3.3 The Contractor shall have and make no claim for the extension of time or for damages because the Director requires a reasonable period of time to consider a product proposed by the Contractor or because the Director disapproves such a product.

- 5.3.4 Where optional materials or methods are specified, or where "or equal" submissions are approved, the Contractor shall make all adjustments to contingent Work, whether the contingent Work be the Work of its contract or the Work of other Contractor's, necessary to accommodate the option or "or equal" product it selects without extra or additional cost.

- 5.4 Royalties and Patents: The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save ORDA harmless from loss on account thereof, except that ORDA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer is specified.

- 5.5 The Contractor shall develop a schedule to complete the Work at the site during the working hours which are in the best interest of ORDA and avoid overtime work or the performance of Work on Saturday, Sunday or any legal holidays.

- 5.6 This project is exempt from sales and compensating use taxes on materials incorporated into the work. The Contractor is responsible for obtaining the appropriate waivers for use with their suppliers and subcontractors and all other such parties.

- 5.7 The Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

ARTICLE 6 - CONTRACTOR'S SUPERVISION

- 6.1 The Contractor shall designate in writing competent supervision and/or management representatives as required below to represent the Contractor at all times with authority to act for the Contractor. All direction given to the Contractor's representatives shall be as binding as if given to the Contractor. A Superintendent or Project Manager shall be classified as management representatives included in the Contractor's Adjustment Factors and shall perform management, supervisory and/or administrative tasks (**non-labor**) only. Individuals listed under this Article shall have the ability to effectively communicate (verbal and written) with all parties associated with the administration/supervision of this Contract.
- 6.2 Should the Director deem any employees of the Contractor incompetent or negligent or for any cause unfit for their duty, the Contractor shall dismiss them and they shall not again be employed on the Work.
- 6.3 Before any part of the Contract shall be sublet or material purchased, the Contractor shall submit to the Director in writing the name of each proposed subcontractor and supplier and obtain the Director's written consent to such subcontractor and supplier. The names shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor and supplier by the Director or Contracting Officer without causing delay in the work of the Project. The Contractor shall promptly furnish such information as the Director or Contracting Officer may require concerning the proposed subcontractor's and supplier's ability and qualifications, and Minority/Women Owned Business Enterprises Status. Each request for approval of a subcontractor whose subcontract will be valued at \$100,000.00 or more shall also be accompanied by a NYS Vendor Responsibility Questionnaire - For-Profit Construction properly completed and executed by the proposed subcontractor.
- 6.4 The Contractor's use of subcontractors shall not diminish the Contractor's obligations to complete the Work in accordance with the Contract. The Contractor shall control and coordinate the Work of its subcontractors.
- 6.5 The Contractor shall be responsible for

informing its subcontractors and suppliers of all the terms, conditions and requirements of the Contract Documents including, but not limited to the General Conditions, Supplementary Conditions, the Detailed Scope of Work including any Drawings and Specifications, Appendix A, and changes made by Addenda.

ARTICLE 7 - USE OF PREMISES

- 7.1 If the Premises are occupied, the Contractor, its subcontractors, and their employees shall comply with the regulations governing access to, operation of, and conduct while in or on the Premises and shall perform the Work in such a manner as not to unreasonably interrupt or interfere with the conduct of business.
- 7.2 Any request received by the Contractor from any source other than the Director or the Director's Representative to change the Work or its sequence shall be referred to the Director's Representative for determination.
- 7.3 The Contractor, its subcontractors and their employees shall not have access to or be admitted to any area outside the Site except with the written permission of the Director's Representative.

ARTICLE 8 - LAWS, PERMITS AND COMPLIANCE

- 8.1 The Contractor shall fully comply with all permits, laws, rules and regulations applicable to the Work at no additional cost to ORDA.
- 8.2 The Contractor shall obtain, maintain and pay for all permits and licenses legally required and shall give all notices, pay all fees at applicable to the Work at no additional cost. In the event that the permit(s) and/or licenses legally required for the Work are secured before the start of Work, the Contractor shall give all notices, if required, maintain in accordance with the conditions of the permit(s) and/or licenses at no additional cost to ORDA.
- 8.3 The Contractor shall become fully familiar with all permits, laws, rules and regulations applicable to the Work and shall comply as per required per 8.1 and 8.2.

ARTICLE 9 - INSPECTION AND ACCEPTANCE

- 9.1 The Director's Representative will inspect and test the Work at reasonable times at the Site,

unless the Director determines to make an inspection or test at a place of production, manufacture or shipment. Such inspection or test shall be conclusive as to whether the material and workmanship inspected or tested conforms to the requirements of the Contract. Such inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Director to reject the completed Work.

- 9.2 The Contractor shall, without charge, promptly correct any Work the Director's Representative finds does not conform to the Contract Documents unless in the public interest the Director consents to accept such Work with an appropriate adjustment on the Contract Price and/or to any terms and conditions of the Contract. The Contractor shall promptly remove rejected material from the Premises.
- 9.3 If the Contractor does not promptly, as determined by the Director, correct rejected Work including the work of other contractors destroyed or damaged by removal, replacement, or correction, the Director may (1) correct such Work and charge the cost thereof to the Contractor; or (2) terminate the Contract in accordance with Article 13 of the General Conditions.
- 9.4 The Contractor shall furnish promptly without additional charge all facilities, labor, material and equipment reasonably needed to perform in a safe and convenient manner such inspections and tests as the Director's Representative requires.
- 9.5 The Contractor shall keep the Director's Representative informed of the progress of the Contractor's Work and particularly, inform in writing, when the Contractor intends to cover Work not yet inspected or tested. All inspection and tests by the Director's Representative shall be performed in such manner as not to unreasonably delay the Work.
- 9.5.1 The Contractor shall be responsible for all required tests and appropriate test schedules, approvals and inspections pursuant to the Contract Documents.
- 9.5.2 The Contractor shall be back-charged with any cost of inspection when the Work is not ready at the time specified by the Director's Representative for inspection, or for deficient work that

shall require re-testing and/or inspection.

- 9.5.3 ORDA shall be responsible for the cost of all testing for required Special Inspections. The Contractor shall be responsible for scheduling and access for testing agency. A minimum of forty-eight (48) hours' notice shall be required for all testing required for Special Inspections unless other arrangements have been made with the Director's Representative.
- 9.6 Should the Director's Representative determine at any time before acceptance of the entire Work to examine Work already completed by removing, uncovering or testing the same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, materials and equipment to conduct such inspection, examination or test. If such Work is found to be defective or nonconforming in any material respect, the Contractor shall defray all the expenses of such examination and satisfactory reconstruction. If the Work is found to meet the requirements of the Contract Documents, the Contractor shall be compensated for the additional services involved in such examination and reconstruction by change order and, if completion of the Work has been delayed thereby, shall receive a suitable extension of time.
- 9.7 No previous inspection or certificates of payment shall relieve the Contractor from the obligation to perform the Work in accordance with the Contract Documents. The final payment shall not relieve the Contractor of the responsibility for failing to comply with the Contract Documents.
- 9.8 The Contractor shall remedy all defects, paying the cost of any damage to other work or property of ORDA resulting there from, which shall appear within a period of one (1) year from the date of physical completion.
- 9.9 The Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where the Contractor proposes, or an acquisition requires, that specific Products must perform as a

package or system, this warranty shall apply to the Products as a system.

9.9.1 Where the Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g. billing, invoicing, claim processing), the Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. The Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to, the failure or untimely performance of such services.

9.9.2 This Date/Time Warranty shall survive beyond termination or expiration of this Contract through: a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

ARTICLE 10 - CHANGE ORDERS

10.1 ORDA may make changes to the Contract by Change Order. ORDA may make changes to the Detailed Scope of Work by altering, adding to or deleting from the Work through the issuance of a Supplemental Job Order. ORDA shall adjust the Job Order Price or the Job Order Completion Time accordingly with a Supplemental Job Order. All changed work shall be executed in conformity with the terms and conditions of the Contract Documents unless otherwise provided in the Supplemental Job Order. Any change in the Job Order Price or the Job Order Completion Time shall be contained in the Supplemental Job Order. Any change in schedule resulting from a Supplemental Job Order will be issued in

accordance with the provisions of Paragraphs 4.6 and 13.5 of these General Conditions. If the work described in the Change Order impacts the Substantial Completion Date, the Contractor must notify the Director's Representative or their designated representative in writing within fifteen (15) days of the approval of the Change Order. The notification shall include the facts and justification for the time adjustment request and a Time Impact Analysis.

10.2 No written or oral instructions shall be construed as directing a change in the Work unless in the form of a Supplemental Job Order signed by the Contracting Officer. The Supplemental Job Order shall describe or enumerate the work to be performed, state the Supplemental Job Order Price and state the time allowed (if any) for the performance of the changed work. If the extent or cost of the changed work is not determinable until after the changed work is performed, the Supplemental Job Order shall specify the method for determining the cost and extent of the changed work when completed. If the Contractor disagrees as to any element of the Supplemental Job Order, the Contractor shall promptly indicate such disagreement in writing by certified mail directed to the Contracting Officer and shall promptly proceed in accordance with the Supplemental Job Order. The Contractor's letter of disagreement shall identify by number the Supplemental Job Order with which the Contractor is disagreeing, the elements with which the Contractor disagrees and a statement as to why there is a disagreement on each element. The letter of disagreement shall be accompanied by documentation of every material element of the Contractor's basis for disagreement. The Contracting Officer shall promptly review the Contractor's letter and supporting documentation and advise the Contractor in writing of any modifications to the Supplemental Job Order or of the confirmation of the Supplemental Job Order as issued. The Contracting Officer may, in the exercise of discretion, conduct informal discussions or meetings with the Contractor and/or State Officials, employees or agents prior to rendering a decision.

10.3 If the Contractor is required to perform work for which the Contractor believes it is entitled to a Supplemental Job Order, the Contractor shall give the Director prompt written notice and await instructions before proceeding to execute such work. The Contractor shall thereafter proceed diligently with the performance of the contract in

accordance with the Director's instructions. The Contractor shall maintain complete cost records including but not limited to time and payroll records, material invoices and delivery tickets, equipment rental and purchase invoices for itself and all subcontractors, suppliers and material-men when the Contractor performs work which the Contractor believes is extra or additional work. Failure to maintain such records shall waive any right to extra and additional costs beyond those costs supported by actual cost records.

10.4 The Director shall determine the value of any Supplemental Job Order by one or more of the methods provided in Division 01 - General Requirements.

10.5 Irrespective of the method used or to be used by ORDA in determining the value of a Supplemental Job Order, the Contractor shall after receipt of a request, promptly, but no later than thirty (30) days, submit to ORDA a detailed breakdown of the Contractor's estimate of the value of the omitted or extra work. The Contractor shall submit evidence, satisfactory to the Contracting Officer, to substantiate each and every item that constitutes his proposal for the change. ORDA shall promptly respond to such submission.

10.5.1 The Contractor shall submit a responsive Job Order Proposal to the Director's Representative in proper form subject to the provisions of this Article. The Contractor shall respond no later than fifteen (15) calendar days from the date of a "request for proposal" from the Director's Representative. If the contractor believes additional time is required to prepare and submit a responsive proposal, a justification and proposed response duration must be submitted to the Director's Representative or his designated representative within ten (10) days from the date of a "request for proposal". If approved, the 10-day requirement will be extended as ORDA may deem appropriate. Should the Contractor fail to respond or fail to submit the required cost proposal within the 15-day requirement, ORDA shall determine a fair market value for the work proposed and will issue a Supplemental Job Order. The Contractor, by failing to respond to a request for proposal or

provide an acceptable and responsive cost proposal, waives any claim or rights to any extra and or additional costs as may be determined by the Contracting Officer.

10.6 Unless otherwise specifically provided for in a Supplemental Job Order, the compensation specified therein for extra work includes full payment for both the extra work covered thereby and for any damage or expense caused the Contractor by any delays to other work to be done under the Contract resulting from or on account of said extra work, and the Contractor waives all rights to any other compensation for said extra work, damage or expense.

10.7 No Supplemental Job Order which creates a liability on ORDA shall be binding unless approved by the Contracting Officer.

ARTICLE 11 - SITE CONDITIONS

11.1 If the Contractor encounters subsurface or other latent physical conditions at the Site which differ substantially from those shown, described or indicated in such information provided by ORDA in the Contract Documents, or from any information which is a public record and which subsurface or other latent physical condition could not have been reasonably anticipated from that information or from the Contractor's own inspection and examination of the Site, the Contractor shall give immediate written notice to the Director before any such condition is disturbed. The Director shall promptly investigate and, if it is determined that the conditions substantially differ from those which should have been reasonably anticipated, shall make such changes in the Drawings and Specifications as may be required. If necessary, the Job Order Price and/or the Job Order Completion Time shall be adjusted, to reflect any increase or decrease in the cost of, or time required for, performance of the Contract.

ARTICLE 12 - SUSPENSION OF WORK

12.1 The Director may order the Contractor in writing to suspend, delay, or interrupt performance of all or any part of the Work for a reasonable period of time as the Director may determine.

12.2 Upon receipt of a suspension order, the Contractor shall, as soon as practicable, cease performance of the Work as ordered and take immediate affirmative measures to protect such

Work from loss or damage.

- 12.3 The Contractor specifically agrees that a suspension, interruption or delay of the performance of the Work pursuant to this Article for a period or periods not exceeding thirty (30) days in total shall not increase the cost of performance of the Work of this Contract other than costs directly related to demobilization and remobilization for the Work, temporary services costs, equipment rental which cannot be practically suspended and temporary protection measures which are unusual but necessary.

ARTICLE 13 - TIME OF COMPLETION AND TERMINATION FOR CAUSE

- 13.1 All time limits stated in the Contract are of the essence of the Contract.
- 13.1.1 The Job Order Completion Time will commence on the date indicated in the Job Order, or the Notice to Proceed.
- 13.1.2 Starting the Work: The Contractor shall start to perform the Work on the date when the Job Order Completion Time commences to run. No Work shall be done at the Site prior to the date on which the Job Order Completion Time commences to run.
- 13.1.3 Time is of the essence for the Contractor's obligation in this Contract. The Contractor shall carry on said Work promptly, efficiently and in a manner that will not cause delay in the progress of the Work or the work of other contractors. If, in the opinion of ORDA, the Contractor falls behind in the progress of the Work, ORDA may direct the Contractor to take such steps as ORDA deems necessary to improve the rate of progress, including, without limitation, requiring the Contractor to increase the number of shifts, personnel, plants, or proceed with other remedies and to submit to ORDA for ORDA's approval a schedule demonstrating the manner in which the required rate of progress will be attained, without additional cost to ORDA. ORDA may require the Contractor to perform portions of the Work, in what would appear to be out of sequence, in order to conform to the Project Schedule.

13.2 Termination for Cause.

- 13.2.1 If in the judgment of the Director, the Contractor fails or refuses to prosecute the Work in accordance with the Contract, or is failing to complete the Work within the time provided by the Contract, the Contracting Officer may terminate the Contract by written notice. In such event, the Director shall order the surety to complete the Work.
- 13.2.2 If it is determined after the award of the Contract that there exists any cause of so serious or compelling a nature, including but not limited to, submission to a contracting agency of a false or misleading statement on a NYS Vendor Responsibility Questionnaire, or in some other form in connection with a bid for or award of this or any other contract or a request for approval of a subcontractor, that it raises questions about the present responsibility of a contractor or subcontractor, the Director may terminate the Contract by written notice. In such event, the Director may or may not in his sole discretion, order the surety to complete the Work.
- 13.2.3 The Director will notify the Contractor and Surety that ORDA is considering declaring the Contractor in default and will arrange a hearing with the Contractor and the Surety to discuss methods of performing and completing the contract work.
- 13.2.4 If ORDA formally declares the Contractor in default, ORDA will demand upon the Surety to complete any and all remaining Work pursuant to the terms of the Contract and the Surety Takeover Guidelines incorporated as Appendix B. The Surety may undertake to perform and complete the Work itself, through its agents or through independent contractors approved by ORDA. ORDA will agree to pay the balance of the Job Order Price to the Surety in accordance with the terms and conditions of the Contract or to the designee authorized in writing by the surety upon acceptance of the Surety's

completion plan pursuant to Appendix B.

13.2.5 The surety agrees to complete any investigation into the default of the Contractor and advise the Director as to its intended course of action within ten (10) days of receipt of the written notice of default. That notice will detail the underlying reasons for the default and provide pertinent documentation including the surety takeover guidelines of the Contracting Officer. Any request by a surety for execution of a takeover agreement, shall be delivered to the Contracting Officer for consideration, within the same ten day period. No changes in the terms and conditions of the Contract will be considered. All rights remedies and defenses of the parties are reserved and no rights, remedies or defenses of the parties are waived, by virtue of the Surety's agreement to assume contract performance under the bond

13.2.6 The Surety may elect to forfeit the remaining penal sum of the Performance Bond within twenty (20) days of notification of default by ORDA, with no additional penalties imposed, upon the execution of a release prepared by ORDA. ORDA will determine the value of the remaining Work based upon its investigation of the Work in place against payments previously authorized. As soon as practical the Surety will tender payment therefore to ORDA.

13.2.7 If the surety fails or refuses to complete the Work within twenty-five (25) days of the notification of the Contractor's default, or if the Surety fails or refuses to complete the work within the time frames allotted by ORDA, ORDA may take over the Work and prosecute it to completion by contract publicly let or otherwise, and may take possession of and utilize in completing the Work, such of the Contractor's materials, equipment and plant as may be on the Site. Whether or not the right to terminate is exercised, the Contractor and the Surety shall be liable for any damage to ORDA resulting from the failure or refusal to complete the Work

in accordance with the Contract or the failure to complete the Work within the time provided by the Contract.

13.2.8 Should the Surety fail to commence the work, the Director will notify the Surety that ORDA is considering declaring the Surety in default and will arrange a hearing with the Surety to discuss methods of performing and completing the contract work. It is the policy of ORDA to let a Contract for the remaining Work after the 21st day of the demand upon the Surety to complete the Work pursuant to the terms and conditions of the Contract and the Performance Bond filed with the ORDA.

13.2.9 Upon termination, ORDA shall have the right to exclude the Contractor from the Site and take possession of the Work and of all the Contractor's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by the Contractor (without liability to the Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which ORDA has paid the Contractor but which are stored elsewhere, and finish the Work as ORDA may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Job Order Price exceeds all claims, costs, losses and damages sustained by ORDA arising out of or resulting from completing the Work, such excess will be paid to the Contractor. If such claims, costs, losses and damages exceed such unpaid balance, the Contractor shall pay the difference to ORDA. Such claims, costs, losses and damages incurred by ORDA shall be reasonable provided that when exercising any rights or remedies under this section ORDA shall not be required to obtain the lowest price for the Work performed. ORDA's rights under this section shall not be in contravention of, but shall be in addition to, any and all rights ORDA has as against the Surety.

13.3 The amount of Liquidated Damages shall be the

amount set forth in the schedule of liquidated damages contained in Supplementary Conditions Liquidated Damages (Document 00 73 05) times the number of days of delay in substantial completion and/or physical completion of the Work. Upon the assessment of such damages, ORDA may withhold the sum of the damages contemplated from payments to avoid an overpayment to any firm where damages would apply.

13.3.1 If the Director terminates the Contract, damages shall consist of liquidated damages, if any, until the Work is physically completed, plus any and all costs incurred by ORDA in completing the Work.

13.3.2 If the Director does not terminate the Contract, the damages shall consist of liquidated damages, if any, until the Work is physically completed.

13.4 The Contract shall not be so terminated nor the Contractor charged with resulting damage if:

13.4.1 The delay in the completion of the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of ORDA in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with ORDA, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers, and

13.4.2 The Contractor notifies the Director in writing of the causes of delay within ten (10) days from when the Contractor knew or ought to have known of any such delay.

13.5 The Director will ascertain the facts and the extent of the delay and extend the time for completing the Work when, in the Director's judgment, the findings of fact justify such an extension, and the Director's findings of fact shall be final and conclusive on the parties.

13.6 If after notice of termination of the Contract, it is determined for any reason the Contractor was not in default or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Article 14.

13.7 The rights and remedies of ORDA provided in this Article are in addition to any other rights and remedies provided by law or under this Contract.

13.8 ORDA reserves the right to terminate this Contract in the event it is found that the certification filed by the offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, ORDA may exercise its termination right by providing written notification to the offerer in accordance with the written notification terms of the Contract.

ARTICLE 14 - TERMINATION OF THE CONTRACTOR FOR THE CONVENIENCE OF ORDA

14.1 The Contracting Officer may terminate this Contract whenever the public interest so requires by delivering to the Contractor a notice of termination specifying the extent to which performance of Work under the Contract is terminated and the date upon which such termination becomes effective. Upon receipt of the notice of termination, the Contractor shall act promptly to minimize the expenses resulting from such termination. ORDA shall pay the Contractor the sum of:

14.1.1 The costs actually incurred by the Contractor, subcontractors, and sub-subcontractors or their suppliers up to the effective date of such termination, and

14.1.2 The cost of settling and paying claims, provided the concurrence of the Contracting Officer is obtained prior to agreeing to any such settlement, arising out of the termination of Work under subcontracts or orders exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the notice of termination of Work under this Contract, which amounts shall be included in the cost on account of which payment is made under 14.1.1 above,

and

14.1.3 An amount determined by adding to the amount of the costs under 14.1.1 above a sum equal to 20% (comprised of 10% overhead and 10% profit) thereof, provided, however, that if it appears that the Contractor would have sustained a documentable loss on the entire Contract had it been completed, an appropriate adjustment shall be made reducing the amount to be paid under this Article to reflect the indicated rate of loss.

14.2 In no event shall the Contractor's compensation exceed the total Contract amount.

14.3 The detailed estimate or amount of progress payments made to the Contractor prior to the day termination was effective shall not be conclusive evidence of costs incurred but progress payments shall be offset against any payment which ORDA makes to the Contractor as a result of such termination.

ARTICLE 15 - DISPUTES

15.1 The Contractor specifically agrees to submit, in the first instance, any dispute or disagreement relating to the performance of this Contract to the Director, who shall render a decision in writing and furnish a copy thereof to the Contractor. The Contractor agrees that this clause does not apply to any dispute or disagreement which involves delay, acceleration, interference or any other act or omission constituting a breach of contract; any matter relating to extensions of time, bonuses or liquidated damages; to the value of any Change Order (issued pursuant to Division 01 - General Requirements); any termination for cause or convenience; or to termination costs allowable pursuant to Contract.

15.2 The Contractor must request such decision in writing by certified mail no more than fifteen (15) days after the Contractor knew or ought to have known of the facts which are the basis of the dispute or disagreement. Such writing shall identify the nature of the dispute or disagreement; identify the person who rendered the decision or interpretation involved and the date of the decision or interpretation with which the Contractor disputes or disagrees, attaching a copy of such decision or interpretation; contain a statement of the contractual basis for the dispute

or disagreement; and identify the relief sought.

15.3 The Director may cause an investigation to be made of the circumstances involving the dispute or disagreement and may cause a fact-finding proceeding to be conducted before rendering the decision.

15.4 The Contractor agrees that the decision of the Director shall be final and conclusive. Nothing in this Contract shall be construed as making final the decision of any administrative official upon a question of law.

ARTICLE 16 - STATUTORY REQUIREMENTS FOR UTILIZATION OF MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES

16.1 Pursuant to § 313 of Article 15-A of the Executive Law of the State of New York, the Director of the Division of Minority and Women's Business Development has promulgated rules and regulations (Parts 140 through 145 of Subtitle N of Title 9 New York Code of Rules and Regulations) (the "Regulations") for the purposes of ensuring that certified Minority and Women Owned Business Enterprises shall be given the opportunity for meaningful participation in the performance of State contracts and to facilitate the award of a fair share of State contracts and subcontracts to such business enterprises.

16.1.1. The Contractor is directed to the MWBE Requirements Section of Division 0 Bidding and Contract Requirements.

16.2 The Contractor shall make a good faith effort to solicit active participation in the Work by enterprises identified in the directory of certified businesses obtainable from the Division of Minority and Women's Business Development, New York State Department of Economic Development.

16.3 The Contractor agrees, as a material condition of this Contract, to be bound by the provisions of § 316 of Article 15-A of the Executive Law of the State of New York which relates to the resolution of disputes which may arise under this Article.

16.4 The Contractor agrees to include the provisions of Paragraphs 16.2 and 16.3 of these General Conditions in every subcontract it enters into as to Work in connection with this Contract in such a manner that the provisions will be binding

upon such subcontractor. However, the provisions of this paragraph shall not be binding upon the Contractor or its subcontractors in the performance of work or the provision of services that are unrelated, separate or distinct from this Contract as expressed by its terms.

16.5 The Regulations referred to in Paragraph 16.1 of these General Conditions require, among other things, that a bidder or proposer for a State contract submit a utilization plan which shall identify certified Minority or Women Owned Business Enterprises which the bidder/proposer intends to use in connection with the performance of the proposed State contract. Such a utilization plan shall be submitted after bids are opened but prior to contract award.

16.5.1 Pursuant to the Regulations: (1) the Commissioner may require the submission by the Contractor of compliance reports relating to the implementation of and adherence to the utilization plan in performing the Contract; (2) the Commissioner shall allow the Contractor to apply for a partial or total waiver of the Minority and Women Owned Business participation requirements; (3) the Contractor may file a complaint with the Executive Director of the Division of Minority and Women's Business Development regarding a denial of a request for waiver of Minority and Women Owned Business participation requirements; (4) the Commissioner may file a complaint with the Executive Director of the Division of Minority and Women's Business Development in the event the Contractor fails to comply with the Minority and Women Owned Business participation requirements set forth in this Contract; and (5) the Commissioner may disqualify the Contractor's bid or proposal as being non-responsive for failure to remedy notified deficiencies contained in the Contractor's utilization plan after an administrative hearing on the record, reviewing all grounds for disqualification stated by the Commissioner and taking into consideration all the criteria set forth in § 313 of the Executive Law.

16.5.2 The Contractor is referred to the entirety of the provisions of § 316 of

Article 15-A of the Executive Law of the State of New York and of the Regulations for the Contractor's full familiarization with their applicable provisions as terms of this Contract.

ARTICLE 17 - COORDINATION OF SEPARATE CONTRACTS

17.1 ORDA may award other contracts which affect the Work of this Contract. In that event, the Contractor shall coordinate the Work with the work of other contractors in such manner as ORDA may direct. Each contractor shall control and coordinate the work of its subcontractors, if any. ORDA shall approve or require the modification of the work schedules of all contractors to the end that the Project may be progressed as expeditiously as the case permits.

17.1.1. ORDA may self-perform work related to the Project at the Site by its own forces, or let other direct contracts therefore which shall contain General Conditions similar to these, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then; (i) written notice thereof will be given to the Contractor prior to starting any such other work, and (ii) the Contractor may make a claim therefore as provided in Articles 11 and 12 if the Contractor believes that such performance will involve additional expense to the Contractor or requires additional time and the parties are unable to agree as to the amount or extent thereof.

17.2 If any part of the Work depends for proper execution or results upon the work of any other contractor, the Contractor shall inspect and promptly report in writing to the Director's Representative any defects in such work. The Contractor's failure to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the Contractor's Work.

17.3 The Director's Representative shall issue appropriate directions and take such other measures to coordinate and progress the Work as may be reserved to ORDA in the Contract, and which an ordinarily reasonable project owner in similar circumstances would be expected to take.

- 17.4 The award of more than one contract for the Project requires sequential or otherwise interrelated contractor operations, and will involve inherent delays in the progress of any individual contractor's work. Accordingly, ORDA does not guarantee the unimpeded operations of any contractor. The Contractor acknowledges these conditions, and understands that the Contractor shall bear the risk of all delays caused by the presence or operations of other contractors engaged by ORDA and delays attendant upon any ORDA-approved construction schedule.
- 17.5 ORDA shall not be liable for delays which occur by reason of any contractor's failure to comply with directions of ORDA or because of the neglect, failure or inability of any contractor to perform its work efficiently.
- 17.6 The Contractor shall defend, indemnify and hold the Indemnified Parties harmless from any and all claims or judgments of damages and from costs and expenses to which the Indemnified Parties may be subjected or which it may suffer or incur by reason of or based upon an allegation of the Contractor's failure to promptly comply with the directions of the Director's Representatives.
- 17.7 Should the Contractor sustain any damage through any act or omission of any other contractor having a contract with ORDA for the performance of work upon the Site which may be necessary to be performed for the proper prosecution of the Work to be performed hereunder, or through any act or omission of a subcontractor of such contractor, the Contractor shall have no claim against ORDA for such damage, but shall have a right to recover such damage from the other contractor under the provision similar to the following provision which has been or will be inserted in the contract with such other contractors.
- 17.8 Should any other contractor having or who shall hereafter have a contract with ORDA for the performance of work upon the Site sustain any damage through any act or omission of the Contractor hereunder or through any act or omission of any subcontractor of the Contractor, the Contractor agrees to reimburse such other contractor for all such damages and to indemnify and hold ORDA harmless from all such claims.

ARTICLE 17A - DELAYS

- 17A.1 For the purposes of this Contract, the term delay includes delay, disruption, interference, inefficiencies, impedance, hindrance and acceleration.
- 17A.2 The Contractor agrees to make claim only for additional costs as defined in Document 01 20 00, Section 1.01, paragraph L, from causes listed below, attributable to delay in the performance of this Contract, occasioned by any act or omission to act by ORDA or any of its representatives. The Contractor also agrees that delay from any other cause shall be compensated for solely by an extension of time to complete the performance of the Work.
- 17A.2.1 The failure of ORDA to take reasonable measures to coordinate and progress the Work unless coordination is assigned to the Contractor or another contractor to whom a contract was awarded which affects the Work of this Contract
- 17A.2.2 Extended delays attributable to ORDA in the review or issuance of Change Orders or Work Change Directives, in shop drawing reviews and approvals or as a result of the cumulative impact of multiple orders on contract, which constitute a qualitative change to the Work and which have a verifiable impact on Project costs.
- 17A.2.3 The unavailability of the Site for such an extended period of time which the Director determines to significantly affect the scheduled completion of the contract.
- 17A.2.4 The issuance by the Director of a stop work order relative to a substantial portion of the Work for a period exceeding thirty (30) days.
- 17A.3 The Contractor shall provide "notice of claim" of an anticipated claim for delay to the Contracting Officer by personal service or certified mail no more than fifteen (15) days after the Contractor knew or ought to have known of the facts which form the basis of the claim. The Contracting Officer shall acknowledge receipt of the Contractor's notice, in writing, within five (5) days. The Contractor agrees that ORDA shall have no liability for any damages which accrue more than fifteen (15) days prior to the delivery or mailing of the required notice. The notice shall at a minimum provide a description of any

operations that were, are being, or will be delayed, the date(s) and reasons for the delay, and, to the extent known, the information required by Paragraph 17A.6 of these General Conditions. In no case, shall oral notice constitute notice under this provision or be deemed to constitute a waiver of the written notice requirement. In no case, shall written notice to the Director's Representative or any other individual other than the Contracting Officer constitute notice under this provision or be deemed to constitute a waiver of the written notice requirement. The Contracting Officer is located at the following location:

Olympic Regional Development Authority
Olympic Center
2634 Main Street
Lake Placid, NY 12946

17A.4 Failure by the Contractor to adequately progress the completion of the Work will be considered in determining the causes of delay. For any claim asserted under this Article, the Contractor shall keep detailed written records of the costs and shall make them available to the Contracting Officer at any time for the purposes of audit and review. Failure by the Contractor to provide the required written notice to the Contracting Officer, or to maintain and furnish records of the costs of such claims to the Contracting Officer, shall constitute a waiver of the claim.

17A.5 The provisions of this Article apply only to claims for extra or additional costs attributable to delay and do not preclude determinations by the Director allowing reimbursement for additional costs for extra work pursuant to Article 10 of these General Conditions.

17A.6 REQUIRED CONTENT OF CLAIM SUBMISSION.

17A.6.1 As noted in Paragraph 17A.3 of these General Conditions, all claims for delay shall be submitted in writing to the Contracting Officer and must be in sufficient detail to enable the Contracting Officer to ascertain the basis and the amount of each claim. The following information shall be provided by the Contractor upon request of the Contracting Officer if not previously supplied:

a. A description of the operations that were delayed, the reasons

for the delay and an explanation of how they were delayed.

b. A detailed factual statement of the claim providing all necessary dates, locations and items of work affected by the claim.

c. An as-built chart, "Critical Path Method" scheme or other diagram or chart depicting in graphic form how the operations were or are claimed to be adversely affected including the report and conclusions of all engineering and scheduling experts or other consultants, if any.

d. The date on which actions resulting in the claim occurred or conditions resulting in the claim became evident.

e. A copy of the approved project schedule and a copy of the "notice of claim" required for the specific claim by Paragraph 17A.3 of these General Conditions.

f. To the extent known, the name, function, and activity of each ORDA official, employee or agent, involved in, or knowledgeable about facts that gave rise to such claim.

g. The name, function, and activity of each contractor or subcontractor officer, or employee, involved in, or knowledgeable about facts that gave rise to such claim.

h. The identification of any pertinent documents, and the substance of any material oral communication relating to such claim.

i. The amount of additional compensation sought and a breakdown of that amount into the categories specified in Division 01 - General Requirements.

j. If an extension of time is also requested, the specific number of days for which it is sought and the basis for such request as determined by an analysis of the construction progress

schedule.

17A.7 REQUIRED CERTIFICATION OF CLAIMS.

17A.7.1 When submitting any notice of claim or claim data, the Contractor must certify in writing and under oath:

- a. That supporting data is accurate and complete to the Contractor's best knowledge and belief; and
- b. That the amount of the claim and the claim itself accurately reflects what the Contractor in good faith believes to be ORDA's liability.

17A.7.2 If the Contractor is an individual, the certification shall be executed by that individual. If the Contractor is not an individual, the certification shall be executed by a company official in charge of the Contractor's operations pertaining to this Contract or an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

17A.7.3 Failure to timely comply with any of the requirements of Article 17A for the submission of any claim for delay may constitute grounds for denial of such claim.

ARTICLE 18 - RESPONSIBILITY FOR DAMAGE

18.1 The Contractor shall faithfully perform and complete all of the Work required by the Contract, and shall be responsible for bodily injury (including exposure to toxic substances), sickness, disease or death sustained by any person, or to injury to or destruction of tangible property (including loss of use), arising out of or resulting from the performance of the Contract or negligent or otherwise tortious acts, errors or omissions and/or willful misconduct of any Responsible Party, regardless of whether or not a claim arises under Labor Law Sections 200, 240 and/or 241, Industrial Code Rule 23 and/or common law negligence, or by reason of liability imposed by operation of law.

18.2 To the fullest extent permitted by law, the Contractor shall defend, indemnify, hold harmless and release the Indemnified Parties from and against any and all suits, claims, liabilities, fines, damages and/or any types of

action whatsoever, including attorneys' fees, defense costs and legal costs, for bodily injury (including exposure to toxic substances), sickness, disease or death sustained by any person, or to injury to or destruction of tangible property (including loss of use), arising out of or resulting from the performance of the Contract or negligent or otherwise tortious acts, errors or omissions and/or willful misconduct of any Responsible Party, or by reason of liability imposed by operation of law.

18.3 ORDA may retain such monies from the amount due the Contractor as may be necessary to satisfy any claim for damages recovered against the Indemnified Parties. The Contractor's obligation under this paragraph shall not be deemed waived by the failure of ORDA to retain the whole or any part of such monies due the Contractor, or where such suit, action, damages, and/or costs have not been resolved or determined prior to release of any monies to the Contractor under the Contract.

18.4 The obligation of the Contractor to indemnify the Indemnified Parties (1) shall not be limited in any manner by any limitation of the amount of insurance coverage or benefits, including workers' compensation or other employee benefit acts, provided by the Contractor, and (2) shall not be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the Indemnified Parties.

18.5 The Contractor has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the Indemnified Parties. This obligation shall include the cost of attorneys' fees, disbursements, costs and other expenses incurred in connection with such action or proceeding. Notwithstanding the foregoing, ORDA reserves the right to join such action or proceeding, at its sole expense, when it determines there is an issue involving a significant public interest.

18.6 The obligation of the Contractor to indemnify does not extend to those suits, claims, liabilities, fines, damages and types of action which arise out of the sole negligence of an Indemnified Party.

18.7 The provisions of this Article shall survive the expiration or termination of the Contract.

ARTICLE 19 – BONDS, INSURANCE - BUILDER'S RISK, LIABILITY AND WORKERS' COMPENSATION

19.1 Performance and Payment Bond:

Prior to the award of the Contract, the Contractor shall provide a Payment Bond and a Performance Bond. Each bond shall have a penal sum equal to \$1,000,000 as security for the faithful performance and payment of all the Contractor's obligations under the Contract Documents. These Bonds shall remain in effect at least until one (1) year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act. ORDA shall receive revised Bonds or other evidence from the Surety when the value of the Project is increased by Supplemental Job Order and ORDA is charged for an increase in the rate of the Bond(s). If the Surety on any Bond furnished by the Contractor for the Project is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of this paragraph 19.1, the Contractor shall within ten (10) days thereafter substitute another bond and surety, both of which must be acceptable to ORDA.

If, at any time, the total value of outstanding Job Orders exceeds the penal sum of the Performance and Payment Bonds then in effect, the Owner may, at its discretion, require the Contractor to submit a new Performance and Payment Bond in the amount of \$1,000,000 or the penal sum equal to such total value of outstanding Job Orders, whichever is greater.

19.2 Insurance:

Before commencing the Work and until the established Physical Completion date, all insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor, and the Contractor shall furnish to

the Director a Certificate of Insurance in a form satisfactory to the Director showing that the Contractor has complied with this Article. Insurance shall be maintained with insurance carriers licensed to do business in New York State and acceptable to the Director; shall be primary and non-contributing to any insurance or self-insurance maintained by ORDA; and shall be endorsed to provide written notice be given to the Director Officer at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail, shall be addressed to:

Olympic Regional Development Authority
Office of Environmental, Planning and Construction
Olympic Center
2634 Main Street
Lake Placid, NY 12946

19.2.1 The endorsement shall name the New York State Olympic Regional Development Authority / the People of the State of New York, their officers, agents, employees and the assigned construction manager as additional insureds there under. This additional insured shall be primary and non-contributory. (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 10 11 85 and a copy of which shall be furnished along with the Certificate of Insurance.) The Contracting Officer may modify the provisions of this Article when deemed in the best interest of ORDA/the State by Change Order or Work Change Field Directive.

19.2.2 The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect on an occurrence form, the following insurance with limits not less than those described in this article, and as required by the terms of this Contract, or as required by law, whichever is greater. If such insurance contains an aggregate limit, it shall apply separately on a per job, per location basis.

19.2.3 The Contractor shall be solely responsible for the payment of all

deductibles and Self-Insured Retentions.

- 19.2.4 Not less than thirty (30) days prior to the expiration date or renewal date of any insurance policies reflected on such certificates, the Contractor shall supply updated replacement Certificates of Insurance, and amendatory endorsements.

19.3 The kinds and amount of insurance is as follows and is applicable to all subcontractors and sub-subcontractors, suppliers and all others directly or indirectly employed by the Contractor: Insurance Limits shall be provided in accordance with Division 0 Contract Requirements - ORDA's Insurance Requirements and Additional Insured.

19.3.1 Workers' Compensation Insurance and Disability Benefits Law. A policy covering the obligations of the Contractor in accordance with the Workers' Compensation Law and the Disability Benefits Law covering all operations under the Contract, whether performed by the Contractor or by its subcontractor.

19.3.2 Commercial General Liability, and if necessary, Commercial Umbrella Liability Insurance with a limit of not less than required by "ORDA's Insurance Requirements and Additional Insured." Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability resulting in Bodily Injury, Property Damage, Personal Injury or loss of use arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage. If such insurance contains an aggregate limit, it shall apply separately on a per job, per location basis.

19.3.3 Comprehensive Business Automobile Liability, and if necessary, Commercial Umbrella Liability Insurance with a

limit of not less than required by "ORDA's Insurance Requirements and Additional Insured for Construction Contracts". Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

19.3.4 Builder's Risk: The Contractor shall be liable for any and all damages and losses to the Project prior to ORDA's acceptance of the Project as fully completed except that the Contractor shall not be liable for:

19.3.4.1 Losses covered by the Builder's Risk property insurance provided by ORDA; except that the Contractor shall be liable for the applicable deductible.

19.3.4.2 All policies shall be issued by insurance companies licensed to conduct such business under the laws of the State of New York, shall be written for the benefit of ORDA/State of New York and for the Contractor as their interests may appear, and shall run until the contract physical completion date. ORDA must be listed as loss payee pursuant to this policy. Policies expiring on a fixed date before physical completion must be renewed and re-filed not less than thirty (30) days before such expiration date.

19.3.5 If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product, hazardous material or substance including asbestos, lead or mold, and those as defined by applicable State and federal laws and regulations, the Contractor shall procure, or otherwise obtain through an approved subcontractor, and maintain in full force and effect throughout the term of the contract, and for two years after completion hereof, pollution legal liability insurance with limits of not less than required by "ORDA's Insurance

Requirements and Additional Insured for Construction Contracts”, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against ORDA or the State arising from the Contractor’s work. ORDA and the State of New York shall be named as additional insured and this shall be primary.

19.3.5.1 Other additional insured shall be named as required by “ORDA’s Insurance Requirements and Additional Insured for Construction Contracts.”

19.3.5.2 If automobiles are to be used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90.

19.4 The Contractor may provide the required proof of insurance on industry forms provided that no other endorsements exclude, delete or restrict those coverages provided for by this article. It is required that companies affording coverage list the company name in full as filed with the New York State Insurance Department. The contract number and project location must be provided in order to approve the certificate.

19.5 Should the Contractor fail to provide or maintain any insurance required by law, the Contract will be considered null and void. Further, no contractor is permitted to access the Project Site without providing proof of proper insurance to the Director or the Director’s designated representative. No payments will be authorized by the Contracting Officer to any firm who fails to comply with the provisions of this Article.

ARTICLE 20 - OCCUPANCY PRIOR TO

COMPLETION AND ACCEPTANCE

20.1 ORDA shall have the right to take possession of or use any completed or partially completed portion of the Work. Written notice of such possession shall be given to the Contractor by the Director. The notice shall identify the date when such possession shall commence and the area, equipment or system involved. Written notice shall also be given the Contractor for any cessation of such possession by ORDA. Such possession or use shall not be deemed an acceptance of any Work. While ORDA is in such possession, the Contractor, notwithstanding the provisions of Article 18 of the Contract, shall be relieved of the responsibility for loss or damage to the Work except for that resulting from the Contractor’s fault or negligence. If such possession or use by ORDA delays the progress of the Work or causes additional expense to the Contractor, a Supplemental Job Order will be issued to reflect an adjustment of the Job Order Price and/or Job Order Completion Time. The provisions relating to an adjustment of the Job Order Price and/or Job Order Completion Time contained in this paragraph shall not apply to occupancy or possession after Substantial Completion.

20.2 All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work, and termination or completion of the Agreement.

ARTICLE 21 - PAYMENT

21.1 ORDA will make one payment for all Job Orders that have a Job Order Completion Time of 45 days or less, or a Job Order Price of \$25,000 or less. For all other Job Orders, the ORDA will make partial, monthly payments based on the percentage of the work completed. Before submitting an Application for Payment (Final or Partial) the Contractor shall reach an agreement with the Director’s Project Manager concerning the percentage complete of the Detailed Scope of Work and the dollar value for which the Application for Payment may be submitted. The Contractor shall submit monthly, or at more frequent intervals if permitted in writing by the Contracting Officer, a requisition for a progress payment to the designated payment office for Work performed and materials furnished up to the date of the requisition, less any amount

previously paid to the Contractor. Except as otherwise provided by this Contract, the Contracting Officer shall approve and cause to be paid the requisition for the progress payment less an amount necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged and less any amount authorized by law to be retained. The requisition shall be in such form and supported by such evidence as the Contracting Officer may reasonably require. The designated payment office is listed as follows:

Olympic Regional Development Authority
Office of Environmental, Planning and Construction
Olympic Center
2634 Main Street
Lake Placid, NY. 12946

21.1.1 For those contracts designated as Labor and Material reimbursement or similar type contracts, the Contractor shall submit no later than sixty (60) days from the period of when the work occurred, acceptable proof of labor and material costs specific to the approved scope of work as verified by the Directors Representative, to the Contracting Officer for audit, verification and approval prior to the submission of any payment. The Contracting Officer is located at the following location:

Olympic Regional Development Authority
Office of Environmental, Planning and Construction
Olympic Center, 2634 Main Street
Lake Placid, NY 12946

21.1.2 The submittal of cost for reimbursement to the Contractor shall be in such form and supported by such evidence as the Contracting Officer may reasonably require.

21.2 The Director or the Contracting Officer may refuse to approve the requisition or a portion of it if the Contractor is failing or refusing to prosecute the Work in accordance with the Contract.

21.3 Payment will be made for approved materials not yet incorporated in the Work which are in short and/or critical supply and for materials determined to be specifically fabricated for the project. Requisitions which require payment for materials shall be accompanied by a notarized

statement certifying that the materials for which payment is requisitioned are the Contractor's property and have been suitably stored and insured. The Contractor shall provide such evidence of the value of the material stored as the Contracting Officer may reasonably require. The Contractor shall have full continuing responsibility to insure and protect such materials and maintain them in proper condition to fulfill Contract requirements when installed.

21.4 When the Work or major milestones thereof as contemplated by the terms of this Contract are substantially completed, the Contractor shall submit to the Contracting Officer a requisition for payment of the remaining amount of the Contract Price. Upon receipt of such requisition the Contracting Officer shall, except as otherwise provided by this Contract, approve and cause to be paid the remaining amount of the Contract Price less two times the value of any remaining items to be completed and an amount necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged. As the remaining items of Work are satisfactorily completed or corrected, the Contracting Officer shall cause to be paid, upon receipt of a requisition, for these remaining items less an amount necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged.

21.5 No more than sixty (60) days after the issuance of the Physical Completion Report, the Contractor shall submit to the Contracting Officer or the Contracting Officer's designated representative a requisition for payment of the remaining Contract balance. Upon receipt of this requisition, the Contracting Officer shall, except as otherwise provided by this Contract, approve and cause such requisition to be paid less any amount necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged. The Contractor waives any claim or right to payment of any contract balance which has not been requisitioned for payment within sixty (60) days of the issuance of the Physical Completion Report.

21.6 The final certificate letter will not be issued until all the labor and material required by the Contract has been furnished and completed, all disputes and claims relating to the performance of the Contract considered and disposed of and all accounts for extra work and materials and allowances for omissions have been rendered and considered. The Contractor waives any

claim or right to additional compensation which has not been submitted in writing via certified or registered mail to the Contracting Officer pursuant to Article 17A, within thirty (30) days of the issuance of the Physical Completion Report.

- 21.7 The final certificate letter will constitute the acceptance of the Work by ORDA, except as to Work thereafter found to be defective. The date of such certificate shall be regarded as the date of acceptance of the Work.
- 21.8 No payment will be made to a foreign contractor until it furnishes satisfactory proof that it has paid all taxes required of foreign contractors under the provisions of the New York State Tax Law. A foreign contractor as used in this paragraph shall mean a contractor denominated "foreign" by the New York State Tax Law.
- 21.9 The Contractor is advised that consistent with Subdivision 3-a of § 220 of the Labor Law, the filing of certified payroll records is a condition precedent to payment of any sums due and owing to any person performing work on this project. The failure to file pursuant to this section will result in a payment delay until such time as the filing occurs.

ARTICLE 22 - AUDITS AND RECORDS

- 22.1 The Director, the Comptroller or their representatives shall have the right to examine all books, records, documents, and other data of the Contractor, subcontractors, material-men or suppliers relating to the bidding, pricing or performance of this Contract or any change or modification thereto for the purpose of evaluating the accuracy, completeness, and currency of the cost or pricing data submitted. This right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted along with the computations and projections used therein.
- 22.2 The above materials shall be made available at the respective offices of the Contractor, subcontractors, material-person or suppliers at all reasonable times for inspection, audit or reproduction until the expiration of six years from the date of the final certificate for the Contract.
- 22.3 If this Contract is completely or partially terminated, the records relating to the Work

terminated shall be made available for a period of six years from the date of any resulting final settlement.

- 22.4 Records which relate to the Disputes Clause of this Contract or litigation or the settlement of claims arising out of the performance of this Contract shall be made available until such appeals, litigation or claims have been disposed of.
- 22.5 The Contractor shall insert a clause containing all of the provisions of Paragraphs 22.1 to 22.4 of these General Conditions in all subcontracts or purchase orders issued hereunder.
- 22.6 The Contractor shall make available to the Contracting Officer, upon written request, all records required to be kept by this Contract or by Article 3-A of the Lien Law. The failure to provide said records upon the receipt of the written request shall bar any recovery for claimed extra or additional costs under this Contract.

ARTICLE 23 – LABOR LAW PROVISIONS

- 23.1 The Contractor shall post, in a location designated by ORDA a copy of the New York State Department of Labor schedules of prevailing wages and supplements for this Project, a copy of all re-determinations of such schedules for the Project, the Workers' Compensation Law § 51 notice, all other notices required by law to be posted at the Site, the Department of Labor notice that this Project is a public work project on which each worker is entitled to receive the prevailing wages and supplements for the occupation at which the worker is working, and all other notices which ORDA directs the Contractor to post. The contractor shall provide a surface for such notices which is satisfactory to ORDA. The Contractor shall maintain such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. The Contractor shall post such notices before commencing any Work on the Site and shall maintain such notices until all Work on the Site is complete.
- 23.2 The Contractor shall distribute to each worker for this Contract a notice, in a form provided by ORDA, that this Project is a public work project on which each worker is entitled to receive the prevailing wage and supplements for the occupation at which the worker is working.

Worker includes employees of the Contractor and all Subcontractors and all employees of Suppliers entering the Site. Such notice shall be distributed to each worker before the worker starts performing any Work of this Contract. At the time of distribution, the Contractor shall have each worker sign a statement, in a form provided by ORDA, certifying that the worker has received the notice required by this section, which signed statement shall be maintained with the payroll records required by Paragraph 23.3 of these General Conditions.

23.3 The Contractor shall maintain on the Site the original certified payroll or certified transcripts thereof which the Contractor and all of its subcontractors are required to maintain pursuant to New York Labor Law § 220. The Contractor shall maintain with the payrolls or transcripts thereof, the statements signed by each worker pursuant to Paragraph 23.2 of these General Conditions.

23.4 A contractor or subcontractor who is required under New York Labor Law § 220 to maintain transcripts of payroll records must submit to ORDA a transcript of the original payroll record within thirty (30) days of issuance of its first payroll and every thirty (30) days thereafter. The copy of the payroll record must be subscribed and affirmed as true under penalty of perjury. The copy must include the contract number and should be directed to the Director's Representative at the job site. The Director's Representative is hereby designated as the individual responsible for the receipt, collection and review for authenticity of payroll records filed for this Contract, consistent with General Conditions Article 23.4, and subparagraphs (iii) and (iv) of New York Labor Law § 220.

23.5 In accordance with New York Labor Law §222-H, the Contractor agrees where the total cost of the Work to be performed under the Contract is at least two hundred fifty thousand dollars; all laborers, workers, and mechanics employed in the performance of this Contract on the public work site, either by the Contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by this 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 hours in duration.

23.6 In accordance with New York Labor Law § 220 (3) (a), the Contractor and every sub-contractor agrees to notify all laborers, workers or mechanics in their employ in writing of the prevailing rate of wage for their particular job classification. Such notification shall be given to every laborer, worker or mechanic on their first pay stub and with every pay stub thereafter. At the beginning of performance of every public works contract, and with the first paycheck after July first of each year, the Contractor and every sub-contractor shall notify all laborers, workers, and mechanics in their employ in writing, in accordance with such form as is prescribed by the department, of the telephone number and address for the department. The notice shall also inform each laborer, worker, or mechanic of their right to contact the department or some other representative if, at any time while working for the public works contractor or sub-contractor, the worker does not receive the proper prevailing rate of wages or supplements for their particular job classification that the worker is entitled to receive under the Contract.

ARTICLE 24 - STATUTORY REQUIREMENTS FOR RESTRICTIONS ON CONTACTS DURING THE PROCUREMENT PROCESS AND DISCLOSURE OF CONTACTS AND RESPONSIBILITY OF OFFERERS MISCELLANEOUS PROVISIONS

24.1 New York State Finance Law §139-k requires that every procurement contract award subject to the provisions of State Finance Law §139-k or §139-j shall contain a certification by the offerer that all information provided to the procuring governmental agency with respect to State Finance Law §139-k is complete, true and accurate. The Contractor shall provide that certification in his contract or agreement.

24.2 New York State Finance Law

24.2.1 New York State Finance Law § 139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law § 163 (9). In accordance with State Finance Law § 139-k, an offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental

Entity due to: (a) a violation of State Finance Law § 139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity.

24.2.2 As part of its responsibility determination, State Finance Law § 139-k(3) mandates consideration of whether an offerer fails to timely disclose or complete information regarding the above non-responsibility determination. In accordance with law, no procurement contract shall be awarded to any offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the offerer is necessary to protect public property or public health safety, and that the offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. The required forms to be completed by the offerer must be submitted to the Governmental Entity conducting the government procurement. The Governmental Entity will have included the disclosure request in its solicitation of proposals or bid documents or specifications of contract documents, as applicable, for procurement contracts.

ARTICLE 25 – MISCELLANEOUS PROVISIONS

25.1 STANDARD CONTRACT TERMS: Appendix A, Standard Contract Terms, is attached hereto and is made a part of this Contract as if set forth herein. The terms and provisions contained in the Standard Contract Terms shall supersede all other Contract terms.

25.2 If, in carrying out this Work, a harmful dust hazard is created for which appliances or methods for the elimination of harmful dust have been approved by the Board of Standards and Appeals, then the Contractor shall install, maintain and effectively operate such appliances and methods during the life of this Contract; and in case of Contractor's failure to comply, as provided by Section 222-a of the Labor Law, the Contract shall be void.

25.3 RETAINED PERCENTAGES: The Contractor agrees that, if the Contract Documents for this Contract includes Performance and Payment

Bonds, ORDA shall retain five percent of the amount of each progress payment in accordance with Section 139-f of the State Finance Law. The Contractor further agrees that, if the Contract Documents for this Contract do not include Performance and Payment Bonds, ORDA shall retain ten percent of the amount of each progress payment in accordance with Section 139-f of the State Finance Law.

25.4 DOMESTIC STEEL: The Contractor agrees, that if the value of this Contract exceeds \$100,000 all structural steel, reinforcing steel and other major steel items to be incorporated in the Work of this Contract shall be produced and made in whole or substantial part in the United States, its territories or possessions.

25.5 COMMENCEMENT OF ACTIONS: The time, as prescribed by law, within which an action on the contract against the Contractor must be commenced shall be computed from the completion of physical work. The Contractor may notify ORDA in writing that the physical work of the contract has been completed by specifying a completion date, which date shall be no more than thirty (30) days previous to the date of such notice. The completion date set forth in such notice shall be deemed the date of completion of the physical work unless ORDA, within thirty (30) days of receipt of such notice, notifies the Contractor in writing of its disagreement. Any notice pursuant to this paragraph shall be sent by the Contractor by Certified Mail and addressed to:

Olympic Regional Development Authority
Director of Environmental, Planning and Construction
2634 Main Street
Lake Placid, NY 12946

25.5.1 In the event that the Contractor fails to send the notice provided for herein or ORDA disagrees in the manner provided for herein, the date of completion of the physical work shall be determined in any other manner provided by law.

25.6 WORKER'S COMPENSATION LAW: In accordance with New York State Worker's Compensation Law (WCL) §141-b (Suspension and Debarment), any person subject to a final assessment of civil fines or penalties or a stop-work order, or that has been convicted of a misdemeanor for a violation of WCL §§ 26 (Enforcement of Payment in Default), 52 (Effect

of Failure to Secure Compensation) or 131 (Payroll Records), and any substantially-owned affiliated entity of such person, shall be ineligible to submit a bid on or be awarded any such public work contract or subcontract with ORDA for a period of one (1) year from the final determination or conviction. Any person convicted of a felony under Article 8 (Administration) of the WCL, or a misdemeanor under WCL §§125 (Job Description Prohibited Based on Prior Receipt of Benefits) and 125-a (Civil Enforcement) shall be ineligible to submit a bid or be awarded any public work contract or subcontract with ORDA for a period of five (5) years from such conviction.

25.7 ENVIRONMENTAL CONSERVATION LAWS: The Contractor certifies and warrants that all heavy-duty vehicles, as defined in New York State Environmental Law (ECL) section 19-0323, to be used under this Contract, will comply with the specifications and provisions of ECL section 19-0323 and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification for a waiver under this law will be the responsibility of the Contractor.

25.8 REPORTING OF ILLEGAL ACTIVITY: During the term of the contract, the Contractor agrees to report any observed or suspected illegal activity of its employees, agents or other third parties, to the Director at 518-302-5332, ORDA Legal Services at 518-302-5372, the State Inspector General or other law enforcement agency. Failure to report criminal conduct associated with a contract awarded by the Office of General Services, will be considered a material breach of the contract and may provide grounds for disqualification of the subject contractor or subcontractor for award of future contracts. The Contractor will include the provisions of this section in every subcontract, in such a manner that the provisions will be binding upon each subcontractor as to work performed in connection with the State contract.

25.9 CONDITIONS PRECEDENT: The notice requirements set forth in these General Conditions are each a condition precedent to the Contractor's commencement of an action on the Contract.

25.10 EMERGENCIES: In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, the

Contractor, without special instruction or authorization from the Director or the Director's Representative, is obligated to act to prevent threatened damage, injury or loss. The Contractor shall give the Director prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the Director determines that a change in the Contract Documents is required because of the action taken by the Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action.

25.11 GEOTECHNICAL DATA: Geotechnical Data/Subsurface Logs: Subsurface logs included in Contract Document are made on the dates indicated on the individual logs. Therefore, the observed water levels and/or conditions noted on the subsurface logs are as recorded at the time of exploration. Water levels and/or conditions may vary considerably with time, according to the prevailing climate, rainfall, or other factors and are otherwise dependent on the duration of and method used in the explorations program. Sound engineering judgment is exercised in preparing the subsurface logs. The information is prepared and is intended for project design and estimate purposes only. Its presentation is for the purpose of providing intended users with access to the same information available to ORDA. Subsurface logs are presented in good faith and are not intended as a substitute for personal investigation, independent interpretations, or judgment of the bidders.

Geotechnical Reports: Geotechnical reports and information provided by ORDA are for information only. The opinions expressed in these reports are those of the geotechnical engineer and represent interpretations of subsoil conditions, tests, and results of analyses conducted by the geotechnical engineer. ORDA shall not be responsible for interpretations or conclusion drawn from their data. The contractor shall make additional test borings and conduct other exploratory operations as necessary for excavation support and protection design and construction.

25.12 REGIONAL WOOD AND STONE: The Contractor agrees, that if the value of this Contract exceeds \$100,000, all wood used in millwork (excluding factory assemblies) and decorative / ornamental stone items to be incorporated in the Work of this Contract shall

be harvested / mined from New York State natural resources unless written permission is provided otherwise by the Director.

- 25.13 ALLOWANCES: *Intentionally omitted.*
- 25.14 SAFETY PLAN POSTING: In addition to the posting requirements of Article 23, Part 23.1, the Contractor shall post a Safety Plan and shall post all other related and relevant documentation to comply with COVID-19 protocols.
- 25.15 PHOTOGRAPHS/VIDEOS: The Contractor shall not take any photographs or videos during the performance of this Contract unless necessary to fulfill the Contractor's obligations under this Contract. Any and all photographs and videos (individually, a "Photo," and collectively, "Photos") taken by the Contractor shall be the property of ORDA and shall be turned over to ORDA at the conclusion of the Project. The Contractor shall not use any Photo, nor shall the Contractor publish or disseminate any Photo, or any part or aspect thereof, without first obtaining written approval from ORDA for such publication or dissemination and of the format and content thereof. The foregoing shall be applicable to the Contractor and its agents, servants, employees, officers, consultants, subcontractors and anyone directly or indirectly employed/retained by any of them and shall survive the termination of this Contract.
- 25.16 USE OF UNMANNED AIRCRAFT: In accordance with 6 NYCRR 190.8(ae), any member of the public requesting non-administrative commercial use of unmanned aircraft systems ("UAS") on State Forest Preserve land owned, managed, or maintained by ORDA, is required to apply for a Temporary Revocable Permit with the New York State Department of Environmental Conservation ("Department") before permission may be granted. The Department UAS Policy Guidance can be found at https://www.dec.ny.gov/docs/legal_protection_pdf/cp71.pdf. All other non-administrative commercial use of UAS on State lands owned, managed, or maintained by ORDA is prohibited under the terms of this Contract.

The Parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "Contract" or "this Contract") agree to be bound by the following clauses which are hereby made a part of the Contract. The word "Contractor" herein refers to any party other than the ORDA, whether a Contractor, consultant, licenser, licensee, lessor, lessee, vendor or any other party.

1. **Doing Business in New York**

Contractor hereby represents and warrants that it is duly organized and validly existing under the laws of its jurisdiction of incorporation or formation and is qualified to do business in the State of New York and all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary, and has all requisite legal power and authority to carry on its business and to execute this Contract and to perform the terms, conditions and provisions hereof.

2. **Prohibiting State Contracts With Entities That Support Discrimination**

Pursuant to Executive Order No. 177, ORDA is prohibited from entering into contracts with entities that have institutional policies or practices that fail to address the harassment of individuals on the basis of their age, race, creed, color, national origin, sexual orientation, gender identity, military status, sex, marital status, disability or other protected basis. Contractor hereby represents and warrants that it has enacted policies or practices that are designed to prevent such harassment or discrimination.

3. **Ensuring Pay Equity by State Contractors**

Pursuant to Executive Order No. 162, for all procurements issued and executed on or after June 1, 2017, ORDA's contractors must agree to include detailed workforce utilization reports to include, in addition to the equal employment opportunity information currently required to be included in such reports, the job title and salary of each employee of a contractor performing work on a State contract, or of each employee in the contractors' entire workforce if the contractor cannot identify the individuals working directly on a State contract. For all subcontracts executed by Contractor in furtherance of this Contract (including all Exhibits hereto), Contractor must include a clause imposing the same requirement on all subcontractors for their employees. Such information shall be reported to ORDA on a quarterly basis in the form and in such manner as required by ORDA.

4. **Comptroller Approval**

Pursuant to Public Authorities Law § 2879-a and 2 NYCRR Part 206, Comptroller approval may be required for certain contracts entered into by public authorities. The Comptroller, at his or her discretion and upon written notification, may elect to review State authority contracts in excess of \$1 million which are a) contracts that are to be paid from monies appropriate by the State or b) awarded to a single source, sole source, or pursuant to any other method of procurement that is not competitive in nature. The Comptroller may exercise authority to review and pre-approve other types of contracts as well. Where Comptroller review and pre-approval of contracts is required, then such agreement shall not be valid or enforceable until it has first been approved by the Comptroller.

5. **Governing Law and Forum**

The Contract is to be construed and interpreted according to the laws of the State of New York without regard to principles of conflicts of law. Any and all actions or proceedings relating to the subject matter of the Contract will be maintained by and subject to a court of competent jurisdiction located in the State of New York. The Contractor hereby irrevocably submits to the exclusive jurisdiction of the Supreme Court, County of Essex, State of New York for the purpose of any

action by the parties relating to or arising in whole or in part under or in connection with the Contract and hereby waives to the extent not prohibited by applicable law, and agrees not to assert, by way of motion, as a defense or otherwise, in any such action, any claim that the Contractor is not subject personally to the jurisdiction of the above-named court, that its property is exempt or immune from attachment or execution, and/or that any such action brought in one of the above-named courts should be dismissed on grounds of forum non conveniens or should be transferred or removed to any court other than one of the above-named courts.

6. **Entire Agreement**

This Agreement (including all Exhibits hereto) constitutes the entire Agreement between Contractor and ORDA and supersedes any prior Agreements or understandings between the parties. It shall not be amended, varied, or modified unless in writing executed by both parties hereto.

7. **Cancellation**

Pursuant to Public Authorities Law § 2875, upon the refusal by a person, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract,

- (a) such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that
- (b) any and all contracts made with any public authority or official thereof, since the effective date of this law, by such person and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the public authority without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the public authority for goods delivered or work done prior to the cancellation or termination shall be paid.

8. **Workers Compensation Benefits**

Pursuant to State Finance Law § 142, this Contract shall be void and of no force and effect unless Contractor shall provide and maintain coverage, during the life of this Contract, for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

9. **Non-Discrimination Requirements**

In accordance with Executive Law Article 15 (also known as the Human Rights Law) and Article 15-A (also known as the MWBE Law), and all other 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, national origin, sexual orientation, gender identity or expression, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the

construction, alteration, or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, and to the extent that this Contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin, discriminate in hiring against any New York State citizen who is qualified and available to perform the work, or discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex, or disability, discriminate in hiring against any New York State citizen who is qualified and available to perform the work, or discriminate against or intimidate any employee hired for the performance of work under this Contract. Contractor is subject to fines of \$50.00 per person, per day, for any violation of Section 220-e or Section 239, as well as possible termination of this Contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

10. **Wage and Hours Provisions**

If this is a public work contract covered by Article 8 of the Labor Law, or a building service contract covered by Article 9 thereof, neither Contractor's/vendor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

11. **Non-Collusive Bidding Requirement**

Pursuant to Public Authorities Law § 2878 and State Finance Law §139-d, if this Contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time it submitted its bid, an authorized and responsible person executed and delivered to ORDA a non-collusive bidding certification on its behalf.

12. **Set-Off Rights**

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

13. Force Majeure

Should either Contractor or ORDA be prevented from or delayed in performing any act required of it hereunder, and such prevention or delay is caused by disruption due to unforeseen or unavoidable circumstances including but not limited to: unforeseen or unavoidable construction activities, strikes, labor disputes, Acts of God including but not limited to adverse or hazardous weather events or conditions, war, terrorism, government restrictions, judicial orders, fire or other casualty, civil commotion, or other similar causes beyond its reasonable control, or if performance hereunder would foreseeably involve either party in or subject it to the effects of a labor dispute and the party therefore withholds or delays performance, making it illegal or impossible to provide or use the facilities, it shall have no liability. In such instances, the party asserting a force majeure event shall not have any further obligation under the agreement. Contractor (or lessee if applicable) shall have no other recourse against ORDA except to obtain monies for services already rendered under the agreement or to obtain refunds of monies paid for services yet to be performed.

14. Records

Contractor shall establish and maintain complete and accurate books, records, documents, accounts, and other evidence directly pertinent to performance under this Contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General, and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing, and copying. As a Public Authority, the Olympic Regional Development Authority is subject to the provisions and requirements of Public Officer's Law Article 6 §§ 84-90, more commonly known as the Freedom of Information Law ("FOIL"). ORDA shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (1) Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; (2) said records shall be sufficiently identified; and (3) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, ORDA's right to discovery in any pending or future litigation.

15. Identifying Information and Privacy Notification

FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices, or ORDA standard vouchers, submitted for payment for the sale of goods or services, or the lease of real or personal property, to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's federal employer identification number, federal social security number, or vendor identification number, or all such numbers when the payee has all such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or ORDA standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(a) PRIVACY NOTIFICATION.

- i. The authority to request the above personal information from a seller of goods or services, or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to ORDA is mandatory. The principal purpose

for which the information is collected is to enable ORDA 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 Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

- ii. The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services, or lease the real or personal property covered by this Contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

16. Equal Employment Opportunities for Minorities and Women

In accordance with Article 15-A of the Executive Law and 5 NYCRR Part 143, if this Contract or any subcontract thereto, is: (1) a written agreement or amendment thereto, or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services (including but not limited to legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, to be performed for, rendered, or furnished to the contracting agency; (2) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon; or (3) a written agreement in excess of \$100,000.00 whereby the owner of a State-assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

- (a) Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrades, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
- (b) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status; and
- (c) At the request of the contracting agency, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such union or representative will affirmatively cooperate in the implementation of Contractor's obligations herein.

Contractor will include the provisions of “a”, “b”, and “c” above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning, or design of real property and improvements thereon (the “Work”), except where the Work is for the beneficial use of Contractor. Executive Law Section 312 does not apply to work, goods or services unrelated to this Contract or to employment outside New York State. ORDA shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor’s Office of Minority and Women’s Business Development pertaining hereto.

17. **Conflicting Terms**

In the event of a conflict between the terms of the Contract (including all Exhibits hereto and amendments hereof) and this ORDA Standard Contract Terms, the terms of this ORDA Standard Contract Terms shall control.

18. **Late Payment**

Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Public Authorities Law § 2880 to the extent required by law.

19. **No Arbitration**

Disputes involving this Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration or mediation (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

20. **Service of Process**

In addition to the methods of service allowed by the State Civil Practice Law & Rules (“CPLR”), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor’s actual receipt of process or upon ORDA’s receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify ORDA, in writing, of each and every change of address to which service of process can be made. Service by ORDA to the last-known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete within which to respond.

21. **Prohibition on Purchase of Tropical Hardwoods**

Contractor certifies and warrants that all wood products to be used under this Contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods) which prohibits the purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of Contractor to establish, to meet with the approval of ORDA.

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 prime contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with

the specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with the approval of ORDA; otherwise, the bid may not be considered as responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of Contractor to meet with the approval of ORDA.

22. **Iranian Energy Sector Divestment**

In accordance with Public Authorities Law § 2879-c, by signing this Contract, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to State Finance Law § 165-a(3)(b). Such list, known as the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012”(“Prohibited Entities List”), is posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the 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 contract assignment will be approved by ORDA.

During the term of the Contract, should ORDA receive information that a person (as defined in Public Authorities Law § 2879-c) is in violation of the above-referenced certifications, ORDA 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 Act within 90 days after the determination of such violation, then ORDA 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.

ORDA reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, 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.

23. **Promotion of New York State Business Enterprises & New York State Residents in Procurements**

It is the policy of New York State, and ORDA, to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises, and New York State residents, as bidders, subcontractors, and suppliers on its procurement contracts.

Information regarding the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
Email: opa@esd.ny.gov

A directory of certified minority- and women-owned business enterprises is available from:
NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, New York 10017
Telephone: 212-803-2414
Email: mwbecertification@esd.ny.gov
<http://esd.ny.gov/MWBE/directorySearch.html>

Public Authorities Law § 2879 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State and ORDA.
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended.

Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the community service division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. Contractor agrees to document these efforts and to provide said documentation to the State and ORDA upon request.

Contractor acknowledges notice that the State and ORDA may seek to obtain offset credits from foreign countries as a result of this Contract and agrees to cooperate with the State and ORDA in these efforts.

24. Reciprocity and Sanctions Provisions

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state, or political subdivision which employs a preference or price distorting mechanism to the detriment of or otherwise discriminates against a New York State business enterprise in the procurement of goods or services by the same or a non-governmental entity influenced by the same, Public Authorities Law § 2879 requires that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana, and Hawaii. Contact the NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

25. Compliance with New York State Information Security Breach and Notification Act

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Sections 899-aa and 899-bb; State Technology Law Section 208).

26. Procurement Lobbying

To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement, Contractor certifies and affirms that all disclosures

made in accordance with State Finance Law Sections 139-j and 139-k are complete, true, and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, ORDA may terminate this Agreement by providing written notification to Contractor in accordance with the terms of this Agreement.

27. **Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates, and Subcontractors**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if Contractor fails to make the certification required by Tax Law Section 5-a, or if during the term of the Contract, the Department of Taxation and Finance or the covered agency (ORDA), as defined by Tax Law Section 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or such false certification shall be a material breach of this Contract, and this Contract may be terminated by providing written notification to Contractor in accordance with the terms of this Agreement, if ORDA determines that such action is in the best interest of the State.

28. **Non-Assignment Clause**

In accordance with Section 138 of the State Finance Law, this Contract may not be assigned by the Contractor, or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

29. **International Boycott Prohibition**

In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this Contract exceeds \$5,000, the Contractor agrees, as a material condition of the Contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

30. **MacBride Fair Employment Principles**

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in

Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

31. **Letting of certain contracts involving steel products**

Pursuant to Public Authorities Law § 2603-a, notwithstanding any other provision of law, and absent a determination to the contrary by the ORDA Board of Directors, ORDA must award contracts involving steel products as follows:

- (a) All purchase contracts for supplies, material or equipment involving an estimated expenditure in excess of fifty thousand dollars shall require with respect to materials, supplies and equipment made of, fabricated from, or containing steel components, that such steel components be produced or made in whole or substantial part in the United States, its territories or possessions. The provisions of this paragraph shall not apply to motor vehicles and automobile equipment assembled in Canada in conformity with the United States-Canadian trade agreements known as the "Automotive Products Trade Act of 1965" or any amendments thereto.
- (b) All contracts in excess of one hundred thousand dollars for the construction, reconstruction, alteration, repair, maintenance or improvement of public works shall require that all structural steel, reinforcing steel or other major steel items to be incorporated in the work of the Contract shall be produced or made in whole or substantial part in the United States, its territories or possessions.

32. **Vendor Responsibility, Pursuant to Executive Order #192**

- a. Responsibility for Duration of Contract: The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by ORDA's President & CEO, or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- b. Suspension of Work (for Non-Responsibility): The President & CEO of ORDA, or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the President & CEO of ORDA, or his or her designee, issues a written notice authorizing a resumption of performance under the Contract.
- c. Termination (for Non-Responsibility): Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate ORDA officials or staff, the Contract may be terminated by President & CEO of ORDA, or his or her designee, at the Contractor's expense where the Contractor is determined by the President & CEO of ORDA or his or her designee to be non-responsible. In such event, the President & CEO of ORDA, or his or her designee, may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

33. **Diesel Emissions Reduction Act 2006**

In 2007, New York State passed legislation establishing the Diesel Emissions Reduction Act 2006 (DERA). This Act amended the Environmental Conservation Law (ECL) by adding Section

19-0323 which requires the use of best available retrofit technology (BART) and ultra low sulfur diesel fuel (ULSD) for heavy duty vehicles owned or operated by, including on behalf of, state agencies and state or regional public authorities. The Department has promulgated regulations (6 NYCRR Part 248) to provide guidance on provisions of the law. The regulations may be found on the Department's website at <http://www.dec.ny.gov/regs/2492.html>.

Contractor must comply with the specifications and provisions of ECL § 19-0323 and 6 NYCRR Part 248, which require the use of BART and ULSD, unless specifically waived by the Department. Qualifications for a waiver under this law are the responsibility of the Contractor.

34. **Executory Clause**

In accordance with Section 41 of the State Finance Law, ORDA shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

35. **Compliance with Consultant Disclosure Law**

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health and mental services, accounting, auditing, paralegal or similar services, then, in accordance with Section 163(4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

36. **Admissibility of Reproduction of Contract**

Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of the Contract, regardless of whether the original of the Contract is in existence.

1. If the Contractor performs the Contract, the Surety and the Contractor shall have no obligation under the Performance Bond.

2. The Surety's obligation under this Bond shall arise after:

2.1 ORDA has notified the Contractor and the Surety in writing that ORDA is considering declaring a Contractor in default, or

2.2 ORDA has declared a Contractor in default and formally terminated the Contractor's right to complete the Contract, and

2.3 ORDA has agreed to pay the Balance of the Contract Price to the Surety or to a Contractor selected to complete the Contract in accordance with the terms of the Contract with ORDA.

3. The Surety shall promptly and at its own expense, take the following actions:

3.1 Undertake to perform and complete the Contract, through its agent or retained contractor; according to the following schedule:

Day 1-10 Immediately begins its investigation. Advises ORDA of its Representatives.

Day 10-25 Visits Site with ORDA representatives to review the contract documents and completed work; and determines extent of acceptable Work.

Day 25-30 Submits proposed completion contractor, completion plan, and CPM as required, for approval by the ORDA.

Day 30-44 As completing contractor, the surety or its representative, presents its list of subcontractors to ORDA for approval. Additionally an Insurance Certificate naming the Surety and completion Contractor as named insured must be submitted to ORDA's Contracting Officer prior to the beginning any completion of the Work. The completion plan and schedule is returned to Surety.

Day 45 Surety begins the Completion of the Work.

4. If the Surety does not proceed with reasonable promptness, the Surety shall be deemed to be in default on the Bond, and ORDA shall be entitled to enforce any remedy available pursuant to the terms of the contract.

5. After ORDA has terminated the Contractor's right to complete the Contract, and if the Surety elects to act then the responsibilities of the Surety to ORDA shall not be greater than those of the Contractor under the Contract, and the responsibilities of ORDA to the Surety shall not be greater than those provided under the Contract. To the limit of the amount of this Bond, the Surety is obligated to correct defective work and complete the work of the Contract in a timely manner.

6. The penal sum of the Performance Bond furnished by the contractor to ORDA, approved and filed with the ORDA, in no way shall be impaired or affected by any other bond that may relate to the contract in question.

END OF DOCUMENT

STATE OF NEW YORK
New York State Olympic Regional Development Authority

SUPPLEMENTARY CONDITIONS
ARTICLE 6 CONTRACTOR'S SUPERVISION
JOB ORDER CONTRACTING SERVICES

Add Paragraphs 6.6 through 6.20, inclusive, as follows:

Management, Supervision and Superintendence:

- 6.6. The Contractor shall be solely responsible for the management of the Contract. The Contractor shall provide a competent and experienced management team necessary for the size and scope of the Contract. The Contractor shall assign to the Contract a Project Manager with the skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The Project Manager shall not be replaced without written notice to ORDA except under extraordinary circumstances. If ORDA finds the Project Manager, or any members of the management team, to be incompetent by reason of failing to perform their duties in a professional manner, including, but not limited to, a lack of professional knowledge of the project scope, acts of workplace violence, acts of workplace discrimination, acts of sexual harassment and any other types of actions considered by ORDA to be inconsistent with the workplace requirements, ORDA shall notify the Contractor in writing and said person shall be removed from the Project and replaced without delay.
- 6.6.1 The Contractor shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but the Contractor shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. The Contractor shall be responsible for completing the Work in full compliance with the Contract Documents.
- 6.6.2 For each Job Order the Contractor shall keep on the Project Site at all times during the progress of the Work a competent, non-working resident superintendent, who shall not be replaced without written notice to ORDA except under extraordinary circumstances. Should there be more than one and up to four Job Orders at a single ORDA venue or facility, only one superintendent is required. The superintendent shall be reachable 24 hours a day, seven days a week. If the superintendent is not available because of illness or vacation or the like, the Contractor shall notify ORDA of a substitute superintendent. The superintendent will be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. All communications to the superintendent shall be as binding as if given to the Contractor. If ORDA finds the resident superintendent to be incompetent by reason of failing to perform their duties in a professional manner, including, but not limited to, a lack of professional knowledge of the project scope, acts of workplace violence, acts of workplace discrimination, acts of sexual harassment and any other types of actions considered by ORDA to be inconsistent with the workplace requirements,

ORDA shall notify the Contractor in writing and the resident superintendent shall be removed from the Project and replaced without delay.

- 6.6.3 Whenever, in the sole discretion of ORDA, the Contractor is not providing a sufficient level of supervision, ORDA may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign additional full time, dedicated, non-working superintendent for any project; submit daily management, inspection, activity, and planning reports; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to ORDA.

Labor, Materials and Equipment:

- 6.7. The Contractor shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the Contract Documents. The Contractor shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours.
- 6.8. Unless otherwise specified in the Division 1 - General Requirements, the Contractor shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.
- 6.9. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of ORDA. If required by the Consultant, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

Concerning Subcontractors, Suppliers and Others:

- 6.10. The Contractor shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to ORDA and the Consultant as indicated in paragraph 6.10.2), whether initially or as a substitute, against whom ORDA or the Consultant may have reasonable objection.
- 6.10.1 The Contractor shall not be required to employ any subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom the Contractor has reasonable objection.

- 6.10.2. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials or equipment) to be submitted to ORDA in advance of the specified date prior to the Effective Date of the Agreement for acceptance by ORDA and the Consultant, and if the Contractor has submitted a list thereof in accordance with the Supplementary Conditions, ORDA's or the Consultant's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case the Contractor shall submit an acceptable substitute, the Contract Price will be adjusted by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by ORDA or the Consultant of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of ORDA or the Consultant to reject defective Work.
- 6.10.3 Reasonable objection to a contractor shall include such considerations as safety record, whether they are currently in litigation with another state agency, labor law compliance, prior work history, including timeliness, compliance with technical specifications as well as being in compliance with all other requirements of the contract all subject to the Contractor's right to show cause at a hearing why a preferred sub/supplier should not be rejected.
- 6.11 The Contractor shall be fully responsible to ORDA and the Consultant for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the Contractor just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other person or organization any contractual relationship between ORDA or the Consultant and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of ORDA or the Consultant pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and
- 6.11.1 The Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the Contractor. The Contractor shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with the Consultant through the Contractor.
- 6.12. The divisions and sections of the Specifications and the identifications of any drawings shall not control the Contractor in dividing the Work among Subcontractors Suppliers or delineating the Work to be performed by any specific trade.
- 6.13. All Work performed by a Subcontractor or Supplier to the Contractor will be pursuant to an appropriate agreement between the Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or supplier to the applicable terms and

conditions of the Contract Documents for the benefit of ORDA and the Consultant. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided pursuant to General Conditions Article 19, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against ORDA, the Contractor, the Consultant, the Consultant's consultants and all other Indemnified Parties for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work. If the insurers in any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, the Contractor will obtain the same.

- 6.14 Every Subcontractor shall complete and execute Document 00 52 01 - Sub-Contractor Site Access Agreement, with endorsement from the sponsoring Prime Contractor, including all stated requirements and submission, prior to working on the Site.

Use of Premises:

- 6.15. the Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the work areas identified in and permitted by the Contract Documents and other land and areas permitted Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. the Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, the Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. The Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless ORDA, the Consultant, the Consultant's consultants, and all other Indemnified Parties, and anyone directly or indirectly employed by any of them, from and against all claims costs, losses and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against ORDA, the Consultant or any other Indemnified Party to the extent caused by or based upon the Contractor's performance of the Work.
- 6.16. During the progress of the Work, the Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. If the Contractor does not keep the premises free from accumulation of waste materials the Director will notify the Contractor and if it is not remedied promptly, ORDA shall make corrections as provided in Article 13. At the completion of the Work, the Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. The Contractor shall leave the site clean and ready for occupancy by ORDA at Substantial Completion of the Work. The Contractor shall restore to original condition all property not designated for alteration by the Contract Documents.
- 6.17. The Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

- 6.18. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
- 6.18.1. all persons on the Work site or who may be affected by the Work;
 - 6.18.2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
 - 6.18.3. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.15.2 or 6.15.3 caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by the Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of ORDA or the Consultant or the Consultant's consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). The Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ORDA issues the Physical Completion Report.

Safety Representative:

- 6.19. The Contractor shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and maintaining and supervising of safety precautions and programs.

Hazard Communication Programs:

- 6.20. The Contractor shall be responsible for coordinating any exchange of Safety Data Sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with Laws or Regulations.

END OF DOCUMENT

ORDA Insurance Coverage and Additional Insured for Construction Contracts

New York State Olympic Regional Development Authority requires the following policies and coverages with valid Certificate of Insurance as a minimum for each Contractor and tiers below the Contractor including, but not limited to, subcontractors, consultants, vendors, etc.

	<u>Contractor</u>	<u>All Other Tiers</u>	
Comprehensive Form Commercial General Liability:			
Each Occurrence / BI & PD Combined Occurrence:	\$1,000,000	\$1,000,000	
General Aggregate / BI & PD General Aggregate:	\$2,000,000	\$2,000,000	
Automobile Liability including Hired and Non-owned Liability:			
Each Occurrence:	\$1,000,000	\$1,000,000	
Commercial Umbrella Liability:			
Each Occurrence:	\$4,000,000	\$1,000,000	
General Aggregate:	\$4,000,000	\$1,000,000	
Environmental Liability:			
Each Occurrence:	\$2,000,000	\$2,000,000	
Workers' Compensation and Employer's Liability Insurance:			
Worker's Compensation:	Statutory Limit	Statutory Limit	
Employer's Liability:	\$1,000,000	\$1,000,000	
Professional Liability Insurance (Design Delegation) to cover errors and omissions arising during the performance of professional engineering and architectural services in the amount of:			
Each Claim:	\$2,000,000	\$2,000,000	
Annual Aggregate:	\$2,000,000	\$2,000,000	
Builder's Risk Insurance: Losses covered by the Builder's Risk property insurance provided by ORDA, except that the Contractor shall be liable for the applicable deductible.			
Project Value:	<u>Less than \$1,000,000</u>	<u>\$1,000,000 to \$5,000,000</u>	<u>Greater than \$5,000,000</u>
Deductible:	\$1,000	\$5,000	\$10,000

Conditions:

1. All policies of insurance shall be written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York with an A.M. Best Company rating of "A-" Class "VII" or better. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII," the insurance must be replaced no later than the renewal date of the policy with an insurer rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.
2. After the initial submission of proof of coverage, the Contractor shall be required to provide proof of the coverage required by this Attachment within ten (10) business days of renewal and/or request.
3. All policies shall designate the New York State Olympic Regional Development Authority as the loss payee and shall contain a provision that the New York State Olympic Regional Development Authority shall receive at least thirty (30) days' notice prior to material change, cancellation, or expiration of any such policy.

Additional Insured:

The policy or policies shall be endorsed to be primary as respects the coverage afforded the New York State Olympic Regional Development Authority and others identified to be included as Additional Insured and such policy or policies shall be primary to any other insurance maintained by the New York State Olympic Regional Development Authority and others identified as Additional Insured.

Additional Insured shall be defined by project location as follows:

Olympic Center (PINs starting with ARN)

1. New York State Olympic Regional Development Authority
2. State of New York
3. Town of North Elba
4. Town Board of the Town of North Elba, as Trustee for the Town of North Elba Public Parks and Playground District
5. Projects at the Olympic Speed Skating Oval will additionally require the following:
 - a. Lake Placid Central School District #2 & The Trustees of Lake Placid Central School District

Olympic Jumping Complex (PINs starting with OJC)

1. New York State Olympic Regional Development Authority
2. State of New York
3. Town of North Elba
4. Town Board of the Town of North Elba, as Trustee for the Town of North Elba Public Parks and Playground District

Olympic Sports Complex (PINs starting with OSC)

1. New York State Olympic Regional Development Authority
2. State of New York
3. New York State Department of Environmental Conservation
4. Town of North Elba
5. Town Board of the Town of North Elba, as Trustee for the Town of North Elba Public Parks and Playground District

Olympic Training Center (PINs starting with EXO)

1. New York State Olympic Regional Development Authority
2. State of New York
3. United States Olympic & Paralympic Committee

Belleayre Mountain Ski Center (PINs starting with BEL)

1. New York State Olympic Regional Development Authority
2. State of New York
3. New York State Department of Environmental Conservation

Gore Mountain Ski Center (PINs starting with GOR)

1. New York State Olympic Regional Development Authority
2. State of New York
3. New York State Department of Environmental Conservation
4. Projects at the North Creek Ski Bowl at Gore will additionally require the following:
 - a. Town of Johnsburg

Whiteface Mountain Ski Center (PINs starting with WFM)

1. New York State Olympic Regional Development Authority
2. State of New York
3. New York State Department of Environmental Conservation
4. Projects at the Veterans Memorial Highway will additionally require the following:
 - a. New York State Department of Transportation

ORDA Administration Building (PINs starting with EXO)

1. New York State Olympic Regional Development Authority
2. State of New York
3. Town of North Elba
4. Town Board of the Town of North Elba, as Trustee for the Town of North Elba Public Parks and Playground District

Project Specific: Refer to the Appendix for Project Specific Additional Insured.

Addresses:

The State of New York
The Capitol
Albany, NY 12210

New York State Department of Transportation
884 NYS Route 86
Ray Brook, NY 12977

New York State Olympic Regional
Development Authority
2634 Main Street
Lake Placid, NY 12946

Town of North Elba
2693 Main Street
Lake Placid, NY 12946
Attn: Supervisor of Town of North Elba

United States Olympic & Paralympic Committee
196 Old Military Road
Lake Placid, NY 12946

Town of Johnsburg
219 Main Street
North Creek, NY 12853

New York State Department of Environmental
Conservation
884 NYS Route 86,
Ray Brook, NY 12977

Lake Placid Central School District #2 &
The Trustees of Lake Placid Central School District
Attn.: Superintendent of Schools
50 Cummings Road
Lake Placid, NY 12946

Town Board of the Town of North Elba, as
Trustee for the Town of North Elba Public Parks
and Playground District
2693 Main Street
Lake Placid, NY 12946
Attn: Supervisor of the Town of North Elba

Venue Addresses:

Belleayre Mountain
181 Galli Curci Road
Highmount, NY 12441

Olympic Jumping Complex
5486 Cascade Road
Lake Placid, NY 12946

Whiteface Mountain Ski Center
5021 Route 86
Wilmington, NY 12997

Gore Mountain
793 Peaceful Valley Road
North Creek, NY 12853

Olympic Sports Complex
220 Bob Sled Run Lane
Lake Placid, NY 12946

ORDA Administrative Building
29 Church Street
Lake Placid, NY 12946

Olympic Center
2634 Main Street
Lake Placid, NY 12946

Olympic Training Center
196 Old Military Road
Lake Placid, NY 12946

Workers Compensation and Employers Liability Insurance: See Section 002113- Instructions to Bidders

Worker's Compensation: Form C105.2, U-26.3, or Proof of Exemption Form CE-200
Disability Benefits: Form DB-120.1, DB-155, or Proof of Exemption Form CE-200

An ACORD 25 form is **NOT** acceptable as proof of Workers Compensation coverage or Disability benefits coverage.

Contact:

Questions regarding ORDA's Insurance for projects administered by ORDA's Office of Environmental, Planning and Construction shall be directed to The Contracting Officer located at the following address:

Olympic Regional Development Authority
Attn: Office of Environmental, Planning & Construction
2634 Main Street
Lake Placid, NY 12946
insurance@orda.org

DOCUMENT 00 73 05

SUPPLEMENTARY CONDITIONS - LIQUIDATED DAMAGES

This supplement modifies the General Conditions. Where any part of the General Conditions is modified by this supplement, the unaltered provisions of that part shall remain in effect.

ARTICLE 2 - DEFINITIONS

Delete Section 2.13 in its entirety and replace with the following:

2.13 The term “liquidated damages” means the amount of money to be assessed against the Contractor for delay in completion of the Work.

ARTICLE 13 - TIME OF COMPLETION AND TERMINATION FOR CAUSE

Delete Section 13.3 in its entirety and replace with the following:

13.3 Liquidated Damages:

13.3.1 At the sole discretion of the Owner, liquidated damages will be assessed, if at all, on a Job Order-by-Job-Order basis. Should the Contractor fail to substantially complete the Detailed Scope of Work within the Job Order Completion Time, or as described in a subsequent Order(s) on Contract, the Director may assess Liquidated Damages for such failure in the amount of \$1,000.00 per day until such time as the Director determines that the Work is substantially complete as defined in Section 2.25 herein.

13.3.2 Should Contractor fail to achieve physical completion of the Detailed Scope of Work within the Job Order Completion Time, the Director may assess Liquidated Damages for such failure in the amount \$1,000.00 per day until such time as the Director determines that the Work is physically complete as defined in Section 2.15 herein.

13.3.3 Liquidated Damages will be assessed not as a penalty, but as liquidated damages, provided, however, that due account shall be taken of any adjustment of the Job Order Completion Time as provided for in the Job Order. Notwithstanding the provisions of General Conditions Article 21, the Contractor agrees that the Director may withhold the sum of the Liquidated Damages from payments to be made to the Contractor. Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion or after the date to which the time for completion may have been extended, will in no way constitute a waiver on the part of ORDA of any of its rights under the Contract. The Contractor is responsible and liable for said liquidated damages even in the event that the Contractor abandons the performance of the contract or the Contractor's employment is terminated pursuant to the provisions of the Contract.

END OF DOCUMENT

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

You have selected the For-Profit Construction questionnaire, commonly known as the “CCA-2,” which may be printed and completed in this format or, **for your convenience, may be completed online using the [New York State VendRep System](#).**

COMPLETION & CERTIFICATION

The person(s) completing the questionnaire must be knowledgeable about the vendor’s business and operations. An owner or official must certify the questionnaire and the signature must be notarized.

NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the IT Service Desk at ITServiceDesk@osc.state.ny.us or call 866-370-4672.

DEFINITIONS

All underlined terms are defined in the “New York State Vendor Responsibility Definitions List,” found at <http://www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf>. These terms may **not** have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the “New York State Vendor Responsibility Definitions List” existing at the time of certification.

RESPONSES

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)**

BUSINESS ENTITY INFORMATION				
<u>Legal Business Name</u>		<u>EIN</u> _____		
<u>Address of the Principal Place of Business</u> (street, city, state, zip code)		<u>New York State Vendor Identification Number</u>		
		Telephone ext.	Fax	
		Website		
<u>Authorized Contact for this Questionnaire</u>				
<u>Name</u>		Telephone ext.	Fax	
<u>Title</u>		Email		
Additional <u>Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , <u>Other Identity</u> , or <u>EIN</u> used in the last five (5) years, the state or county where filed and the status (active or inactive).				
Type	Name	EIN	State or County where filed	Status

I. BUSINESS CHARACTERISTICS				
1.0 <u>Business Entity Type</u> – Check appropriate box and provide additional information:				
a) <input type="checkbox"/> <u>Corporation</u> (including <u>PC</u>)	Date of Incorporation			
b) <input type="checkbox"/> <u>Limited Liability Company</u> (LLC or <u>PLLC</u>)	Date Organized			
c) <input type="checkbox"/> <u>Limited Liability Partnership</u>	Date of Registration			
d) <input type="checkbox"/> <u>Limited Partnership</u>	Date Established			
e) <input type="checkbox"/> <u>General Partnership</u>	Date Established	County (if formed in NYS)		
f) <input type="checkbox"/> <u>Sole Proprietor</u>	How many years in business?			
g) <input type="checkbox"/> <u>Other</u>	Date Established			
If Other, explain:				
1.1 Was the <u>Business Entity</u> formed in New York State?				<input type="checkbox"/> Yes <input type="checkbox"/> No
If “No,” indicate jurisdiction where the <u>Business Entity</u> was formed:				
<input type="checkbox"/> <u>United States</u>	State			
<input type="checkbox"/> <u>Other</u>	Country			

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

I. BUSINESS CHARACTERISTICS			
1.2 Is the <u>Legal Business Entity</u> publicly traded?		<input type="checkbox"/> Yes <input type="checkbox"/> No	
If "Yes," provide the <u>CIK code</u> or Ticker Symbol:			
1.3 Is the <u>Business Entity</u> currently <u>registered to do business in New York State</u> ?		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<i>Note: Select "Not Required" if the Business Entity is a Sole Proprietor or General Partnership</i>		<input type="checkbox"/> Not Required	
If "No," explain why the <u>Business Entity</u> is not required to be <u>registered to do business in New York State</u> :			
1.4 Is the responding <u>Business Entity</u> a <u>Joint Venture</u> ? Note: If the submitting <u>Business Entity</u> is a <u>Joint Venture</u> , also submit a separate questionnaire for each <u>Business Entity</u> comprising the <u>Joint Venture</u> .		<input type="checkbox"/> Yes <input type="checkbox"/> No	
1.5 If the <u>Business Entity's</u> <u>Principal Place of Business</u> is not in New York State, does the <u>Business Entity</u> maintain an office in New York State?		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<i>(Select "N/A" if <u>Principal Place of Business</u> is in New York State.)</i>		<input type="checkbox"/> N/A	
If "Yes," provide the address and telephone number for one office located in New York State.			
1.6 Is the Business Entity a New York State certified <u>Minority-Owned Business Enterprise</u> , or <u>Women-Owned Business Enterprise</u> , or <u>New York State Small Business</u> , or federally certified <u>Disadvantaged Business Enterprise</u> ?		<input type="checkbox"/> Yes <input type="checkbox"/> No	
If "Yes," check all that apply:			
<input type="checkbox"/> New York State certified <u>Minority-Owned Business Enterprise (MBE)</u>			
<input type="checkbox"/> New York State certified <u>Women-Owned Business Enterprise (WBE)</u>			
<input type="checkbox"/> <u>New York State Small Business</u>			
<input type="checkbox"/> Federally certified <u>Disadvantaged Business Enterprise (DBE)</u>			
1.7 Identify each person or business entity that is, or has been within the past five (5) years, <u>Principal Owner</u> of 5.0% or more of the firm's shares; a <u>Business Entity Official</u> ; or one of the five largest shareholders, if applicable. <i>(Attach additional pages if necessary.)</i>			
<u>Joint Ventures</u> : Provide information for all firms involved.			
Name <i>(For each person, include middle initial)</i>	Title	Percentage of ownership (Enter 0%, if not applicable)	Employment status with the firm
			<input type="checkbox"/> Current <input type="checkbox"/> Former
			<input type="checkbox"/> Current <input type="checkbox"/> Former
			<input type="checkbox"/> Current <input type="checkbox"/> Former
			<input type="checkbox"/> Current <input type="checkbox"/> Former

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)**

II. AFFILIATE and JOINT VENTURE RELATIONSHIPS		
2.0 Are there any other <u>construction</u> -related firms in which, now or in the past five years, the submitting <u>Business Entity</u> or any of the individuals or business entities listed in question 1.7 either owned or owns 5.0% or more of the shares of, or was or is one of the five largest shareholders or a director, officer, partner or proprietor of said other firm? <i>(Attach additional pages if necessary.)</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Firm/Company Name	Firm/Company EIN (If available)	Firm/Company's Primary Business Activity
Firm/Company Address		
Explain relationship with the firm and indicate percent of ownership, if applicable (enter N/A, if not applicable):		
Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting <u>Business Entity</u> has in common with this firm?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual's Name <i>(Include middle initial)</i>	Position/Title with Firm/Company	
2.1 Does the <u>Business Entity</u> have any <u>construction</u> -related <u>affiliates</u> not identified in the response to question 2.0 above? <i>(Attach additional pages if necessary.)</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Affiliate Name	Affiliate EIN (If available)	Affiliate's Primary Business Activity
Affiliate Address		
Explain relationship with the affiliate and indicate percent of ownership, if applicable (enter N/A, if not applicable):		
Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting Business Entity has in common with this affiliate?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual's Name <i>(Include middle initial)</i>	Position/Title with Firm/Company	
2.2 Has the <u>Business Entity</u> participated in any <u>construction</u> -related <u>Joint Ventures</u> within the past three (3) years? <i>(Attach additional pages if necessary.)</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Joint Venture Name	Joint Venture EIN (If available)	Identify parties to the Joint Venture

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

III. CONTRACT HISTORY	
3.0 Has the <u>Business Entity</u> completed any <u>construction</u> contracts?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," list the ten most recent <u>construction</u> contracts the <u>Business Entity</u> has completed using Attachment A – Completed Construction Contracts, found at www.osc.state.ny.us/vendrep/documents/questionnaire/ac3294s.doc. If less than ten, include most recent subcontracts on projects up to that number.</i>	
3.1 Does the <u>Business Entity</u> currently have uncompleted <u>construction</u> contracts?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," list all current uncompleted <u>construction</u> contracts by using Attachment B – Uncompleted Construction Contracts, found at www.osc.state.ny.us/vendrep/documents/questionnaire/ac3295s.doc. Note: Ongoing projects must be included.</i>	
IV. INTEGRITY – CONTRACT BIDDING	
<i>Within the past five (5) years, has the <u>Business Entity</u>, an affiliate, or any predecessor company or entity:</i>	
4.0 Been <u>suspended</u> or <u>debarred</u> from any <u>government contracting process</u> or been <u>disqualified</u> on any government procurement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 Been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 Had any bid rejected by a <u>government entity</u> for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 Had a proposed subcontract rejected by a <u>government entity</u> for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 Had a low bid rejected on a <u>government contract</u> for failure to make <u>good faith efforts</u> on any <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or <u>Disadvantaged Business Enterprise</u> goal or <u>statutory affirmative action requirements</u> on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 Agreed to a voluntary exclusion from bidding/contracting with a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.6 Initiated a request to withdraw a bid submitted to a <u>government entity</u> or made any claim of an error on a bid submitted to a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>For each "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, project(s), relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.</i>	
V. INTEGRITY – CONTRACT AWARD	
<i>Within the past five (5) years, has the <u>Business Entity</u>, an affiliate, or any predecessor company or entity:</i>	
5.0 Defaulted on or been <u>suspended</u> , cancelled or <u>terminated for cause</u> on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.1 Been subject to an <u>administrative proceeding</u> or civil action seeking specific performance or restitution (except any disputed work proceeding) in connection with any <u>government contract</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.2 Entered into a formal <u>monitoring</u> agreement, consent decree or stipulation settlement as specified by, or agreed to with, any <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.3 Had its surety called upon to complete any contract whether government or private sector?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.4 Forfeited all or part of a standby letter of credit in connection with any <u>government contract</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

V. INTEGRITY – CONTRACT AWARD

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

For each “Yes,” provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity/owners involved, project(s), contract number(s), relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

VI. CERTIFICATIONS/LICENSES

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

- | | |
|--|--|
| 6.0 Had a revocation or <u>suspension</u> of any business or professional permit and/or license? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or a federal certification of <u>Disadvantaged Business Enterprise</u> status, for other than a change of ownership? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

VII. LEGAL PROCEEDINGS/GOVERNMENT INVESTIGATIONS

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

- | | |
|--|--|
| 7.0 Been the subject of a criminal <u>investigation</u> , whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or <u>federal</u> law? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.1 Been the subject of: | |
| (i.) An indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime; or | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| (ii.) Any criminal <u>investigation</u> , felony indictment or conviction concerning the formation of, or any business association with, an allegedly false or fraudulent <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> , or a <u>Disadvantaged Business Enterprise</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.2 Received any <u>OSHA</u> citation, which resulted in a final determination classified as <u>serious</u> or <u>willful</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.3 Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.4 Had a New York State Labor Law violation deemed willful? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.5 Entered into a consent order with the New York State Department of Environmental Conservation, or a <u>federal</u> , state or local government enforcement determination involving a violation of <u>federal</u> , state or local environmental laws? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)**

VII. LEGAL PROCEEDINGS/GOVERNMENT INVESTIGATIONS

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

7.6 Other than previously disclosed, been the subject of any <u>citations</u> , notices or violation orders; a pending administrative hearing, proceeding or determination of a violation of: <ul style="list-style-type: none"> • <u>Federal</u>, state or local health laws, rules or regulations; • <u>Federal</u>, state or local environmental laws, rules or regulations; • Unemployment insurance or workers compensation coverage or <u>claim</u> requirements; • Any labor law or regulation, which was deemed willful; • Employee Retirement Income Security Act (ERISA); • <u>Federal</u>, state or local human rights laws; • <u>Federal</u>, state or local security laws? 	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

For each "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

Note: Information regarding a determination or finding made in error, which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required.

VIII. LEADERSHIP INTEGRITY

If the Business Entity is a Joint Venture Entity, answer "N/A - Not Applicable" to questions in this section.

Within the past five (5) years has any individual previously identified or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the Business Entity with any government entity been:

8.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.1 <u>Suspended, debarred or disqualified</u> from any <u>government contracting process</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.2 The subject of a criminal <u>investigation</u> , whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or <u>federal law</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for: <ul style="list-style-type: none"> (i.) Any business-related activity, including but not limited to fraud, coercion, extortion, bribe or bribe-receiving, giving or accepting unlawful gratuities, immigration or tax fraud, racketeering, mail fraud, wire fraud, price-fixing or collusive bidding; or (ii.) Any crime, whether or not business-related, the underlying conduct of which related to truthfulness, including but not limited to the filing of false documents or false sworn statements, perjury or larceny 	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

For each "Yes," provide an explanation of the issue(s), the individual involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)**

IX. FINANCIAL AND ORGANIZATIONAL CAPACITY		
9.0 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?		<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>		
9.1 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> had any <u>liquidated damages</u> assessed over \$25,000?		<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, relevant dates, the contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>		
9.2 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> had any <u>liens, claims or judgments</u> over \$25,000 filed against the <u>Business Entity</u> which remain undischarged or were unsatisfied for more than 90 days? (Note: Including but not limited to tax warrants or liens. Do not include UCC filings.)		<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, relevant dates, the Lien holder or Claimants' name(s), the amount of the <u>lien(s)</u> and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>		
9.3 In the last seven (7) years, has the <u>Business Entity</u> or any <u>affiliate</u> initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?		<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," provide the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses.</i>		
9.4 What is the <u>Business Entity's</u> Bonding Capacity?		
a. Single Project		b. Aggregate (All Projects)
9.5 List <u>Business Entity's</u> Gross Sales for the previous three (3) Fiscal Years:		
1st Year (Indicate year) Gross Sales	2nd Year (Indicate year) Gross Sales	3rd Year (Indicate year) Gross Sales
9.6 List <u>Business Entity's</u> Average Backlog for the previous three (3) fiscal years: (Estimated total value of uncompleted work on outstanding contracts)		
1st Year (Indicate year) Amount	2nd Year (Indicate year) Amount	3rd Year (Indicate year) Amount
9.7 Attach <u>Business Entity's</u> most recent annual <u>financial statement</u> and accompanying notes or complete Attachment C – Financial Information, found at www.osc.state.ny.us/vendrep/documents/questionnaire/ac3296s.xls . (This information must be attached.)		

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)**

X. FREEDOM OF INFORMATION LAW (FOIL)

10.0 Indicate whether any information provided herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL).

Yes No

Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL. Attach additional pages if necessary.

If "Yes," indicate the question number(s) and explain the basis for the claim.

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NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or Federal Law, as well as a finding of non-responsibility, contract suspension or contract termination.

The undersigned certifies that he/she:

- is knowledgeable about the submitting Business Entity’s business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Business Entity’s responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- is under an obligation to update the information provided herein to include any material changes to the Business Entity’s responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

Sworn to before me this _____ day of _____, 20____;

_____ Notary Public

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT A – COMPLETED CONSTRUCTION CONTRACTS**

Vendor Name:

NYS Vendor ID:

Question 3.0: List the ten most recent construction contracts the Business Entity has completed. If less than ten, include most recent subcontracts on projects up to that number:					
1.	Agency/Owner		Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer	
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable
2.	Agency/Owner		Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer	
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable
3.	Agency/Owner		Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer	
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable
4.	Agency/Owner		Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer	
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable
5.	Agency/Owner		Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer	
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT A – COMPLETED CONSTRUCTION CONTRACTS**

Vendor Name:

NYS Vendor ID:

Question 3.0: List the ten most recent construction contracts the Business Entity has completed. If less than ten, include most recent subcontracts on projects up to that number:						
6.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
7.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
8.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
9.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
10.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS**

Vendor Name:

NYS Vendor ID:

Question 3.1: List all current uncompleted construction contracts:								
1.	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others		Uncompleted Amount	
2.	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others		Uncompleted Amount	
3.	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others		Uncompleted Amount	
4.	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others		Uncompleted Amount	

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS**

Vendor Name:

NYS Vendor ID:

Question 3.1: List all current uncompleted construction contracts:								
5.	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others		Uncompleted Amount	
6.	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others		Uncompleted Amount	
7.	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others		Uncompleted Amount	
8.	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others		Uncompleted Amount	

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS**

Vendor Name:

NYS Vendor ID:

Question 3.1: List all current uncompleted construction contracts:						
9.	Agency/Owner				Award Date	Completion Date
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
			Total Contract Amount	Amount Sublet to others	Uncompleted Amount	
10.	Agency/Owner				Award Date	Completion Date
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
			Total Contract Amount	Amount Sublet to others	Uncompleted Amount	
Grand Total All Uncompleted Contracts					\$0.00	

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**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: _____

As of Date: _____

ASSETS

Current Assets

1. Cash		\$	_____	-	
2. Accounts receivable - less allowance for doubtful accounts	\$	_____	-		
Retainers included in accounts receivable	\$	_____	-		
Claims included in accounts receivable not yet approved or in litigation	\$	_____	-		
Total Accounts Receivable	\$	_____	-		
3. Notes receivable - due within one year	\$	_____	-		
4. Inventory - materials	\$	_____	-		
5. Contract costs in excess of billings on uncompleted contracts	\$	_____	-		
6. Accrued income receivable					
Interest	\$	_____	-		
Other (list) _____	\$	_____	-		
_____	\$	_____	-		
Total Accrued Income Receivable	\$	_____	-		
7. Deposits					
Bid and Plan _____	\$	_____	-		
Other (list) _____	\$	_____	-		
_____	\$	_____	-		
Total Deposits	\$	_____	-		
8. Prepaid Expenses					
Income Taxes	\$	_____	-		
Insurance	\$	_____	-		
Other (list) _____	\$	_____	-		
_____	\$	_____	-		
Total Prepaid Expenses	\$	_____	-		
9. Other Current Assets					
Other (list) _____	\$	_____	-		
_____	\$	_____	-		
Total Other Current Assets	\$	_____	-		
10. Total Current Assets				\$	_____
11. Investments					
Listed securities-present market value	\$	_____	-		
Unlisted securities-present value	\$	_____	-		
Total Investments	\$	_____	-		

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: _____

12. Fixed Assets

Land	\$	-	
Building and improvements	\$	-	
Leasehold improvements	\$	-	
Machinery and equipment	\$	-	
Automotive equipment	\$	-	
Office furniture and fixtures	\$	-	
Other (list) _____	\$	-	
	\$	-	
Total	\$	-	
Less: Accumulated depreciation	\$	-	
Total Fixed Assets - Net	\$	-	

13. Other Assets

Loans receivable			
Officers	\$	-	
Employees	\$	-	
Shareholders	\$	-	
Cash surrender value of officers' life insurance	\$	-	
Organization expense – net of amortization	\$	-	
Notes receivable - due after one year	\$	-	
Other (list) _____	\$	-	
	\$	-	
Total Other Assets	\$	-	

14. TOTAL ASSETS

\$ _____
\$ _____

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**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: _____

LIABILITIES

Current Liabilities

15. Accounts payable	\$	-
16 a. Loans from shareholders - due within one year	\$	-
16 b. Other Loans - due within one year	\$	-
17. Notes payable - due within one year	\$	-
18. Mortgage payable - due within one year	\$	-
19. Other payables - due within one year	\$	-
Other (list) _____	\$	-
_____	\$	-
_____	\$	-
Total Other Payables - due within one year	\$	-
20. Billings in excess of costs and estimated earnings	\$	-
21. Accrued expenses payable		
Salaries and wages	\$	-
Payroll taxes	\$	-
Employees' benefits	\$	-
Insurance	\$	-
Other	\$	-
Total Accrued Expenses Payable	\$	-
22. Dividends payable	\$	-
23. Income taxes payable		
State	\$	-
Federal	\$	-
Other	\$	-
Total Income Taxes Payable	\$	-
24. Total current liabilities	\$	-
25. Deferred income taxes payable		
State	\$	-
Federal	\$	-
Other	\$	-
Total Deferred Income Taxes	\$	-
26. Long Term Liabilities		
Loans from shareholders - due after one year	\$	-
Other Loans - due within one year		
Principle	\$	-
Interest	\$	-
Notes payable - due after one year	\$	-
Mortgage - due after one year	\$	-
Other payables - due after one year	\$	-
Other (list) _____	\$	-
_____	\$	-
_____	\$	-
Total Long Term Liabilities	\$	-

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: _____

27. Other Liabilities			
Other (list) _____	\$	-	
_____	\$	-	
Total Other Liabilities			\$ _____
28. TOTAL LIABILITIES			\$ _____

NET WORTH

29. Net Worth (if proprietorship or partnership)			\$ _____
30. Stockholders' Equity			
Common stock issued and outstanding	\$	-	
Preferred stock issued and outstanding	\$	-	
Retained earnings	\$	-	
Total	\$	-	
Less: Treasury stock	\$	-	
31. TOTAL STOCKHOLDERS' EQUITY			\$ _____
32. TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY			\$ _____

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**SUPPLEMENTARY CONDITIONS - ENCOURAGING USE OF NEW YORK STATE
BUSINESSES IN CONTRACT PERFORMANCE**

This supplement modifies the General Conditions. Where any part of the General Conditions is modified by this supplement, the unaltered provisions of that part shall remain in effect.

ARTICLE 25 – MISCELLANEOUS PROVISIONS

Add a new Section 25.17 as follows:

25.17 Encouraging New York State Businesses

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders need to be aware that all government entities benefiting from this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York’s infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor’s optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Bidders can demonstrate their commitment to the use of New York State businesses by responding to the question shown below *on the Bid Form for this project*:

Will New York State Businesses be used in the performance of this contract? Yes No

The successful bidder who answers “Yes” to this question on the bid form will be required to list the New York State business(es) that will be used on the **Contractor’s List of Subcontractors/Suppliers** (Form OEPC 329), which must be submitted within *fifteen (15) days after award* of the contract.

END OF DOCUMENT

New York State Olympic Regional Development Authority

Job Order Contracting Services

DOCUMENT 00 80 00

JOC SUPPLEMENTAL CONDITIONS

Table of Contents

Part One.JOC Instructions to Bidders
Part Two.Procedure for Ordering Work

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PART ONE: JOC INSTRUCTIONS TO BIDDERS

1. CONTRACT OVERVIEW:

- 1.1. A Job Order Contract is an indefinite quantity construction contract pursuant to which the Contractor may perform an ongoing series of individual Projects at different locations and facilities under the jurisdiction of the Owner. Job Order Contracting is typically used for small to medium sized repair and rehabilitation work, replacement in kind projects, and minor new construction.
- 1.2. The Contract Documents include a Construction Task Catalog[®] containing Prepriced Tasks for construction work with preset Unit Prices. All Unit Prices are based on local labor, material and equipment costs and are for the direct cost of construction.
- 1.3. Bidders will bid two sets of Adjustment Factors to be applied to the Unit Prices. The first set of Adjustment Factors is for Projects estimated to be equal to or less than \$10,000 while the second set of Adjustment Factors is for Projects estimated to be greater than \$10,000. Each set of Adjustment Factors includes one Adjustment Factor for performing work during Normal Working Hours and a second Adjustment Factor for performing work during Other Than Normal Working Hours. The same four Adjustment Factors apply to every Pre-priced Task in the Construction Task Catalog[®].
- 1.4. A Contract will be awarded in accordance with the Request for Bid (RFB) issued by ORDA.
- 1.5. As Projects are assigned after the award of a Contract, the Contractor will attend a Joint Scope Meeting with the Owner to review and discuss the proposed work. The Owner will prepare a Detailed Scope of Work and issue a Request for Job Order Proposal to the Contractor. The Contractor will then prepare a Job Order Proposal including a Price Proposal, construction schedule, list of proposed subcontractors, and other requested documentation.
- 1.6. The value of the Price Proposal shall be determined by summing the total of the following calculation for each Prepriced Task: Unit Price x quantity x Adjustment Factor, plus the value of all Non-Prepriced Tasks. The Job Order Price shall equal the value of the approved Price Proposal.
- 1.7. If the Job Order Proposal is found to be complete and accurate, the Owner may issue a Job Order to the Contractor.
- 1.8. A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time and the Job Order Price. The Contractor will be paid the Job Order Price for completing the Detailed Scope of Work within the Job Order Completion Time.
- 1.9. Extra work, credits, and deletions will be contained in a Supplemental Job Order.

2. CONTRACT TERM:

- 2.1. The Base Term of the Contract is one year. There are two bilateral Option Terms. Both parties must agree to extend the Contract for an Option Term. The duration of each Option Term is one year.

- 2.2. The Owner and the Contractor may agree to extend the term of an Option Term.
- 2.3. All Job Orders issued during any term of this Contract shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue, after such period has expired. All terms and conditions of the Contract apply to each Job Order.

3. CONTRACT VALUE

- 3.1. The Estimated Annual Value for this Contract is \$500,000. The Contractor may be issued Job Orders up to or exceeding the Estimated Annual Value. The Contractor is not guaranteed to receive the Estimated Annual Value. It is merely an estimate.

4. GEOGRAPHIC AREA OF WORK

- 4.1. The Contractor will perform work primarily in **Region 2: Ulster County**. However, if a Contractor assigned to a different region is unable or unwilling to perform work, the Owner may request the Contractor to perform work in such different region. If the Contractor performs work for such different region, it shall be at the Contractor's competitively bid Adjustment Factors, then in effect. The Contractor may decline work outside its designated region.

5. ADJUSTMENT FACTORS

- 5.1. There are four Adjustment Factors for this Contract. When preparing a Price Proposal, the Contractor shall select the appropriate Adjustment Factor.
- 5.2. The Adjustment Factors are as follows:
 - 5.2.1. **For Projects Equal to or Less than \$10,000, Normal Working Hours Adjustment Factor:** Monday through Friday 7:00 am to 5:00 pm except ORDA holidays.
 - 5.2.2. **For Projects Equal to or Less than \$10,000, Other Than Normal Working Hours Adjustment Factor:** Monday through Friday 5:01 pm to 6:59 am and all-day Saturday, Sunday and ORDA holidays.
 - 5.2.3. **For Projects Greater than \$10,000, Normal Working Hours Adjustment Factor:** Monday through Friday 7:00 am to 5:00 pm except ORDA holidays.
 - 5.2.4. **For Projects Greater than \$10,000, Other Than Normal Working Hours Adjustment Factor:** Monday through Friday 5:01 pm to 6:59 am and all-day Saturday, Sunday and ORDA holidays.
- 5.3. *The Other Than Normal Working Hours Adjustment Factor must be equal to or greater than the corresponding Normal Working Hours Adjustment Factor.*
- 5.4. For bid evaluation purposes only, the following work distributions shall be used to determine the Award Criteria Figure:

Adjustment Factor	% Weight (For Bid Evaluation Only)
For Projects Equal to or Less than \$10,000, Normal Working Hours	20%
For Projects Equal to or Less than \$10,000, Other than Normal Working Hours	10%
For Projects Greater than \$10,000, Normal Working Hours	40%
For Projects Greater than \$10,000, Other than Normal Working Hours	30%

5.5. All Unit Prices listed in the Construction Task Catalog[®] are priced at a net value of 1.0000. The Adjustment Factors shall be an increase or decrease to all the Unit Prices listed in the Construction Task Catalog[®]. For example, 1.1000 would be a 10% increase to the Unit Prices and 0.9500 would be a 5% decrease to the Unit Prices. Bidders who submit separate Adjustment Factors for separate Unit Prices will be considered non-responsive and their bid will be rejected.

6. JOC SYSTEM LICENSE FEE

6.1. The Owner selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution[™] includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog[®] which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, subcontractor lists, and other requirements specified by the Owner. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution[™].** The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors.

PART TWO: PROCEDURE FOR ORDERING WORK

1. DEFINITIONS

- 1.1. **Adjustment Factor** - A competitively bid adjustment to be applied to the Unit Prices listed in the Construction Task Catalog[®].
- 1.2. **Award Criteria Figure** - The sum of the extended totals as calculated in the on the Bid Form, which is used for the purposes of determining the lowest Bid.
- 1.3. **Base Term** - The initial period of the Contract and does not include any Option Terms.
- 1.4. **Construction Task Catalog[®]** - A comprehensive listing of construction related tasks together with a specific unit of measure and a published Unit Price.
- 1.5. **Detailed Scope of Work** - A document setting forth the work the Contractor is obligated to complete for a particular Job Order.
- 1.6. **Job Order** - A written order issued by the Owner requiring the Contractor to complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price. A project may consist of one or more Job Orders.
- 1.7. **Job Order Completion Time** - The time within which the Contractor must complete the Detailed Scope of Work.
- 1.8. **Job Order Price** - The value of the approved Price Proposal and the amount the Contractor will be paid for completing the Detailed Scope of Work within the Job Order Completion Time.
- 1.9. **Job Order Proposal** - A set of documents including: (a) Price Proposal; (b) construction schedule; (c) list of proposed subcontractors; and (d) other requested documents.
- 1.10. **Joint Scope Meeting** - A meeting at the site to discuss the work to be performed before the Detailed Scope of Work is finalized.
- 1.11. **Non-Prepriced Task** - A task that is not set forth in the Construction Task Catalog[®].
- 1.12. **Normal Working Hours** - Includes the hours from 7:00 a.m. to 5:00 p.m. Monday through Friday, except for Owner holidays.
- 1.13. **Other Than Normal Working Hours** - Includes the hours of 5:01 p.m. to 6:59 a.m. Monday through Friday and all day Saturday, Sunday, and Owner holidays.
- 1.14. **Option Term**- An additional period of time beyond the Contract Term which extends the termination date of the Contract.
- 1.15. **Prepriced Task** - A task set forth in the Construction Task Catalog[®], which includes a description of the task, a unit of measure, and a unit price.
- 1.16. **Price Proposal** - A document prepared by the Contractor that includes Prepriced Tasks, quantities, appropriate Adjustment Factors, and Non-Prepriced Tasks required to complete the Detailed Scope of Work.
- 1.17. **Project** - The collective improvements to be constructed by the Contractor pursuant to a Job Order or a series of related Job Orders.

- 1.18. **Request for Job Order Proposal** - A written request to the Contractor to prepare a Job Order Proposal for the Detailed Scope of Work referenced therein.
- 1.19. **Supplemental Job Order** - A secondary Job Order developed after the initial Job Order has been issued to change, delete, or add work to the initial Detailed Scope of Work, or to change the Job Order Completion Time.
- 1.20. **Technical Specifications** - The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
- 1.21. **Unit Price** - The unit price published in the Construction Task Catalog[®] for a Prepriced Task.

2. CONDUCTING THE JOINT SCOPE MEETING

- 2.1. As the need exists, the Owner will notify the Contractor of a potential Project. The Owner will schedule a Joint Scope Meeting with the Contractor and other necessary representatives as soon as practicable, generally, within seven (7) days.
- 2.2. The Contractor does not have the right to refuse to perform any Project, Prepriced Task, or Non-Prepriced Task.
- 2.3. The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum, the following items:
 - 2.3.1. The work to be performed
 - 2.3.2. Presence of hazardous materials
 - 2.3.3. Required permits
 - 2.3.4. Long lead time materials
 - 2.3.5. Protocol for workers entering the site
 - 2.3.6. Staging area and areas that are off-limits
 - 2.3.7. Subcontracting goals (if applicable)
 - 2.3.8. Construction schedule and work hours – with critical milestones and phasing requirements
 - 2.3.9. Controlled inspections, testing requirements
 - 2.3.10. Value Engineering suggestions
 - 2.3.11. Organization of Price Proposal – by location, by corner, etc.
 - 2.3.12. Due Date for Detailed Scope of Work and for Price Proposal

3. FINALIZING THE DETAILED SCOPE OF WORK

- 3.1. After the Joint Scope Meeting, the Owner will prepare a draft Detailed Scope of Work which will reference any drawings, specifications, sketches, photographs and other documents required to accurately describe the work to be performed. The Contractor shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work has been prepared, the

Owner will issue a Request for Job Order Proposal that will require the Contractor to prepare a Job Order Proposal. The Detailed Scope of Work, unless modified by both the Contractor and the Owner, will be the basis on which the Contractor will develop its Job Order Proposal and the Owner will evaluate the same.

- 3.2. The Owner may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the Owner cannot agree on the quantities required, or for any other reason as determined by the Owner. In all such cases, the Owner shall issue a Supplemental Job Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.
- 3.3. If the Contractor requires additional information to clarify the Detailed Scope of Work before preparing the Job Order Proposal, the Contractor will make such request quickly so that the Job Order Proposal can be submitted on time.

4. PREPARING THE JOB ORDER PROPOSAL

- 4.1. The Contractor will prepare a Job Order Proposal including:
 - 4.1.1. Price Proposal;
 - 4.1.2. Support Documentation for Non-Prepriced Tasks;
 - 4.1.3. Construction Schedule;
 - 4.1.4. M/WBE/SDVOB Utilization Plan, if applicable to Job Order;
 - 4.1.5. List of Subcontractors; and
 - 4.1.6. Other requested documents.
- 4.2. The Contractor will prepare Job Order Price Proposals in accordance with the following:
 - 4.2.1. **Prepriced Task:** The Contractor shall select the appropriate Prepriced Tasks, enter the accurate quantities, and select the appropriate Adjustment Factor to be used for each such Prepriced Task. The Contractor shall use the Adjustment Factors in effect on the date the Price Proposal is due, even though the Job Order may be issued after the Adjustment Factors have been updated.
 - 4.2.2. **Non-Prepriced Task:**
The final price submitted for Non-Prepriced Tasks shall be according to the following formula:
 - A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity
 - B = Lowest of three independent quotes for all materials
 - C = The hourly, weekly, or monthly rate for each piece of equipment not

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in the Construction Task Catalog® multiplied by the quantity

D = Lowest of three subcontractor quotes

E = Allowable Overhead and Profit = (A + B + C) x 15%

F = Subcontractor Allowance = D x 10%

Total Cost of Non-Prepriced Task = A + B + C + D + E + F

- 4.2.3. After the cost for a Non-Prepriced Task has been approved, the Owner may determine that such cost shall be fixed for all future Price Proposals and will not require subcontractor quotes for price determination. The Owner reserves the right to request the Contractor provide current quotes for any Non-Prepriced Task approved previously.
- 4.2.4. The value of the Price Proposal shall be calculated by summing the total of the calculations for each Prepriced Tasks (Unit Price x quantity x Adjustment Factor) plus the value of all Non-Prepriced Tasks.
- 4.3. Whenever, because of trade jurisdiction rules or small quantities, the cost of a Prepriced Task is less than the actual cost of the labor and material to perform such Prepriced Task, the Owner may permit the Contractor to be paid for such Prepriced Task as a Non-Prepriced Task or use Prepriced Tasks for labor and the material component pricing of the Prepriced Task to cover the actual costs incurred. Provided, however, that there is no other work for that trade on the Project or the other work for that trade cannot be scheduled at the same time and the actual cost does not exceed \$1,000.
- 4.4. To compensate the Contractor for the JOC System License on reimbursable work, the adjustment applied to reimbursable tasks shall be equal to 1.0101.
- 4.5. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing. Incidental engineering and architectural services do not include stamped drawings, or assignments which consist of more than 4 hours of a professional's time.
- 4.6.
- 4.7. The Contractor's Job Order Proposal shall be submitted by the date set forth in the Request for Job Order Proposal.
- 4.8. The amount of time allowed for the Contractor to prepare the Job Order Proposal will depend on the complexity of the Detailed Scope of Work and on the date by which the Owner requires the Detailed Scope of Work to be completed. Generally, the Contractor will be allowed between seven and fourteen days to prepare the Job Order Proposal. For complex Projects or Projects requiring engineering and architectural services to be completed before a Job Order Proposal can be prepared, the amount of time allowed will be increased.
- 4.9. If the Contractor requires clarifications or additional information regarding the Detailed Scope of work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.
- 4.10. In emergency situations and minor maintenance and repair Job Orders requiring an

immediate response, the Job Order Proposal may be required in less than seven days, or, as described below, the Contractor may be directed to begin work immediately with the Job Order Proposal to follow. A purchase order is required prior to performance of any service.

- 4.11. In the event an immediate response is necessary, the Contractor shall be required to follow alternative procedures as established by the Owner. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Detailed Scope of Work, Request for Job Order Proposal, or Job Order. The Contractor shall be compensated for such work as if the work had been ordered under the standard procedures to develop a Job Order.
- 4.12. For purposes of Using the Construction Task Catalog[®], the project site is defined as the exterior perimeter of a building. For work not performed in a building, the project site is defined as the limits of the work area.
- 4.13. The Contractor will not be permitted to add labor hours to the Job Order Price Proposal for time associated with ingress procedures and inspections of labor, materials, and/or equipment.

5. REVIEWING THE JOB ORDER PROPOSAL

- 5.1. The Owner will review the Job Order Proposal.
- 5.2. All incomplete Job Order Proposals shall be rejected.
- 5.3. The Owner will review the Price Proposal to determine the accuracy of the Prepriced Tasks, quantities, Adjustment Factors, and Non-Prepriced Tasks.
- 5.4. The Contractor may choose the means and methods of construction. Provided, however, the Owner may reject any means and methods proposed by the Contractor that:
 - 5.4.1. Will constitute or create a hazard to persons or property;
 - 5.4.2. Will not produce the Detailed Scope of Work in accordance with the terms of the Contract; or
 - 5.4.3. Unnecessarily increases the Job Order Price when alternative means and methods are available.
- 5.5. By submitting a Job Order Proposal to the Owner, the Contractor is offering to complete the Detailed Scope of Work within the proposed construction schedule for the value of the Price Proposal.
- 5.6. It is the Contractor's responsibility to include the necessary Prepriced Tasks and Non-Prepriced Tasks, accurate quantities, and correct Adjustment Factors in the Price Proposal prior to delivering it to the Owner.

6. ISSUANCE OF THE JOB ORDER

- 6.1. If the Job Order Proposal is found to be complete and accurate, the Owner may issue a

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Job Order to the Contractor.

- 6.2. The Job Order signed by the Owner, accompanied by the purchase order, and delivered to the Contractor constitutes the Owner's acceptance of the Contractor's Job Order Proposal.
- 6.3. A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time and the Job Order Price.
- 6.4. The Job Order Price shall be the value of the approved Price Proposal.
- 6.5. All clauses of this Contract shall apply to each Job Order.
- 6.6. The Contractor will be paid the Job Order Price for completing the Detailed Scope of Work within the Job Order Completion Time.
- 6.7. The Owner, without invalidating the Job Order, may order changes in the Detailed Scope of Work by adding to, and/or changing or deleting from, the Detailed Scope of Work, by issuing a Supplemental Job Order. All Supplemental Job Orders shall be developed in accordance with these procedures.
- 6.8. The Owner may decide not to issue a Job Order under development, may decide to cancel a Job Order or any portion of a Job Order, or cancel a Project or any portion of a Project, for any reason. In such case, the Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to attending the Joint Scope Meeting, preparing or reviewing the Detailed Scope of Work, preparing a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, or reviewing the Job Order Proposal with the Owner. The Owner may perform such work by other means.

7. CHANGES IN THE WORK

- 7.1. The Owner, without invalidating the Job Order, may order changes in the Detailed Scope of Work by adding to, and/or changing or deleting from, the Detailed Scope of Work, by issuing a Supplemental Job Order.
- 7.2. All Supplemental Job Orders shall be developed and priced in accordance with the Procedure for Ordering Work contained in these JOC Supplemental Conditions.
- 7.3. Price Proposals for Supplemental Job Orders shall include credits for deleted Prepriced Tasks and Non-Prepriced Tasks. Deleted tasks shall result in a credit equal to 100% of the value at which those tasks were included in the original Price Proposal.

8. JOC SYSTEM LICENSE FEE

The Owner selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, subcontractor lists, and other requirements specified by the Owner. **To obtain**

access to the Gordian JOC Solution™, the Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee on all Projects procured by the Owner. The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors.

9. ENR CCI ADJUSTMENT OF THE ADJUSTMENT FACTORS

9.1. Economic Price Adjustment: The Adjustment Factors may be updated on each anniversary of the effective date of the Contract to account for changes in construction costs, provided, the Contractor requests, in writing, no less than thirty (30) days prior to such anniversary, that the Adjustment Factors be updated. The request shall be delivered to the Owner and to Gordian. In the event the Contractor fails to deliver the request timely, then the Owner shall determine the date on which the Adjustment Factors will be updated, but in no event will such date be later than thirty (30) days after the written request to update the Adjustment Factors is received by the Owner. Thereafter, the Contractor's Adjustment Factors will be adjusted according to the following:

- 9.1.1. A Base Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for the average of the twenty cities published in the Engineering News Record (ENR) for the 12 months immediately prior to the month of the bid due date (e.g. February bid due date, Base Year Index is February of the prior year to January of the bid due date year).
- 9.1.2. A Current Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for the average of the twenty cities published in the Engineering News Record (ENR) for the 12 months beginning with the month of anniversary of the bid due date (e.g. February bid due date, Current Year Index is February of the prior year to January of the current year).
- 9.1.3. The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.
- 9.1.4. The Contractor's original Adjustment Factors shall be multiplied by the Economic Price Adjustment to obtain the Contractor's new Adjustment Factors effective for the next 12 months.
- 9.1.5. Averages shall be obtained by summing the 12-month indices and dividing by 12.
- 9.1.6. All calculations shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:
- 9.1.7. The fourth decimal place shall be rounded up when the fifth decimal place is five (5) or greater.
- 9.1.8. The fourth decimal place shall remain unchanged when the fifth decimal place is less than five (5).

9.2. ENR occasionally revises indices. ENR CCIs used in the calculations described above

shall be those currently published at the time the Economic Price Adjustment calculation is performed. No retroactive adjustments will be made as a result of an ENR revision. Revised CCI indices, if any, shall be used in subsequent calculations.

- 9.3. If the Contractor submits a Price Proposal with outdated Adjustment Factors, then the Contractor waives its right to resubmit the Price Proposal using updated Adjustment Factors.
- 9.4. The Contractor cannot delay submitting a Job Order Proposal to take advantage of a scheduled update of the Adjustment Factors. In that event, the Contractor shall use the Adjustment Factors that would have been in effect without the delay.

10. AS-BUILT DRAWINGS

If the Contractor is provided, or prepares, drawings as part of the Detailed Scope of Work, then as the Detailed Scope of Work progresses the Contractor shall keep a complete and accurate record of changes to, and deviations from, such drawings. The As-Built Drawings will be created in the same medium (paper, electronic) in which they were originally prepared.

11. ORDER OF PRECEDENCE

In the event of conflict between the Contract Documents, these JOC Supplemental Conditions shall take precedence.

12. CONSTRUCTION TASK CATALOG[®]

The Construction Task Catalog[®] is included as a Contract Document by reference and is available as a separate PDF document.

13. TECHNICAL SPECIFICATIONS

The Technical Specifications are included as a Contract Document by reference and are available as a separate PDF document.

SECTION 01 10 01
SUMMARY OF WORK - JOB ORDER CONTRACTING

PART 1 GENERAL

1.1 DESCRIPTIONS

1. Project Information
2. Work Covered by Contract Documents
3. Pay Items.
4. Related, Concurrent and Future Projects.
5. Contractor's Use of Site and Premises.
6. Owner Supplied Products and/or Services.
7. Owner Occupancy.
8. Work Completion.
9. Novel Coronavirus.

1.2 PROJECT INFORMATION

1. Project / Contract Identification:
 - i. PIN: **EXO.21.017**
 - ii. Project Name: **Job Order Contracting Services**
 - iii. CIN: **EXO.21.017.104**
 - iv. Contract Name: **Job Order Contracting Services for Heavy Civil – Ulster County**
2. Address: ORDA Venues in Ulster County
3. Owner: NYS Olympic Regional Development Authority (ORDA)
4. Design Professional: **Not Applicable**

1.3 WORK COVERED BY CONTRACT DOCUMENTS

1. The title and location of the Work is printed on the cover of this Project Manual.
2. Type of Contract: **Indefinite Quantity Contract**
3. General Description of Contract: **Refer to Part One of Document 00 80 00 JOC Supplemental Conditions**

Time is of the essence for this contract due to ORDA's operational obligations, financial responsibilities and the concurrent and related contracts.

1.4 PAY ITEMS :

1. **Adjustment Factor For Projects Equal to or Less than \$10,000, Normal Working Hours:** Monday through Friday 7:00 am to 5:00 pm except ORDA holidays.
2. **Adjustment Factor For Projects Equal to or Less than \$10,000, Other Than Normal Working Hours:** Monday through Friday 5:01 pm to 6:59 am and all-day Saturday, Sunday and ORDA holidays.
3. **Adjustment Factor For Projects Greater than \$10,000, Normal Working Hours:** Monday through Friday 7:00 am to 5:00 pm except ORDA holidays.
4. **Adjustment Factor For Projects Greater than \$10,000, Other Than Normal Working Hours:** Monday through Friday 5:01 pm to 6:59 am and all-day Saturday, Sunday and ORDA holidays.

- 1.5 RELATED, CONCURRENT AND FUTURE PROJECTS
1. The project has several Related Contracts which required a level of coordination typical to Multiple Prime Contracts in accordance with New York State procurement law, Wicks Law. Coordinate the work with all projects, thru the Director's Representative, to avoid conflicts.
 2. The following contracts are related contracts:
 - i. N/A
 3. The following project will be taking place concurrently:
 - i. N/A
 4. The following project(s) may be let in the future during the performance of the contract presented in this Contract Manual:
 - i. N/A

- 1.6 CONTRACTOR'S USE OF SITE AND PREMISES
1. Limit use of the Site and premises to designated staging areas, permitted haul road and location of Product purchased.
 2. Contractor may be extended the privilege to use on-site public restroom facilities in Owner's buildings during normal operational hours on a Job Order by Job Order basis. If the privilege is granted, it is revocable. Misuse will require the contractor to secure their own facilities.

- 1.7 OWNER SUPPLIED PRODUCTS AND/OR SERVICES
1. Electrical power at all existing buildings on a Job Order by Job Order basis.
 2. Water is available during the operational seasons at the Venues.

- 1.8 OWNER OCCUPANCY
1. Cooperate with Owner to minimize conflict, and to facilitate Owner's operations.
 2. Schedule the Work to accommodate Owner's work.

- 1.9 WORK COMPLETION
1. Determined by Job Order.

- 1.10 NOVEL CORONAVIRUS
1. The Work must be conducted in accordance with any and all health and safety requirements relating to the COVID-19 pandemic issued by federal, state, county and local entities, including but not limited to ORDA, New York State Governor Office Executive Orders, New York State Department of Health rules, regulations and guidance, and all other laws, rules, regulations or requirements that exist or may be issued and/or amended during the bidding and/or performance of Work on the Project.
 2. Inspections for compliance with these Guidelines will be conducted by ORDA's office of Environmental, Planning and Construction, under the same framework as other safety and regulatory compliance. The failure to follow protocols may result in "Stop Work Activity Notification" as per "Section 01 11 00 Safety, Part 1.05 Stop Work Activity Authorization" and shall not excuse the Contractor from meeting their contractual obligation to complete the Detailed Scope of Work within the Job Order Completion Time.

PART 2 PRODUCTS
2.1 Owner Supplied

Not Used

PART 3 EXECUTION

Not Used

END OF SECTION

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SECTION 01 11 00

SAFETY

PART 1 GENERAL

1.01 SUMMARY

- A. This section requires compliance with applicable laws, safety codes, standards and regulations, including but not limited to OSHA, Building Code of New York State, Fire Code of New York State, New York State Department of Health Regulations and Facility Regulations.

1.02 RELATED WORK SPECIFIED ELSEWHERE

- A. Summary of the Work: Section 011000.
- B. Regulatory Requirements: Section 014100.

1.03 DEFINITIONS, ABBREVIATIONS

- A. OSHA: Occupational Safety and Health Administration.
- B. BCNYS: Building Code of New York State.
- C. EBCNYS: Existing Building Code of New York State.
- D. FCNYS: Fire Code of New York State.
- E. NFPA: National Fire Protection Association.
- F. NEC: NFPA 70E.
- G. NYSDOH: New York State Department of Health

1.04 SUBMITTALS

- A. Provide a SAFETY PLAN no later than 15 days after approval of the Contract. The plan must include at a minimum:
 - 1. Cover page including Project Name/Location/Project Number/Contractor Name/Potential Start/Finish Dates.
 - 2. Complete Scope of work.
 - 3. Roles and Responsibilities page identifying Supervision, list of the names of all competent and/or qualified persons, including their qualifications, for each activity requiring a competent person i.e. excavations, scaffolding, rigging, fall protection, etc.
 - 4. A program for implementing appropriate PPE as specified in the High 5. Hazard Assessment detailed in Subparagraph 1.04 A.11 below.
 - 5. A program for assuring employees have proper work attire, i.e. substantial sole safety-toed footwear, long pants, shirts with minimum 4-inch sleeves, etc.

6. A 100% 6-foot conventional fall protection program which provides full body harnesses, lanyards (connectors), and anchorage points, or guardrails for all trades when working 6 feet above a lower level.
 - a. Exception:
 - 1) When the employer can demonstrate that it is infeasible or creates a greater hazard to utilize these systems, the employer shall develop and implement a Fall Protection Plan, which meets the requirements of paragraph (k) 1926.502. This plan must be approved before implementation by the applicable OEPC Regional Safety Manager.
 - 2) When working from portable ladders.
7. A program for raising employee awareness through the use of weekly Safety Talks (i.e. "Toolbox Talks" or "Tailgate Meetings") on topics related to upcoming/relevant work on the project. Contractor shall be required to verify that all employees on site participated in meeting, with documentation submitted to the Director's Representative.
8. Confined Space entry program and procedures for entry, when applicable.
9. A written Respirable Silica Protection Plan, including tasks for which employees could reasonably be expected to be exposed to harmful silica dust, and control methods that will be used to limit or eliminate exposure, as well as any PPE necessary to ensure protection.
10. Identify specific hazards related to this Project, and how employees will be protected from those hazards.
11. High Hazard Assessment's detailing procedures for all high hazard work activities including, but not limited to:
 - a. All lifts involving cranes or material handling equipment.
 - b. Scaffolding where scaffold working deck is expected to be 10' or higher from a lower level.
 - c. Demolition.
 - d. Excavations where anticipated depth is 5 feet or more.
 - e. Hot work activities, which shall follow all applicable requirements stated in NFPA 51B.
 - f. Steel erection with specific fall protection requirements detailed.
 - g. Work at elevations, including roofing work.
 - h. Electrical work involving Lock Out - Tag Out (LOTO) procedures.
 - 1) High Hazard Assessments shall include a step-by-step breakdown of a given task, the hazards associated with each step, the controls that will be utilized to eliminate or minimize the hazards, and the PPE that will be used to protect from remaining hazards.
 - 2) All required certifications shall be provided for all applicable types of work with required training/certifications (i.e. Powder Actuated Tools, Aerial Lifts, Forklifts, Crane Operators License, etc.).
12. A project safety inspection program, with a minimum of one documented safety inspection per week, during the course of construction. Submit copies of all resultant inspection reports to the Director's Representative on a weekly basis.
13. A program for providing proper care for injured employees, including the name of the employee with First Aid/CPR certification who will be on site at all times during the course of construction, to include local hospital/medical facility locations and contact information.

14. Provide an Emergency Action and Evacuation Plan, including Fire Protection and Emergency Response, when applicable.
 - a. Plan to include:
 - 1) Procedures for reporting a fire or other emergency.
 - 2) Procedures for emergency evacuation, including type of evacuation and exit route assignments.
 - 3) Emergency Contact information.
 - 4) Procedures on how to alert workers of an emergency.
 - 5) Procedures to account for all employees after evacuation and muster/evacuation points.
 - 6) A list of all major fire hazards, to include type of fire protection equipment necessary to control hazard.
 15. Health Related Safety Plan Section: Contractor shall post the Health Related Safety Section for full display and access as required by the General Conditions and as required to fulfil the obligations of this Section.
 16. Novel Coronavirus
 - 1) The Work must be conducted in accordance with any and all health and safety requirements relating to the COVID-19 pandemic issued by federal, state, county and local entities, including but not limited to ORDA, New York State Governor Office Executive Orders, New York State Department of Health rules, regulations and guidance, and all other laws, rules, regulations or requirements that exist or may be issued and/or amended during the bidding and/or performance of Work on the Project.
 - 2) Inspections for compliance with these Guidelines will be conducted by ORDA's office of Environmental, Planning and Construction, under the same framework as other safety and regulatory compliance. The failure to follow protocols may result in "Stop Work Activity Notification" as per "Section 01 11 00 Safety, Part 1.05 Stop Work Activity Authorization" and shall not excuse the Contractor from meeting their contractual obligation of completion schedule.
- B. As required for a Job Order, provide a SITE SPECIFIC SAFETY PLAN with the Job Order Proposal or other date requested by ORDA. The plan must include at a minimum the items listed in subparagraph A above.
- C. Provide safety orientation training for each employee prior to their starting work on site. This orientation shall include, but not be limited to: Fitness for Duty (drug and alcohol policies), training on general safety hazards, site-specific safety policies and procedures, personal protective equipment, injury reporting and protocols, emergency evacuation and preferred medical providers, and HAZCOM (GHS Harmonization). Provide documentation of all safety orientation training for each new employee on the site, including all subcontractors, to the Director's Representative.
- D. Accident Reporting: The Director's Representative shall be immediately notified of any and all accidents. A copy of a written accident report shall be furnished to the Director's Representative within 24 hours of an incident.
1. After any incident on site resulting in an employee being injured or damage to property, a Post- Accident Review Investigation shall be held as soon as possible after any incident. As a minimum, this investigation will involve the injured person, his/her supervisor, the responsible project superintendent and/ or

supervisor and the onsite safety supervisor. The contractor shall be responsible to provide a written Post-Accident Corrective Action Plan, which will detail immediate steps taken to correct any unsafe condition that led to injury/property damage, long-term actions to prevent repeat incidents from happening on the site, and roles and responsibilities of individuals who will be implementing the corrective measures, which will be reviewed for effectiveness and continually monitored for implementation.

1.05 STOP WORK ACTIVITY AUTHORITY

- A. All ORDA Office of Environmental, Planning and Construction (OEPC) Representatives have the authority to stop a work activity that exposes any Contractor employees to potentially serious injury and/or illness. The responsible Contractor shall immediately cease work, perform an assessment of the activity that is exposing employees to any Immediately Dangerous to Life or Health (IDLH) conditions, and take action necessary to satisfactorily address the unsafe condition(s), at no cost to the State. The activity may only resume when a OEPC Representative and respective Contractor's Safety Representative verify corrective measures have been satisfactorily completed. Any related impact to time of completion shall be considered within the Contractor's control.
- B. **No site work, other than mobilization, shall commence until the Site-Specific Safety Plan is approved.**

1.06 ADDITIONAL SAFETY POLICIES THAT WILL BE ADHERED TO THROUGHOUT THE CONSTRUCTION PHASE

- A. All contractors are required to utilize head (hardhat) and eye protection (safety glasses) at all times well within the project limits.
- B. Any employee exposed to equipment/vehicles shall be required to utilize an ANSI Level 2 Safety Work Vest.
- C. Contractors are strictly prohibited from utilizing any state-owned equipment or materials during construction.
- D. All tools/equipment on multi-trade projects shall bear identifiable markings as to which contractor the tool/equipment belongs to. If any tool/equipment on the project does not have contractor's markings, the tool shall be immediately removed from the site until owner claims the tool/equipment.
- E. Seatbelts shall be utilized when operating all heavy equipment designed to be operated in a seated position. When traveling in a vehicle, all employees shall be seated in a secured seat with a seatbelt in place.
- F. Inspections of scaffolding prior to use, and excavations prior to entry shall be documented by an on-site competent person. Documented inspection will be available on-site for inspection by the Director's Representative.
- G. All electrical cords/water hoses, if feasible, shall be run overhead to avoid additional slip/trip hazards. If not feasible due to physical restrictions, cords/hoses shall be placed to avoid all walkways and work areas.

- H. All heavy equipment being utilized on site shall have a fire extinguisher of suitable size/rating within reach of operator.
- I. Any fuel-powered equipment shall have a fire extinguisher of suitable size/rating no closer than 10 feet and no further than 25 feet from the equipment.
- J. All electrical work shall be done when panels/lines/boxes have been de-energized and locked out, unless otherwise approved in writing by the Director's Representative.
- K. An applicable sized Spill Kit shall be available on all jobsites where heavy equipment is being utilized.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION (Not Used)

END OF SECTION

SECTION 01 31 19

PROJECT MEETINGS

PART 1 GENERAL

1.01 INITIAL JOB MEETING

- A. The Director's Representative will notify all parties concerned of the time and place of the initial job meeting. The meeting will be conducted by the Director's Representative. The agenda will be based on the Format for Initial Job Meeting. All items on the format, as they apply, will be discussed.
1. A copy of the Facility's current Visitor Identification Policy will be distributed.

1.02 PROJECT SCHEDULE MEETINGS

- A. The Initial Schedule Meeting will be held within 15 days of Project award. The Director's Representative will notify all members of the Project Team of the time and place of the meeting. The meeting will be conducted by the Director's Representative and ORDA Scheduling via WebEx™ or an equivalent online method for the following purposes:
1. Define the intent of the specification.
 2. Review the reporting structure of the Project.
 3. Provide training to the Project Team.
- B. The Director's Representative will notify all members of the Project Team of any Schedule development/coordination meetings conducted by the Director's Representative and ORDA Scheduling via WebEx™ or an equivalent online method.
- C. The Project will have monthly project update reporting periods. The update meetings will be conducted by the Director's Representative and ORDA Scheduling via WebEx™ or an equivalent online method for the following purposes:
1. Agree to the completed Activity dates.
 2. Coordinate and approve the next 6-week Project Work Plan.
 3. Evaluate and acknowledge any impact to the Contractor's ability to execute the Project Schedule according to the approved Baseline Project Schedule.

1.03 BI WEEKLY JOB MEETINGS

- A. Unless otherwise directed, job meetings will be held bi weekly, at a time and place agreed upon by the Director's Representative, the Contractor, and the Facility Representative. Other interested parties may attend when needed, e.g., subcontractors and representatives from suppliers, public utilities, and local government. The meetings will be conducted by the Director's Representative for the following purposes:
1. Review job progress, quality of Work, and approval and delivery of materials.
 2. Identify and resolve problems which impede planned progress.
 3. Coordinate the efforts of all concerned so that the project progresses on schedule to on-time completion.
 4. Maintain sound working relationships between the Contractors and the Director's Representative, and a mutual understanding of the project requirements.
 5. Maintain sound working procedures.

6. If applicable to a Job Order, review LEED documentation and compliance with anticipated goals.

1.04 PRINCIPALS' MEETINGS

- A. Unless otherwise directed, all projects with a total project cost exceeding one million dollars will require Principals' Meetings to be held monthly, via Microsoft Teams with one (1) meeting every fourth month to be on-site. The Contractor shall be required to have in attendance at least one individual of the rank of Vice-President or greater whom is directly responsible for executive level binding decision making for the Project on behalf of the Contractor and one individual whom has direct knowledge of the day to day management of the project whom position is not lower than Project Manager. Other interested parties may be invited with the approval of the Director, e.g., Superintendent and on major subcontractors* (**Major Subcontractors are typically only allowed on Design-Build and PLA Contracts*). The meetings will be conducted by the Director in association with the Director's Representative for the following purposes:
 1. Review job progress and quality of Work.
 2. Identify and resolve problems which impede planned progress.
 3. Coordinate the efforts of all concerned so that the project progresses on schedule to on-time completion.
 4. Maintain sound working relationships between the Contractors and the Director's Representative, and a mutual understanding of the project requirements.
 5. Maintain sound working procedures.
 6. Check in on MWBE and SDVOB Goals.

1.05 PRE-INSTALLATION MEETINGS

- A. Pre-installation meetings will be held to review the specifications, Project Schedule, drawings, and approved submittals in preparation for start of a particular activity.
- B. The meetings shall be attended by the Director's Representative, a Design Representative, and the Contractor's Representative, including installer and representatives of manufacturers & fabricators involved in or affected by the installation and its coordination with other materials/trades.
- C. The Director's Representative shall schedule the meetings prior to the start of the work. The goal of these meetings is to ensure the quality of construction and to maintain the schedule.

1.06 ATTENDANCE

- A. A Contractor's Representative shall be required to attend all meetings scheduled by the Director's Representative, as set forth above.
- B. If the Contractor's Representative fails to attend two scheduled meetings without prior approval, the Contractor will be directed to replace the current Contractor's Representative. Further incidents of non-attendance by the Contractor's Representative will form the basis for review of the Contractor's responsible vendor status.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION (Not Used)

END OF SECTION

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SECTION 01 33 00

SUBMITTAL PROCEDURES

PART 1 GENERAL

1.01 RELATED REQUIREMENTS SPECIFIED ELSEWHERE

- A. Other requirements pertaining to submittals are included in the General Conditions and in the various sections of the Specifications.
- B. Summary of the Work: Section 01 10 00.
- C. Contract Closeout Submittals: Section 01 77 16.

1.02 SECTION INCLUDES

- A. Submittal procedures.
- B. Proposed products list.
- C. Product data.
- D. Certificates.
- E. Manufacturer's instructions.

1.03 DEFINITIONS

- A. Deviation: Changes in products, materials, equipment and methods of construction from those required by the Contract Documents and proposed by the Contractor.
- B. Acceptable Manufacturer, Company or Product: A manufacturer, company or product capable of achieving the requirements established in the Contract Documents and demonstrating compliance.
- C. Portable Document Format (PDF): An open standard file format used for representing documents in a device-independent and display resolution-independent fixed layout document format.

1.04 DEVIATIONS FROM REQUIREMENTS OF THE CONTRACT DOCUMENTS

- A. Deviations from the requirements of the Contract Documents will not be allowed unless a request for deviation is made in writing prior to or at the time of submission and the specific deviation is approved by the Director's Representative subject to the requirements of Article 4 of the General Conditions. The request for deviation shall be made utilizing the CONTRACT DOCUMENT DEVIATION REQUEST FORM.
 - 1. The submission of a deviation shall be done in a timely manner according to the schedule of submittals to allow the Director sufficient time for review.

1.05 “OR EQUAL” TO BRAND NAME PRODUCTS

- A. Whenever a product is specified by brand name, a comparable brand, equal to that named, may be submitted for approval subject to the requirements of Article 5 of the General Conditions.
 - 1. The Contractor shall bear the burden of proving that the proposed product is equal to the specified product. The submission of an “or equal” shall be done in a timely manner to allow the Director sufficient time to review the proposed product.
 - 2. Whenever a color or pattern is indicated by a specific manufacturer’s name or number, the intent is to communicate the required color or pattern of the material. Other manufacturers’ comparable colors or patterns may be submitted for approval as equal.

1.06 WAIVER OF CERTAIN SUBMITTAL REQUIREMENTS

- A. Unless otherwise specified, the requirement to submit product data and samples for approval will be waived for products specified by brand name if the specifically named products are furnished for the Work. In such cases, submit required Product Data to the Director’s Representative for information only.

1.07 SUBMITTAL PROCEDURES

- A. Transmit each submittal with accepted form.
- B. Sequentially number the transmittal form.
- C. Identify Project, Contractor, subcontractor, and supplier; pertinent drawing and detail number, and specification section number, as appropriate.
- D. Apply Contractor's stamp, signed or initialed certifying that review, approval, verification of products required, field dimensions, adjacent construction Work, and coordination of information is in accordance with the requirements of the Work and Contract Documents.
- E. Schedule submittals to expedite the Project, and deliver via E-Mail to project architect and CC project manager.
- F. For each submittal for review, allow (14) fourteen days.
- G. Identify variations from Contract Documents and product or system limitations, which may be detrimental to successful performance of the completed Work.
- H. Provide space for review stamps.
- I. When revised for resubmission, identify all changes made since previous submission. Distribute copies of reviewed submittals as appropriate. Instruct parties to promptly report any inability to comply with requirements.
- J. Submittals not requested will not be recognized or processed.

1.08 PROPOSED PRODUCTS LIST

- A. Within two (2) days after issuance of the Job Order, submit list of major products proposed for use, with name of manufacturer, trade name, and model number of each product.
- B. For products specified only by reference standards, give manufacturer, trade name, model or catalog designation, and reference standards.

1.09 PRODUCT DATA

- A. Product Data: Submit to Owner for review for the limited purpose of checking for conformance with information given and the design concept expressed in the contract documents.
- B. Mark each copy to identify applicable products, models, options, and other data. Supplement manufacturers' standard data to provide information specific to this Project.

1.10 CERTIFICATES

- A. When specified in individual specification sections, submit certification by the manufacturer, installation/application subcontractor, or the Contractor to Owner, in quantities specified for Product Data.
- B. Indicate material or product conforms to or exceeds specified requirements. Submit supporting reference data, affidavits, and certifications as appropriate.
- C. Certificates may be recent or previous test results on material or product, but must be acceptable to Engineer.

1.11 MANUFACTURER'S INSTRUCTIONS

- A. When specified in individual specification sections, submit printed instructions for delivery, storage, assembly, installation, adjusting, and finishing to Engineer for delivery to Owner in quantities specified for Product Data.
- B. Indicate special procedures, perimeter conditions requiring special attention, and special environmental criteria required for application or installation.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION (Not Used)

END OF SECTION

SECTION 01 41 00

REGULATORY REQUIREMENTS

PART 1 GENERAL

1.01 COMPLIANCE

- A. Comply with applicable regulatory requirements and various codes referenced in these specifications. Where conflicts exist between local, State, and/or Federal regulatory requirements, codes, or these specifications advise the Director's Representative. The Director's Representative will assist in resolving the conflicts to the satisfaction of the regulatory agencies prior to commencing the Work.

1.02 UNIFORM CODE, ENERGY CODE, AND CONTRACTOR QUALIFICATIONS

- A. All Work shall comply with OSHA (including site-specific safety plans required on all projects), and the New York State Uniform Fire Prevention and Building Code (the "Uniform Code"), which includes the publications incorporated by reference in Title 19 NYCRR Part 1219 through 1228:
1. 2020 Building Code of the State of New York (BC)
 2. 2020 Residential Code of the State of New York (RC)
 3. 2020 Existing Building Code of the State of New York (EBC)
 4. 2020 Fire Code of the State of New York (FC)
 5. 2020 Plumbing Code of the State of New York (PC)
 6. 2020 Mechanical Code of the State of New York (MC)
 7. 2020 Fuel Gas Code of the State of New York (FGC)
 8. 2020 Property Maintenance Code of the State of New York (PMC)
- B. The contractor shall be aware of, and comply with, contractor requirements identified in the above-referenced codes and standards; for example, but not limited to:
1. OSHA (Occupational Safety and Health Administration).
 2. 2020 BC- Chapter 33 Safeguards During Construction.
 3. 2020 EBC- Chapter 15 Construction Safeguards.
 4. 2020 FC- Chapter 33 Fire Safety During Construction and Demolition, Chapter 35 Welding and Other Hot Work (which governs safety during construction).
- C. All Work shall comply with the New York State Energy Conservation Construction Code ("Energy Code") promulgated pursuant to Article 11 of the New York State Energy Law. The Energy Code is contained in 19 NYCRR, Part 1240, and in the publications incorporated by reference in 19 NYCRR Part 1240. The publications incorporated by reference in 19 NYCRR Part 1240 include:
1. The publication entitled "ANSI / ASHRAE / IES Standard 90.1-2016, Energy Standard for Buildings Except Low-Rise Residential Buildings", published by American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc.
 2. The other referenced standards mentioned and/or referred to in 19 NYCRR Part 1240.

- D. Electrical Work: Conform to the requirements of the National Electrical Code (NEC), as referenced in the Uniform Code, unless otherwise shown or specified. The Director will be the sole judge of the interpretation of these rules and requirements.

1.03 WORK PERMITS AND INSPECTIONS

- A. Earthwork / Site Work: The Contractor or subcontractor performing site work which disturbs the site shall submit an executed and completed Storm Water Pollution Prevention Plans (SWPPP) Contractor Certification Statement to the Director's Representative prior to the commencement of work. This required document is found in the Environmental Appendix. The failure to execute this required document may result in the Contract being considered for Termination for Cause under the provisions of Article 13 of the General Conditions. Where a SWPPP is not required for earthwork, the Contractor shall implement and maintain the appropriate best management practices for erosion and sediment control using the NYS Standards and Specifications for Erosion and Sediment Control.
- B. Wetlands & Waters of the United States: All project areas must have a complete wetland delineation field survey to identify wetlands and waters within a project area. Any work below the ordinary high-water mark (OHWM) in Waters of the U.S. requires review and potential permit from the U.S. Army Corps of Engineers (USACE). Any project with proposed work in or adjacent to wetlands that has the potential to negatively affect wetlands areas must be reviewed and authorized by the USACE. If a federal permit is issued/required for work in wetlands and/or Waters of the U.S., a permit from the NYS Department of Environmental Conservation is additionally required. ORDA shall obtain permits. No Work shall commence in these areas without authorization from the USACE and NYSDEC. All Work shall comply with requirements of the permit(s) and any applicable permit conditions.
- C. Work Requiring Building Permits: No Work shall commence without a Construction Permit issued by ORDA. Contractors shall not file for and not pay for Construction Permits for Work located on New York State property.
- D. A New York Board of Fire Underwriters inspection or certificate is not required.
- E. Obtain a New York Board of Fire Underwriters inspection and certificate.

1.04 LISTINGS

- A. Equipment and materials for which Underwriters' Laboratories, Inc. (UL) provides product listing service, shall be listed and bear the listing mark.
 - 1. Alternately, any product listed and bearing the mark from one of the other Nationally Recognized Testing Laboratories (NRTL – as recognized by OSHA) shall be an acceptable alternative to being UL listed and marked, if the listed product has been tested to the applicable standard.

1.05 FIRE-RESISTANT CONSTRUCTION MATERIALS AND ASSEMBLIES

- A. Conform to the fire rating classifications based upon the test methods and acceptance criteria in the "Standard for Fire Tests of Building Construction and Materials" for which Underwriters' Laboratories, Inc. (UL) provides listings.
 - 1. Materials and assemblies shall comply with the acceptance criteria, detailed description of the assembly, its performance in the fire test, and other pertinent

details such as specification of materials, Classification coverage, and alternate assembly details.

2. Alternatively, fire resistance rating classifications by other issuing organizations listed in the New York State Uniform Fire Prevention and Building Code are acceptable.

1.06 UTILITIES

A. Underground Utilities:

1. Locate existing underground utilities prior to commencing excavation work. Conform to all requirements of NYCRR 16 Part 753, including the following:
 - a. Notify Dig Safely New York at least 48 hours in advance, not counting the date of contact.
 - 1) Statewide: 800-962-7962.
 - 2) Website: www.digsafelynewyork.com
 - b. Refer to Project Manual Section 023313 “Underground Utility Locator Service” to locate all utilities on facility and/or private property.
 - c. Determine exact utility locations by hand-excavated test pits. Contractor will be responsible for the proper support and protection of all utilities to remain in service.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION (Not Used)

END OF SECTION

SECTION 01 45 33
CODE-RELATED SPECIAL INSPECTIONS

PART 1 GENERAL

1.1 SUMMARY

- A. This section addresses the CONTRACTOR responsibilities as it relates to Special Inspections for this Project.

1.2 DEFINITIONS

- A. Special Inspections: Inspections and testing of materials, installation, fabrication, erection or placement of components and connections mandated by the Code that also require special expertise to ensure compliance with the Contract Documents. Special inspections are separate from and independent of tests and inspections conducted by the CONTRACTOR for the purposes of quality assurance and contract administration.
- B. Code or Building Code: 2020 New York State Uniform Building Code and Fire Prevention Code and supplement and specifically, Chapter 17 – Special Inspections and Tests.
- C. Authority Having Jurisdiction: Agency empowered to enforce the building, fire and life safety code requirements of the permitting jurisdiction in which the Project is located.

1.3 OWNERS RESPONSIBILITIES

- A. The OWNER shall employ services of a Special Inspection Agent to perform inspections and associated testing and sampling indicated on the Schedule of Special Inspection Services.
- B. The OWNER and ENGINEER will provide a copy of the Schedule of Special Inspection Services prior to work commencing, if not included herein for CONTRACTOR use.
- C. Cooperate with agency and laboratory personnel; provide access to the work, to manufacturers' facilities, and to fabricators' facilities as required.
- D. Provide incidental labor and facilities:
- i. Safe access to work to be tested or inspected.
 - ii. Obtain and handle samples
 - iii. Facilitate tests or inspections
 - iv. Provide storage and curing of test samples
 - v. Provide certification and all other special inspections required with submittals.
- E. Notify OWNER, or designated representative, 48 hours in advance of expected time for operations requiring testing or inspection services.

1.4 CONTRACTOR RESPONSIBILITIES

- A. CONTRACTOR shall be responsible for timely notification of all work to be inspected.
- B. CONTRACTOR shall request list of Special Inspections if they did not receive it before the first progress meeting. Not having a copy of the required special inspections does not relieve the CONTRACTOR of their obligation to obtain a copy.

- C. The work of the Special Inspection Agent in no way relieves CONTRACTOR of obligation to perform their Work in accordance with requirements of Contract Documents.
- D. CONTRACTOR shall pay for the re-inspection of defective work performed by them.

PART 2 PRODUCTS
Not Used

PART 3 EXECUTION

- 3.1 Special inspections shall be indicated as continuous or periodic.
 - A. Continuous special inspection: Special Inspection Agent shall be present in the area where the work is being performed and observe the work at all times the work is in progress.
 - B. Periodic Special Inspection: Special Inspection Agent shall be present in the area where work is being performed and observe the work part-time or intermittently and at the completion of the work. The OWNER shall make the determination as to the frequency and duration of the Periodic Special inspection.
- 3.2 RETESTING
 - A. Retesting required because of non-conformance to specified requirements shall be performed by the same Agency and paid for by the CONTRACTOR. Copies of all said reports must be submitted to the OWNER and reviewed by the ENGINEER for acceptance.
 - B. Retesting required because the Agency was called to the site for inspection, but the CONTRACTOR was not ready will be paid for by the CONTRACTOR.

END OF SECTION

SECTION 01 60 00
PRODUCT REQUIREMENTS

PART 1 GENERAL

1.1 SECTION INCLUDES

- A. Products.
- B. Product delivery requirements.
- C. Product storage and handling requirements.
- D. Product options.
- E. Product substitution procedures.

1.2 PRODUCTS

- A. Definition: Product is any material purchased, stored and/or delivered to the site to be incorporated into the Work.
- B. Provide products of qualified manufacturers suitable for intended use. Provide products of each type by a single manufacturer unless specified otherwise.
- C. Do not use materials and equipment removed from existing premises, except as specifically permitted by the Contract Documents.
- D. Provide interchangeable components of the same manufacturer for components being replaced.

1.3 PRODUCT DELIVERY REQUIREMENTS

- A. Transport and handle products in accordance with manufacturer's instructions.
- B. Promptly inspect shipments to ensure that products comply with requirements, quantities are correct, and products are undamaged.
- C. Provide equipment and personnel to handle products by methods to prevent soiling, disfigurement, or damage.

1.4 PRODUCT STORAGE AND HANDLING REQUIREMENTS

- A. Store and protect products in accordance with manufacturers' instructions.
- B. Store with seals and labels intact and legible.
- C. Store sensitive products in weather tight, climate controlled, enclosures in an environment favorable to product.
- D. For exterior storage of fabricated products, place on sloped supports above ground and adequately protected from weather.
- E. CONTRACTOR shall insure all off-site stored products in a bonded off-site storage facility when site does not permit on-site storage or protection.
- F. Cover products subject to deterioration with impervious sheet covering. Provide ventilation to prevent condensation and degradation of products.
- G. Store loose granular materials on solid flat surfaces in a well-drained area. Prevent mixing with foreign matter.
- H. Provide equipment and personnel to store products by methods to prevent soiling, disfigurement, or damage.

- I. Arrange storage of products to permit access for OWNER inspection. Periodically inspect to verify products are undamaged and are maintained in acceptable condition.

1.5 PRODUCT OPTIONS

- A. Products Specified by Reference Standards or by Description Only: Any product meeting those standards or description.
- B. Production Specified for One Manufacturer supported by the text “Memorandum of Standardization” are products that are approved for standardization by the Owner’s internal approval process for controlling product uniformity. No substitutions shall be entertained.
- C. Products Specified by Naming One or More Manufacturers with a Provision for Substitutions: Submit a request for substitution for any manufacturer not named in accordance with the following article.

1.6 PRODUCT SUBSTITUTION PROCEDURES

- A. Owner will consider requests for Substitutions only within 5 days after date of Owner-Contractor Agreement. Requests for substitutions shall be made in a timely manner and in conjunction with the project schedule so as not to delay the project. Additionally, the substitution will only be considered when the Engineer is given adequate time to review the submittal and respond without negative impact on the Project Schedule.
- B. Document each request with complete data substantiating compliance of proposed Substitution with Contract Documents.
- C. A request constitutes a representation that the Bidder:
 - 1. Has investigated proposed product and determined that it meets or exceeds the quality level of the specified product.
 - 2. Will provide the same warranty for the Substitution as for the specified product.
 - 3. Will coordinate installation and make changes to other Work which may be required for the Work to be complete with no additional cost to Owner.
 - 4. Waives claims for additional costs or time extension which may subsequently become apparent.
 - 5. Will reimburse Owner for review or redesign services associated with re-approval by authorities.
- D. Substitutions will not be considered when they are indicated or implied on Shop Drawing or Product Data submittals, without separate written request, or when acceptance will require revision to the Contract Documents.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

Not Used.

END OF SECTION

SECTION 01 70 00

EXECUTION REQUIREMENTS

PART 1 GENERAL

1.1 SECTION INCLUDES

1. Closeout procedures.
2. Final cleaning.
3. Protecting installed construction.
4. Project record documents.
5. Operation and maintenance data.
6. Manual for equipment and systems.
7. Product warranties.

1.2 CLOSEOUT PROCEDURES

1. Submit written certification that Contract Documents have been reviewed, Work has been inspected, and that Work is complete in accordance with Contract Documents and ready for Owner's review.
2. Provide submittals to Owner that are required by governing or other authorities.

1.3 FINAL CLEANING

1. Contractor will execute final cleaning prior to final project assessment.
2. Interior to be broom clean.
3. Remove waste and surplus materials, rubbish, and construction facilities from the site.

1.4 PROTECTING INSTALLED CONSTRUCTION

1. Protect installed Work and provide special protection where specified in individual specification sections.
2. Provide temporary and removable protection for installed products. Control activity in immediate work area to prevent damage.

1.5 PROJECT RECORD DOCUMENTS

1. Maintain on site one set of the following record documents; record actual revisions to the Work:
 1. Detailed Scope of Work
 2. Drawings.
 3. Specifications.
 4. Supplemental Job Orders
 5. Reviewed Shop Drawings, Product Data, and Samples.
 6. Manufacturer's instructions for assembly, installation, and adjusting.
2. Ensure entries are complete and accurate, enabling future reference by Owner.
3. Store record documents separate from documents used for construction.
4. Record information concurrent with construction progress, not less than weekly.
5. Specifications: Legibly mark and record at each product section a description of actual products installed, including the following:
 1. Manufacturer's name and product model and number.
 2. Product substitutions or alternates utilized.
 3. Changes made by Addenda and modifications.
6. Record Drawings and Shop Drawings: Legibly mark each item to record actual construction including:
 1. Measured horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements.
 2. Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of the Work.
 3. Field changes of dimension and detail.
 4. Details not on original Contract Drawings.
7. Submit documents to Owner with claim for Final Completion.

1.6 OPERATION AND MAINTENANCE DATA

1. Submit data bound in 8-1/2 x 11 inch (A4) text pages, three D side ring binders with durable plastic covers.
2. Drawings: Provide with reinforced punched binder tab. Bind in with text; fold larger drawings to size of text pages.
3. Contents: Prepare a Table of Contents for each part, with each product or system description identified, typed on white paper, in three parts as follows:
Part 1: Directory, listing firm names, addresses, contact persons, and telephone numbers of Engineer, Contractor, Subcontractors, and major equipment suppliers.

Part 2: Operation and maintenance instructions, arranged by system and subdivided by specification section. For each category, identify firm names, addresses, contact persons, and telephone numbers of Subcontractors and suppliers. Identify the following:

- 1) Significant design criteria.
- 2) List of equipment.
- 3) Parts list for each component.
- 4) Operating instructions.
- 5) Maintenance instructions for equipment and systems.
- 6) Maintenance instructions for special finishes, including recommended cleaning methods and materials, and special precautions identifying detrimental agents.

Part 3: Project documents and certificates, including the following:

- 7) Shop drawings and product data.
- 8) Certificates.
- 9) Originals of warranties.

4. Submit draft copy of completed volumes 15 days prior to final inspection. This copy will be reviewed and returned after final inspection, with Owner comments. Revise content of all document sets as required prior to final submission.
5. Submit two sets of revised final volumes, within 10 days after draft is returned by Owner.

1.7 MANUAL FOR EQUIPMENT AND SYSTEMS

1. Submit two copies of preliminary draft or proposed formats and outlines of contents before start of Work. Owner will review draft and return one copy with comments.
2. For equipment or component parts of equipment put into service during construction and operated by Owner, submit documents within ten days after acceptance.
3. Submit two sets of revised final volumes in final form within 10 days after draft is returned by Owner.
4. Each Item of Equipment and Each System: Include description of unit or system, and component parts. Identify function, normal operating characteristics, and limiting conditions. Include performance curves, with engineering data and tests, and complete nomenclature and model number of replaceable parts.
5. Provide original manufacturer's parts list, illustrations, assembly drawings, and

diagrams required for maintenance.

6. Provide list of original manufacturer's spare parts, current prices, and recommended quantities to be maintained in storage.
7. Additional Requirements: As specified in individual product specification sections.

1.8 PRODUCT WARRANTIES

1. Obtain warranties executed in duplicate by responsible Subcontractors, suppliers, and manufacturers.
2. Execute and assemble transferable warranty documents from Subcontractors, suppliers, and manufacturers.
3. Co-execute submittals when required.
4. Submit prior to final Application for Payment.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

Not Used.

END OF SECTION

SECTION 01 77 16

CONTRACT CLOSEOUT

PART 1 GENERAL

1.01 RELATED REQUIREMENTS SPECIFIED ELSEWHERE

- A. Other provisions pertaining to this Section are included in Article 9 of the General Conditions.

1.02 CONTRACT CLOSEOUT INSPECTIONS

- A. The following 3 inspections will be made in addition to the normal inspections to ensure that all Contract requirements are met and that the Work is complete and acceptable. The purpose of each of these inspections is to furnish the Contractor a written list of Contract exceptions, omissions, and incompletions so that the Work can be progressed to timely completion in accordance with the Contract Documents.
 1. Detailed Inspection: The "Detailed Inspection" will be made when the Work is substantially complete. A copy of the detailed inspection list will be furnished to the Contractor. When this inspection progresses over any length of time, copies of the list will be furnished as the inspection progresses so that the Contractor may proceed with the required Work without delay.
 2. Final Inspection: The Contractor will be advised by letter of the date and time of final inspection. A copy of the final inspection list containing all incomplete or unsatisfactory items and the time allowed to complete the Work will be furnished to the Contractor.
 3. Joint Inspection for Physical Completion: The joint inspection for physical completion may be made to verify completion of the exception items listed on the final inspection list so that the physical completion date (defined in the General Conditions) may be established.

1.03 FINAL CLEANING

- A. Perform final cleaning prior to joint inspection for physical completion. Leave the premises in a neat, unobstructed condition, the work areas broom clean (except where more thorough cleaning is specified), and everything in perfect repair and adjustment.
- B. Clean site; sweep paved areas, rake clean landscaped surfaces.
- C. Remove tools, equipment, waste and surplus materials, rubbish, and construction facilities from the premises as soon as possible upon completion of the Work.

1.04 PROJECT RECORD DOCUMENTS

- A. Maintain on site, 2 sets of the following record documents; record actual revisions to the Work:
 1. Detailed Scope of Work including any Drawings.
 2. Supplemental Job Orders and other modifications to the Job Order.

3. Reviewed shop drawings, product data, and samples.
- B. Store record documents separate from documents used for construction.
 - C. Record information concurrent with construction progress.
 - D. Record Documents and Shop Drawings: Legibly mark each item to record actual construction including:
 1. Measured depths of foundations in relation to finish (first) (main) floor datum.
 2. Measured horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements.
 3. Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of the Work.
 4. Field changes of dimension and detail.
 5. Details not on original Contract Drawings.
 - E. Upon completion of the work, create electronic versions of the project record documents. Documents are to be scanned into PDF Format.
 1. The scanned images are to be put on a compact disc (CD) using ISO 9660 format. Name the electronic files with the same name as the drawing. Create a folder on the CD for each trade and one for Shop Drawings.
 2. Label the CD with the project number, name, and title as it appears on the project manual cover. If there is more than one CD include notation to that effect on the label; i.e., 1 of 3, 2 of 3, 3 of 3. The Project record documents and CD(s) are to be turned over to the Director's Representative.
 - F. Applications for progress payments will not be approved if the record documents are not kept current. Application for final payment will not be approved until the project record documents are delivered to the Director's Representative.

1.05 OPERATION AND MAINTENANCE DATA

- A. Prepare 2 sets comprised of 8-1/2 x 11 inch text pages bound in capacity expansion binders with durable plastic covers identified with printed title "OPERATION AND MAINTENANCE INSTRUCTIONS", title of project, and subject matter of binder when multiple binders are required. Prepare a printed Table of Contents for each volume, with each product or system description identified. Internally subdivide the binder contents with permanent page dividers, logically organized as described below, with tab titles clearly printed under reinforced laminated plastic tabs:

Part 1: Directory, listing names, addresses, and telephone numbers of Architect/Engineer, Contractor, subcontractors, and major equipment suppliers.

Part 2: Operation and maintenance instructions, arranged by system and subdivided by specification section. For each category, identify names, addresses, and telephone numbers of subcontractors and suppliers. Identify the following:

1. Significant design criteria.
2. List of equipment.
3. Parts list for each component.
4. Operating instructions.
5. Maintenance instructions for equipment and systems.

6. Maintenance instructions for finishes, including recommended cleaning methods and materials and special precautions identifying detrimental agents.

Part 3: Project documents and certificates, including the following:

1. Shop drawings and product data.
 2. Air and water balance reports.
 3. Certificates.
 4. Photocopies of warranties.
- B. Submit one copy of completed volumes in final form 15 days prior to final inspection. This copy will be returned after final inspection, with the Director's comments. Revise content of documents as required prior to final submittal.
 - C. Submit 2 volumes prior to final Application for Payment.

1.06 WARRANTIES

- A. Furnish warranty certification and copies of warranties that extend beyond the one year period required by the General Conditions. Warranties submitted without warranty certification will not be accepted.
 1. Warranty Certification: Written certification from the warrantor that invoices for installation, service, supplies, and warranty fees have been paid in full to persons or firms due payment, and that the warranty is in effect and non-retractable due to any of the specified conditions.
- B. Prepare printed Table of Contents and assemble warranty certifications and warranty copies in a binder with a durable plastic cover.
- C. Deliver the binder to the Director's Representative prior to final Application for Payment.
- D. Applications for final payment will not be approved until the warranty certification and warranty documents are delivered to the Director's Representative.

1.07 SPARE PARTS AND MAINTENANCE MATERIALS

- A. Label and deliver spare parts, maintenance items, and extra materials to the Site. Place in locations as directed.
 1. Include "NOT FOR WARRANTY REPAIRS" on the labels.
 2. Obtain receipt prior to final payment.
- B. Do not use the spare parts and maintenance materials required by the Contract Documents to remedy defects during the one-year period described in Paragraph 9.8 of the General Conditions except when approved otherwise by authorized Facility Representative. In such cases, replace items used.
- C. Furnish the names, business addresses, and telephone numbers of fully equipped authorized service organizations to the Director's Representative.
- D. Applications for final payment will not be approved until these items are delivered to the Director's Representative.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION (Not Used)

END OF SECTION

**PLANROOM COPY
NOT FOR BIDDING**