

impose any obligations upon the Municipality to the Contractor. The Municipality may withhold up to 10% of any such payment until thirty (30) days following final completion of all work required under this Contract.

In paying any unpaid bills of the Contractor, the Municipality shall be deemed the agent of the Contractor. Any payment so made by the Owner shall be considered payment made under the contract by the Municipality to the Contractor. The Municipality shall not be liable to the Contractor for any such payment made in good faith.

The acceptance by the Contractor of final payment shall be and shall operate as a release to the Municipality of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Municipality and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or its sureties from any obligation under this contract or any performance and payment bond required hereunder.

ARTICLE 4. CONTRACTOR'S INSURANCE

The Contractor shall not commence work under this contract until it has obtained all insurance required under this paragraph and such insurance has been approved by the Municipality.

(a) Compensation Insurance: This contract shall be void and of no force and effect unless the 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 State Workers' Compensation Law. If employees will be working on, near or over navigable waters, a U.S. Longshore and Harbor Workers' Compensation Act endorsement must be included.

(b) General Liability and Property Damage Insurance: The Contractor shall take out and maintain during the life of this contract such general liability and property damage insurance as shall protect it from claims for damages for personal injury, including accidental death, as well as from claims for property damage which may arise from operations under this contract. The amounts of such insurance shall be as follows:

General liability insurance in an amount not less than \$2,000,000 for injuries including wrongful death to any one person and subject to the same limit for each person, in an amount not less than \$3,000,000 on account of any one occurrence.

Property damage insurance in an amount not less than \$1,000,000 for damage on account of all occurrences.

The Contractor shall furnish the above insurances to the Municipality and shall also name the Municipality as an additional named insured in said policies.

(c) Contingent Liability: The above policies for public liability and property damage must be written to include contingent liability and contingent property damage insurance to protect the Contractor against claims arising from operations of subcontractors.

(d) Insurance Covering Special Hazards: The following special hazards shall be covered by rider(s) to the public liability and/or property damage insurance policy or policies herein elsewhere required to be furnished by this Contractor or by separate policies of insurance in amounts as follows: For automobiles and automobile trucks, limits shall be the same as required under public liability and property damage as hereinbefore specified.

(e) Defense of Action or Suits: Neither the Municipality nor any of its officers or agents shall in any manner be answerable or responsible for any loss or damages that may happen to the work, or to any part or parts thereof, or to any materials, equipment or other property that may be used therein, or placed upon the ground, during the progress of the work. Neither the Municipality nor any of its officers or agents shall be in any manner answerable or responsible for any injury done, or damages or compensation required to be paid under any present or future law, to any person or persons whatever, whether employees of the Contractor or otherwise, or for damages to any property, whether belonging to the employees of the Contractor or otherwise, or for damages to any property, whether belonging to the Municipality or others, occurring during or resulting from the work. The Contractor shall properly guard against all injuries and damages. The Contractor shall indemnify and save harmless the Municipality,

its officers, and agents against all such injuries, damages and compensation arising or resulting from causes other than the Municipality's negligence. The Contractor shall, from the commencement of work until completion and acceptance thereof, maintain public liability insurance and property damage liability insurance in the amounts hereinbefore stated for the protection of the Contractor and the Municipality, and shall furnish duplicate of the policies to the Municipality, stamped by the insurer "Premium Paid." These policies shall be written by an insurance company or companies approved by the Municipality.

(f) The Contractor shall furnish the Municipality with satisfactory proof of carriage of the insurance required. Such proof shall consist of an unconditional certificate conferring the coverages shown thereunder or an indorsement to an existing policy showing the same and stating, in either case, that the coverages thereunder shall not be materially modified, terminated or expire except upon thirty (30) days prior written notice to the insured and additional insureds including the Municipality.

(g) The insurance required hereunder shall also contain contractual liability coverage for the provisions hereof (including the agreement to indemnify, defend and hold harmless the Municipality).

(h) By its submission of (a) certificate(s) or policy(ies) Contractor is warranting and representing that the same complies in all respects with the provisions hereof and the Municipality shall not be responsible for ensuring that same provides the coverages required.

ARTICLE 5. REPRESENTATIONS OF CONTRACTOR

The Contractor represents and warrants:

(a) That it is financially solvent and that it is experienced in and competent to perform the type of work to be furnished by it; and

(b) That it is familiar with all federal, state, municipal and department laws, ordinances and regulations which may in any way affect the work or those employed therein and agrees to abide thereby in all respects.

ARTICLE 6. PERMITS AND REGULATIONS

The Contractor shall procure and pay for all permits and licenses necessary for the services to be rendered hereunder.

ARTICLE 7. MUNICIPALITY'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

The Municipality shall have the right to stop work or terminate the contract if:

(a) The Contractor is adjudged bankrupt or makes an assignment for the benefit of creditors; or

(b) A receiver or liquidator is appointed for the Contractor or for any of [his/her/its] property and is not dismissed within 20 days after such appointment or the proceedings in connection therewith are not stayed on appeal within the said 20 days; or

(c) The Contractor refuses or fails to prosecute the work or any part thereof in a timely manner or with due diligence; or

(d) The Contractor fails to make prompt payment to persons supplying labor for the work; or

(e) The Contractor fails or refuses to comply with all applicable laws or ordinances; or

(f) The Contractor defaults under or breaches any other provision of this contract;

(g) In any event, the Municipality, without prejudice to any other rights or remedy it may have, by giving five (5) days' notice to the Contractor, and for any reason whatsoever, may terminate the employment of the Contractor and its right to proceed either as to the entire work or, at the option of the Municipality as to any portion thereof, and may take possession of the work and complete the work by contract or otherwise as the Municipality deems 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 compensation to be paid the Contractor hereunder exceeds the expense of completing the work (including compensation for additional managerial, administrative and inspection services and any damage for delay), the excess shall be paid to the Contractor. If the expense exceeds the unpaid balance, the Contractor and any sureties shall be liable to the Municipality for the excess. If the right of the Contractor to proceed with the work is so terminated, the Municipality may take possession of and utilize in completing the work the materials, supplies, appliances, plant and equipment as may be on the site of the work and necessary therefore. If the Municipality does not so terminate the right of the Contractor to proceed, the Contractor shall continue the work.

ARTICLE 8. DAMAGES

It is hereby mutually covenanted and agreed that the relation of the Contractor to the work to be performed by it under this contract shall be that of an independent contractor. As an independent contractor, it will be responsible for all damage, loss or injury to persons or property that may arise in or be incurred during the conduct and progress of said work, whether or not the Contractor, its agents, or employees have been negligent. The Contractor shall hold and keep the Municipality free and discharged of and from any and all responsibility and liability of any sort or kind. The Contractor shall assume all responsibility for risks or casualties of every description, for loss or injury to persons or property arising out of the nature of the work, from the action of the elements, or from any unforeseen or unusual difficulty. The Contractor shall make good any damages that may occur in consequence of the work or any part of it. The Contractor shall assume all blame, loss and responsibility of any nature by reason of neglect or violation of any federal, state, county or local laws, regulations or ordinances.

ARTICLE 9. INDEMNITY AND SAVE HARMLESS AGREEMENT

The Contractor agrees to indemnify, defend and hold harmless the Municipality, its officers, agents and employees for and from any claims, suits, damages or liability made against or imposed upon the Municipality, its officers, agents and/or employees arising from any strict vicarious liability laws or regulations or from the acts or omissions of the Contractor, its agent, employees, subcontractors and material suppliers or otherwise from their conduct of the work.

ARTICLE 10. NO ASSIGNMENT:

In accordance with the provisions of section 109 of the General Municipal Law, the Contractor is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this agreement, or of its right, title or interest in this agreement, or its power to execute this agreement, to any other person or corporation without the previous consent in writing of the Municipality. Any attempts to assign the contract without the Municipality's written consent are null and void.

ARTICLE 11. REQUIRED PROVISIONS OF LAW

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party, this contract shall be physically amended forthwith or shall otherwise be deemed to make such insertion. In particular, the Contractor shall, among other things, fully comply with:

(a) Labor Law section 220-e and Executive Law sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and providing equal opportunity.

(b) Affirmative action as required by the Labor Law.

(c) Prevention of dust hazard required by Labor Law section 222-a.

- (d) Preference in employment of persons required by Labor Law section 222.
- (e) Eight-hour workday as required by Labor Law section 220(2).
- (f) Prevailing Wage and related laws required by the Labor Law.

ARTICLE 12. NON-COLLUSIVE BIDDING CERTIFICATION

The Contractor warrants, under penalty of perjury, that its Contract was arrived at independently and without collusion aimed at restricting competition and otherwise without conflict of interest or any prohibited conduct or relationship with a Municipality official. The Contractor further warrants that, an authorized and responsible person has executed and delivered to the Municipality a non-collusive certification on the Contractor's behalf.

ARTICLE 13. SET-OFF RIGHTS.

The Municipality shall have rights of set-off. These rights shall include, but not be limited to, the Municipality's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing by the Contractor to the Municipality with regard to this contract, or any other contract with the Municipality, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Municipality for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for damages by the Municipality and third parties in connection therewith.

ARTICLE 14. RECORDS

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively "Records") for a period of six (6) years (or any other longer period required by law) following final payment or the termination of this contract, whichever is later, and any extensions thereto. The Municipality, State Comptroller, State Attorney General and any other person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within New York State, or, if no such office is available, at a mutually agreeable and reasonable venue within the State, during the contract term, any extensions thereof and said six (6) year period thereafter, for purposes of inspection, auditing and copying. As used in this clause, "termination of this contract" shall mean the later of completion of the work of the contractor the end date of the term stated in the contract. The Municipality will take reasonable steps to protect from public disclosure those Records which are exempt from disclosure under State Public Officers Law §87 ("Statute") provided that: (i) the Contractor shall timely inform an appropriate Municipality official, in writing, that said records should not be disclosed; (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Municipality's right to discovery in any pending or future litigation.

ARTICLE 15. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to the Municipality 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 or Federal social security number, or both such numbers when the payee has both 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 standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

ARTICLE 16. CLEANUP

The Contractor shall, at all times, keep the premises free from accumulations of waste materials caused by its employees or due to its work. At the completion of the project, the Contractor shall remove all of its rubbish from

the building and the site, and all of its tools, scaffolding and surplus materials. It shall leave its work "broom clean," or its equivalent, except where further cleaning is required.

ARTICLE 17. TAXES

Any and all taxes now or hereafter imposed on the work to be performed and/or materials to be furnished or upon the Contract itself or any matter in connection therewith shall be paid by the Contractor, it being the intention of the parties hereto that in no event shall such taxes be borne by the Municipality.

ARTICLE 18. CONFLICTING TERMS

In the event of a conflict between the terms of this Contract and the attached Schedule "A" and the terms hereof shall control.

ARTICLE 19. GOVERNING LAW

This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

ARTICLE 20: ARBITRATION

Should any dispute arise between the Municipality and the Contractor regarding the manner or sufficiency of the performance of the work, in the sole discretion of the Municipality, the disputed matter shall be settled by arbitration in accordance with the laws of the State of New York. There shall be three arbitrators, one of whom shall be selected by each of the parties hereto, and the third by the two arbitrators so selected. If the selection of any arbitrator is not made within fifteen (15) days of the time that either party has notified the other of the name of the arbitrator it has selected, then the arbitrator or arbitrators not selected shall be appointed in the manner provided by the laws of the State of New York. The work shall not be interrupted or delayed pending such decision.

ARTICLE 21: SERVICE OF PROCESS

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

ARTICLE 22. OBSERVANCE OF LAWS

The Contractor agrees to observe all Federal, State and local laws and regulations, and to procure all necessary licenses and permits.

ARTICLE 23. NO WAIVER OF PROVISIONS

The Municipality's failure to exercise or delay in exercising any right or remedy under this contract shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Municipality of any right or remedy under this contract shall be effective unless made in a writing duly executed by an authorized officer of the Municipality, and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future of any other remedy under this contract.

ARTICLE 24. ENTIRE AGREEMENT

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

ARTICLE 26. AUTHORITY FOR EXECUTION ON BEHALF OF THE MUNICIPALITY

The [Mayor/Supervisor] has executed this agreement pursuant to a Resolution adopted by the [Municipality], Board at a meeting thereof held on _____ 200_. [Name], whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of the Municipality. This instrument shall be executed in duplicate. At least one copy shall be permanently filed, after execution thereof, in the office of the _____ Clerk.

ARTICLE 27. NOTICES

Any and all notices and payments required hereunder shall be addressed as follows, or to such other address as may hereafter be designated in writing by either party hereto:

To: _____

To: _____

ARTICLE 28. WAIVER

No waiver of any breach of any condition of the agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

ARTICLE 29. MODIFICATION

This agreement constitutes the complete understanding of the parties. No modification of any provisions thereof shall be valid unless in writing and signed by both parties.

IN WITNESS WHEREOF, the Municipality caused its corporate seal to be affixed hereto and these presents to be signed by _____ its _____, duly authorized to do so, and to be attested to by _____, _____ and the Contractor has caused these presents to be signed by its President, the day and year first above written.

Attest:

[MUNICIPALITY]

_____, Clerk

By: _____
_____, MAYOR

[CONTRACTOR]

By: _____
Print Name: _____
Title: _____

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss:

On the ____ day of _____, in the year 200_, before me, the undersigned, a Notary Public in and for said State, 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 he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF _____) ss:

On the ____ day of _____, in the year 200_, before me, the undersigned, a Notary Public in and for said State, 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 he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

Notary Public