# TOWN OF GREECE

## STANDARD AGREEMENT FOR SERVICES

## 2017 JOB ORDER CONTRACTING SERVICES

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**Name of Bid**

| | | | |
|---|---|---|---|
| **Parties:** | **"TOWN"** | **AND** | **"CONTRACTOR** |
| | Town of Greece, NY | | JOHN W. DANFORTH COMPANY |
| | 1 Vince Tofany Blvd | | |
| | Greece, NY 14612 | | JOC. 2017 · 05 · HVAC |
| | | **Phone:** | |
| | | **Fax:** | |

**Attachment A:** Scope of Work

**Attachment B:** Bid Form

**Attachment C:** Required forms (PROPOSAL OR BID FOR PERFORMANCE OF MUNICIPAL CONTRACT, NON-COLLUSIVE BIDDERS CERTIFICATION, INSURANCE STATEMENT, SIGNATURE PAGE, BONDING COMPANY LETTER).

**Attachment D:** JOC Special Provisions

**Attachment E:** General Conditions

**Attachment F:** Form of Contract

**Attachment G:** The Construction Task Catalog®.

**Attachment H:** Technical Specifications.

## STANDARD CLAUSES FOR TOWN OF GREECE CONTRACTS

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# STANDARD CLAUSES FOR TOWN OF GREECE CONTRACTS

For purposes of the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract"), the contractor agrees 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 Town of Greece (the word "Town "herein refers to the Town of Greece).

1. **SERVICES.** The Contractor shall perform the Services set forth in Attachment "A" ("Scope of Work") in compliance with the specifications and standards set forth in Attachment "A". The Town shall have the right to order, in writing, changes in the scope of the work or under the Services to be performed with any applicable version of the compensation paid hereunder agreed upon by the Town and the Contractor. Any adjustment to fees, rate schedules, or schedule of performance can only be adjusted pursuant to written agreement between the parties

2. **TERM OF AGREEMENT.** This agreement shall be for the term set forth herein, unless sooner terminated pursuant to the terms hereof.

3. **NON-ASSIGNMENT CLAUSE.** 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 previous consent, in writing, of the Town and any attempts to assign the contract without the Town's written consent are null and void.

4. **FEES.** The Town shall pay the Contractor the fees set forth in Attachment "B", in accordance with the terms and conditions of this agreement. The Contractor represents that such fees do not exceed the Contractor's customary current price schedule. The Town shall pay all applicable taxes; excepting, however, the federal excise tax and all state and local sales and property taxes from which the Town is exempt. Payment shall be made by the Town's Accounts Payable Office upon submittal of invoice(s) approved by the Comptroller, or designee, at the Town Office

5. **EXPENSES.** The Contractor shall assume all expenses incurred in connection with performance except as otherwise provided in this agreement. If permits, governmental approvals or licensing is required to perform the services provided, the contract or agrees to apply for and obtain, at their cost and expenses such permits, approvals, or licenses.

6. **WARRANTIES.** The Contractor warrants and represents that it is specially trained, qualified, duly licensed, experienced, and competent to provide the services or to perform the scope of work. The Contractor warrants that Services (and any goods in connection therewith) furnished hereunder will conform to the requirements of this agreement (including all descriptions, specifications and drawings made a part hereof) and in the case of goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the Town, free from defects in design. The Town's approval of designs or specifications furnished by the Contractor shall not relieve the Contractor of its obligations under this warranty. All warranties, including special warranties specified elsewhere herein, shall inure to the Town, its successors, assigns, and users of the goods or services.

7. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required New York State Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with New York State 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: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract Contractor understand and has been advised that contractor is subject to fines for any violation of the Labor Law as well as possible termination of this contract and forfeiture of all moneys due hereunder for violations of the Labor Law. Not intending to limit the foregoing, the Contractor hereby certifies that in performing work or providing services for the Town, there shall be no discrimination in its hiring, employment practices, or operation because of sex, race, religious creed, color, ancestry, national origin, physical disability, mental disability, medical condition, marital status, or sexual orientation, except as provided for by law. Contractor shall comply with applicable federal and New York anti-discrimination laws, including but not limited to, the New York Fair Employment and Housing Act. The Contractor agrees to require compliance with this nondiscrimination policy by all subcontractors employed in connection with this agreement.

8. **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 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. The Contractor agrees to provide payroll wage certifications upon submittal of each invoice for services performed. Failure to provide such certifications will result in delay of payment or non-payment by the Town. Also in accordance with New York State Labor Law section 220, the successful bidder must submit certified payroll transcripts. Said transcripts will be kept on file at the Greece Town Hall for no less than three years following the contract completion. Contractors are required to deliver subscribed and sworn payroll transcripts to the Town within 1 week after issuance of payroll. The transcript shall be accompanied by a statement under penalties of perjury signed by the Contractor indicating that the payrolls are accurate and complete, that the wage rates contained therein are not less than those determined by the New York State Department of Labor, and that the classifications set forth for each employee conform with the work he performed.

**9. NON-COLLUSIVE BIDDING CERTIFICATION.** Contractor affirms, under penalty of perjury, that its bid and or quote was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the Town a non-collusive bidding certification on Contractor's behalf. Contractor further states under penalty of perjury, that to the best of knowledge and belief:

a. 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.

b. Unless otherwise required by law, the prices which have been quoted in this bid or quote have not been knowingly disclosed by the bidder and will not knowingly be disclosed prior to the opening, directly or indirectly, to any other bidder or to any competitor.

c. No attempt has been 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.

**10. TERMINATION OF AGREEMENT.** This agreement may be terminated by the Town by providing 30 days' prior written notice to the Contractor or immediately upon breach of this agreement by the Contractor.

**11. DOCUMENTATION.** As applicable, the Contractor agrees to provide to the Town, at no charge, a sufficient number of nonproprietary manuals and other printed materials, as used in connection with the Services, and updated versions thereof, which are necessary or useful to the Town in its use of the Services provided hereunder.

**12. RIGHTS IN DATA.** All technical communications and records originated or prepared by the Contractor pursuant to this agreement including papers, reports, charts, computer programs, and other documentation, but not including the Contractor's administrative communications and records relating to this agreement shall be delivered to and shall become the exclusive property of the Town and may be copyrighted by the Town. The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this agreement by the Contractor or jointly by the Contractor and the Town can be used by either party in any way it may deem appropriate. All inventions, discoveries or improvements of the computer programs developed pursuant to this agreement shall be the property of the Town. During the term of this agreement, certain information which the Town deems confidential ("Confidential Information") might be disclosed to the Contractor. The Contractor agrees not to divulge, duplicate or use any Confidential Information obtained by the Contractor during the Contractor's engagement. Such Confidential Information may include, but is not limited to, employee information, computer programs, and data in the Town's written records or stored on the Town's computer systems.

**13. SET-OFF RIGHTS.** The Town shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Town '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 to the Town with regard to this contract, any other contract with any other Town department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Town for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The Town shall exercise its set-off rights in accordance with normal Town practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the Director of Finance,

**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 (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and six (6) additional years thereafter. The Director of Finance of the Town 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 the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the Monroe County, for the purposes of inspection, auditing and copying. The Town 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: (i) the Contractor shall timely inform The Town Clerk, in writing, that said records should not be disclosed; and (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 Town's right to discovery in any pending or future litigation.

**15. CONTRACTOR ACCOUNTING RECORDS.** Records of the Contractor's directly employed personnel, other consultants and reimbursable expenses pertaining to the work and records of account between the Town and the Contractor shall be maintained on an accounting basis acceptable to the Town and shall be available for examination by the Town or its authorized representative(s) during regular business hours within one (1) week following a request by the Town to examine such records. Failure by the Contractor to permit such examination within one (1) week of a request shall permit the Town to withhold all further payments until such examination is completed unless an extension of time for examination is authorized by the Town in writing

**16. , INDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. FEDERAL EMPLOYER IDENTIFICATION NUMBER AND/OR FEDERAL SOCIAL SECURITY NUMBER.** The contractor agrees to file an IRS form W-9 with the town prior to the commencement of the contract. Failure to supply such form is a condition precedent to the payment by the Town of any sums owed pursuant to this contract. All invoices or Town of Greece standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to the Department of Finance of the Town must include the payee'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 Town of Greece standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

**17. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Attachment "A", the terms of this Attachment "A" shall control.

**18. NON-APPROPRIATION OF FUNDS.** The Town of Greece intends to remit to the contractor all payments and other amounts for the full term provided the funds are legally available. In the event this contract is not granted an appropriation of funds at any time during the term of this contract and there is no other legal procedure or available funds by or with which payment can be made to contractor, and the non-appropriation did not result from an act or omission by the contractor, the Town of Greece may terminate this Agreement on the last day of the fiscal period for which appropriations were received without penalty or expense to the contract or of the Town of Greece, except as to the portion of the Payments for which funds shall have been appropriated and budgeted. At least thirty (30) days prior to the end of your fiscal period, the Town Supervisor, Director of Finance or Town Attorney shall certify in writing that (a) funds have not been appropriated for the fiscal period, (b) such non-appropriation did not result from any act or failure to act by the Town of Greece, and (c) the Town of Greece you have exhausted all funds legally available to pay Payments. If the Town of Greece terminates this Agreement because of a non-appropriation of funds, the Town may not enter in a contract during the subsequent fiscal period, which contract performs the same functions as, or functions taking the place of, those performed by the contract terminated by the Town, provided however, these restrictions shall not be applicable if or to the extent that the application of these restrictions would affect the validity of this Agreement. The Town of Greece shall not terminate this Agreement in order to acquire services or equipment or to allocate funds directly or indirectly, that perform essentially the same function for which the original contract was intended.

If the term of this agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the agreement is contingent on the appropriation and availability of funds for such purpose, as determined in good faith by the Town. If funds to affect such continued purpose are not appropriated or available as determined in good faith by the Town, this agreement shall automatically terminate and the Town shall be relieved of any further obligation

**19. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Local Finance Law to the extent required by law. Interest will not be charged unless payment is not received 60 days after the Town received the invoice and all required paperwork is complete and in compliance with this agreement.

**20. ADVANCES.** The Town will not advance any retainer for goods and/or services unless the parties mutually agree.

**21. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York, County of Monroe.

**22. 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 he complete upon Contractor's actual receipt of process or upon the Town 's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the Town in writing, of each and every change of address to which service of process can be made. Service by the Town to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**23. WAIVER OF DAMAGES; INDEMNITY.** The Contractor hereby waives and releases the Town from any claims the Contractor may have at any time arising out of or relating in any way to this agreement, except to the extent caused by the Town's willful misconduct. Notwithstanding the foregoing, the parties agree that in no event shall the Town be liable for any loss of the Contractor's business, revenues or profits, or special, consequential, incidental, indirect or punitive damages of any nature, even if the Town has been advised in advance of the possibility of such damages. This shall constitute the Town's sole liability to the Contractor and the Contractor's exclusive remedies against the Town. Except for the sole negligence or willful misconduct of the Town the Contractor shall indemnify, hold harmless and defend the Town and its Town Board, officers, employees, and agents from any liability, losses, costs, damages, claims, and obligations relating to or arising from this agreement. Without limiting the foregoing, the Contractor shall indemnify and hold harmless the Town, and its Town Board , officers, employees, and agents from all liability, losses, costs, damages, claims, and obligations of any nature or kind, including attorneys' fees, costs, and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article or appliance, registered or unregistered trademark, service mark, or trade name, furnished or used in connection with this agreement. The Contractor, at its own expense, shall defend any action brought against the Town to the extent that such action is based upon a claim that the goods or software supplied by the Contractor or the operation of such goods infringes a patent, trademark, or copyright or violates a trade secret. The contractor hereby agrees to defend, indemnify and save harmless the Town against any and all liabilities, loss, damage, detriment, suit, claim, demand, cost, charge, attorney's fees and expenses of whatever kind or nature which the Town may directly or indirectly incur, suffer or be required to pay by reason or in consequence of the carrying out of any of the provisions or requirements of this contract, where such loss or expense is incurred directly or indirectly by the Town, its employees or agents, as a result of the negligent act or omission, breach or fault of the contractor, its agents, employees or contractors. If a claim or action is made or brought against the Town and for which the contractor may be responsible hereunder in whole or in part, then the contractor shall be notified and shall be required to handle or pay for the handling of the portion of the claim for which the contractor is responsible as a result of this section.

**24. INSURANCE REQUIREMENTS.**
The insurance requirements for all contractors of the Town are as follows. Not all may apply to this contract; refer to the Town contact person for clarification:

The Contractor shall procure and maintain at his own expense until final completion of the work or services covered by the Contract, insurance for liability for damages imposed by law of the kinds and in the amounts hereinafter provided, issued by insurance companies authorized to do business in the State of New York, covering all operations under the Contract whether performed by the Contractor or by his subcontractors. **The Town of Greece must be named as Certificate Holder and Additional Insured on all policies.**

Within ten (10) days after notice of award, the Contractor shall furnish to the Town evidence of insurance in a form satisfactory to the Town Attorney showing that he has complied with all insurance requirements set forth herein, such evidence shall provide that the policies shall not be changed or cancelled until thirty (30) days written notice has been given to the Town. **Please note, a certificate of insurance alone is not sufficient as proof of the Town covered as Certificate Holder and an Additional Insured. A policy endorsement from the Contractor's carrier is required.** Except for Worker's Compensation Insurance, no insurance required herein shall contain any exclusion of municipal operations performed in connection with the Contract resulting from this bid solicitation. The kinds and amounts of insurance are as follows:

**A. WORKER'S COMPENSATION AND DISABILITY INSURANCE.** A policy covering the operations of the Contractor in accordance with the provisions of New York State Worker's Compensation Law, covering all operations under Contract, whether performed by him or by his subcontractors. The Contract shall be void and of no effect unless the person or corporation making or executing same shall secure compensation coverage for the benefits of, and keep insured during the life of said Contract, such employees in compliance with the provisions of the Worker's Compensation Law known as the Disability Benefits Law (chapter 600 of the Laws of 1949) and amendments hereto. 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 required to be covered by the provisions of the Workers' Compensation Law.

**B. GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE.**

**(1) CONTRACTOR'S LIABILITY INSURANCE** issued to the Contractor and covering the liability for damages imposed by law upon the Contractor with respect

to all work performed by him under the within Contract. All of the following coverage shall be included:

- Comprehensive Form
- Premises-Operations
- Products/Completed Operations
- Contractual Insurance covering the Hold Harmless Provision
- Broad Form Property Damage
- Independent Contractors
- Personal Injury

**(2) CONTRACTOR'S PROTECTIVE LIABILITY INSURANCE** issued to the Contractor and covering the liability for damages imposed by law upon the said Contractor for the acts or neglect of each of his subcontractors with respect to all work performed by said subcontractors under the agreement. The contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in New York State such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the contract and fro which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers compensation, disability benefit and other similar employee benefit acts which are applicable to the work performed.
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees.
3. Claims for damages because of bodily injury, occupational sickness or disease, or death of any person other than the Contractor's employees.
4. Claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly, related to employment of such person by the Contractor or by another person.
5. Claims for damages, other than to the work itself because of injury to or destruction of tangible property, including loss of use resulting there from.
6. Claims for damages because of bodily injury, death or property damage arising out of ownership, maintenance or use of a motor vehicle.
7. Claims involving contractual liability insurance applicable to the Contractor's obligations contained herein.

**(3) OWNER'S PROTECTIVE LIABILITY INSURANCE** issued to the Contractor and the Town of Greece, which covers the liability for damages imposed by law on the Town with respect to all work performed by the Town Contractor and his subcontractors under the agreement resulting from this bid offering.

**C. MOTOR VEHICLE INSURANCE** issued to the Contractor and covering public liability and property damage on the Contractor's vehicles in the amount listed below.

**D. PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS.** The contractor shall procure at its own expense professional liability insurance for services to be performed pursuant to this agreement, insuring the contractor against malpractice or errors and omissions of the contractor.

The insurance shall be written for not less than limits of liability specified or required by law, whichever coverage is greater. Coverage, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the work until date of final payment and termination of any coverage required to be maintained after final payment. Unless otherwise specifically required by special specifications, each policy shall have limits as found in the attached matrix.

**25. SEVERABILITY.** The Contractor and the Town agree that if any part, term, or provision of this agreement is found to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect other parts, terms, or provisions of this agreement, which shall be given effect without the portion held invalid, illegal, or unenforceable, and to that extent the parts, terms, and provisions of this agreement are severable.

**26. NOTICE.** Any notice required to be given pursuant to the terms of this agreement shall be in writing and served personally or by deposit in the United States mail, postage and fees fully prepaid, addressed to the applicable address set forth above. Service of any such notice if given personally shall be deemed complete upon delivery and, if made by mail, shall be deemed complete on the earlier of the day of actual receipt or the expiration of two (2) business days after the date of mailing.

**27. CONFLICTS OF INTEREST.** The Contractor agrees not to accept any employment or representation during the term of this agreement which is or may likely make the Contractor "financially interested" in any decision made by the Town on any matter in connection with which the Contractor has been retained pursuant to this agreement.

**28. REQUIREMENTS FOR FEDERALLY FUNDED CONTRACTS.**

A. If this agreement is funded by the Town, in whole or in part, from revenues received from the Federal Government, then the following additional provisions shall apply. It shall be the Contractor's responsibility to ascertain if Federal funds are involved.

B. Contractor, and any subcontractors at any tier, shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, and Department of Labor."

C. No contract, or any subcontract at any tier, shall be made to parties listed on the General Services

Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold (currently $100,000) shall provide the required certification regarding its exclusion status and that of its principal employees.

29. **REGULATIONS.** In addition to the above, and per Federal and State Regulations, the successful bidder must meet all Federal and State regulations regarding all New York State Department of Labor and OSHA safety regulations and standards. If applicable, New York State Department of Labor prevailing wage rates must be followed under this contract. Pursuant to the provision of Section 220-A of the New York State Labor Law, as amended, the Contractor (and his Sub-Contractors) will be obligated to pay all workers in the covered classes the applicable prevailing wage rates and supplements. The minimum hourly wage rate to be paid the various classes of labor performing work under this contract shall be in accordance with schedules that have been established, or may hereafter be established or increased, by the New York State Department of Labor during the contract term. Wage schedules are in effect from July 1 through June 30, but may be amended throughout the period. It is the responsibility of the Contractor to pay per the current wage schedule. Please visit the New York State Department of Labor website at **www.labor.state.ny.us** for updated schedules.

30. **RELATIONSHIP OF PARTIES.** With regard to performance hereunder, the Contractor is an independent contractor and not an officer, agent, partner, joint venturer, or employee of the Town. The Contractor shall not, at any time, or in any manner, represent that it or any of its agents or employees is in any manner agents or employees of the Town.

31. **TOWN REPRESENTATIVE.** The contact person set forth above or his or her designee shall represent the Town in the implementation of this agreement.

32. **GOVERNING LAW.** This agreement shall be deemed to have been executed and delivered within the State of New York, and the rights and obligations of the parties hereunder, and any action arising from or relating to this agreement, shall be construed and enforced in accordance with, and governed by, the laws of the State of New York or United States law, without giving effect to conflict of laws principles. Any action or proceeding arising out of or relating to this agreement shall be brought in the County of Monroe, State of New York, and each party hereto irrevocably consents to such jurisdiction and venue, and waives any claim of inconvenient forum.

33. **EQUAL OPPORTUNITY EMPLOYER.** The Contractor, in the execution of this agreement, certifies that it is an equal employment opportunity employer.

34. **ATTORNEYS' FEES AND COSTS.** If either party shall bring any action or proceeding against the other party arising from or relating to this agreement, each party shall bear its own attorneys' fees and costs, regardless of which party prevails.

35. **BOARD AUTHORIZATION.** The effectiveness of this agreement is expressly conditioned upon ratification by the Town Board of the Town of Greece.

36. **AMENDMENTS.** This agreement is the entire agreement between the parties as to its subject matter and supersedes all prior or contemporaneous understandings, negotiations, or agreements between the parties, whether written or oral, with respect thereto. This agreement may be amended only in a writing signed by both parties.

## INSURANCE MATRIX

| CATEGORY | General Liability | Professional Liability (Errors & Omissions) | Work Comp & Disability | Vehicle Liability | Owner's Protective Liability | Contractor's Protective Liability |
|---|---|---|---|---|---|---|
| **Professional Services** | x | x | x | | | |
| Services provided by Engineers, Architects, Financial Consultants, Legal Consultants - typically requires an advanced degree. | | | | | | |
| **Service Contracts** | x | | x | x | | |
| Non-professional services provided by contractors. | | | | | | |
| **Construction** | x | | x | x | x | x |
| Building and infrastructure construction or repair. | | | | | | |
| **Organized Leagues** | x | | | | | |

**Standard Insurance Coverage (Contracts up to $1,000,000):**

| | | | | | | |
|---|---|---|---|---|---|---|
| Bodily Injury | | | Per | | | |
| Each Person | $1,000,000 | | Chapter 41 | $1,000,000 | $1,000,000 | $1,000,000 |
| Each Occurrance | $1,000,000 | | of | $1,000,000 | $1,000,000 | $1,000,000 |
| Property Damage | | | Workers' | | | |
| Each accident | $1,000,000 | | Compen- | $1,000,000 | $1,000,000 | $1,000,000 |
| Aggregate | $3,000,000 | | sation | $1,000,000 | $3,000,000 | $3,000,000 |
| Service Performed | | $1,000,000 | Law | | | |
| **Work with a value in excess of $1,000,000 shall have $3,000,000/$5,000,000 for General Liability/Property Damage.** | | | | | | |

**Construction projects up to $5,000; Service contracts up to $20,000:**

| | | | | | | |
|---|---|---|---|---|---|---|
| Bodily Injury | | | Per | | | |
| Each Person | $500,000 | | Chapter 41 | $500,000 | $500,000 | $500,000 |
| Each Occurrance | $500,000 | | of | $500,000 | $500,000 | $500,000 |
| Property Damage | | | Workers' | | | |
| Each accident | $500,000 | | Compen- | $500,000 | $500,000 | $500,000 |
| Aggregate | $1,000,000 | | sation | $500,000 | $1,000,000 | $1,000,000 |
| Service Performed | | $500,000 | Law | | | |

**Service contracts up to $5,000:**

| | | | | | | |
|---|---|---|---|---|---|---|
| Bodily Injury | | | Per | | | |
| Each Person | $250,000 | | Chapter 41 | $250,000 | | |
| Each Occurrance | $500,000 | | of | $500,000 | | |
| Property Damage | | | Workers' | | | |
| Each accident | $250,000 | | Compen- | $250,000 | | |
| Aggregate | $500,000 | | sation Law | $500,000 | | |

**Acceptable Forms**

| | |
|---|---|
| General Liability | Town shall be listed as "Additional Insured", and the additional insured endorsement is to be provided along with the Certificate of Insurance. |
| Worker's Compensation | WC/DB100; revised C-105.2 (9/07); U-26.3; SI-12; GSI 105.2. |
| Disability Benefits | WC/DB100; DB-120.1; DB-155. |

# ATTACHMENT A – SCOPE OF WORK

## 1. OVERVIEW OF THE CONTRACT

1.1. A Job Order Contract is an indefinite quantity contract pursuant to which the Contractor may perform an ongoing series of individual Projects at different locations throughout a designated region. The bid documents include a Construction Task Catalog® containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.

1.2. The Contractor will bid two Adjustment Factors to be applied to the Unit Prices. 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 two Adjustment Factors shall apply to every Pre-priced Task in the Construction Task Catalog®.

1.3. For each Contract listed in section 4 below, the Town will award a Contract to the lowest, responsive, responsible bidder.

1.4. Thereafter, as projects are identified the Contractor will jointly scope the work with the Owner. The Owner will prepare a Detailed Scope of Work and issue a Request for Proposal to the Contractor. The Contractor will then prepare a Job Order Proposal for the Project including a Job Order Price Proposal, drawings and sketches, a list of subcontractors and materialmen, construction schedule, and other requested documentation. The Job Order Price shall equal the value of the approved Job Order Price Proposal. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.

1.5. If the Job Order Proposal is found to be complete and reasonable, a Job Order may be issued.

1.6. A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time, and the Job Order Price. The Job Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate Job Order will be issued for each Project. Extra work, credits, and deletions will be contained in a Supplemental Job Order.

## 2. DESCRIPTION OF THE WORK

2.1. 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.

2.2. This Contract is for construction work and related services to be performed within a designated region. However, if the need arises, the Town and Contractor may agree that the Contractor can perform Work in a different region at its current Adjustment Factors.

## 3. TERM OF THE CONTRACT AND OPTION TERM

3.1. The Base Term of the Contract is one year.

3.2. There is one (1) bilateral Option Term. Both parties must agree to extend the Contract for the Option Term. The duration of the Option Term is one year.

3.3. The Town and the Contractor may agree to extend the term of an Option Term.

3.4. All Job Orders issued during the 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.

## 4. CONTRACT SPECIFICS

4.1. The Town is seeking bids for the following types of Contracts in regions 4 through 17: General Construction, HVAC, Plumbing, and Electrical. The chart below contains the specifics for each Contract. Refer to section 5 of this Attachment A for a map of the regions and the associated counties.

| Contract Number | Region | Contract Type | Estimated Annual Value | Maximum Contract Duration (Sum of Terms) | Estimated Contract Value | Applicable Construction Task Catalog® |
|---|---|---|---|---|---|---|
| JOC-2017-04-GC | 4 | General Construction | $2,000,000 | 2 years | $4,000,000 | #1 |
| JOC-2017-04-HVAC | 4 | HVAC | $750,000 | 2 years | $1,500,000 | #1 |
| JOC-2017-04-PLUMB | 4 | Plumbing | $750,000 | 2 years | $1,500,000 | #1 |
| JOC-2017-04-ELEC | 4 | Electrical | $750,000 | 2 years | $1,500,000 | #1 |
| JOC-2017-05-GC | 5 | General Construction | $2,000,000 | 2 years | $4,000,000 | #1 |
| JOC-2017-05-HVAC | 5 | HVAC | $750,000 | 2 years | $1,500,000 | #1 |
| JOC-2017-05-PLUMB | 5 | Plumbing | $750,000 | 2 years | $1,500,000 | #1 |
| JOC-2017-05-ELEC | 5 | Electrical | $750,000 | 2 years | $1,500,000 | #1 |
| JOC-2017-06-GC | 6 | General Construction | $2,000,000 | 2 years | $4,000,000 | #2 |
| JOC-2017-06-HVAC | 6 | HVAC | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-06-PLUMB | 6 | Plumbing | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-06-ELEC | 6 | Electrical | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-07-GC | 7 | General Construction | $2,000,000 | 2 years | $4,000,000 | #2 |
| JOC-2017-07-HVAC | 7 | HVAC | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-07-PLUMB | 7 | Plumbing | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-07-ELEC | 7 | Electrical | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-08-GC | 8 | General Construction | $2,000,000 | 2 years | $4,000,000 | #2 |
| JOC-2017-08-HVAC | 8 | HVAC | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-08-PLUMB | 8 | Plumbing | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-08-ELEC | 8 | Electrical | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-09-GC | 9 | General Construction | $2,000,000 | 2 years | $4,000,000 | #2 |
| JOC-2017-09-HVAC | 9 | HVAC | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-09-PLUMB | 9 | Plumbing | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-09-ELEC | 9 | Electrical | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-10-GC | 10 | General Construction | $2,000,000 | 2 years | $4,000,000 | #2 |

| Contract Number | Region | Contract Trade | Estimated Annual Value | Maximum Contract Duration (Sum of Terms) | Estimated Contract Value | Applicable Construction Task Catalog® |
|---|---|---|---|---|---|---|
| JOC-2017-10-HVAC | 10 | HVAC | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-10-PLUMB | 10 | Plumbing | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-10-ELEC | 10 | Electrical | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-11-GC | 11 | General Construction | $2,000,000 | 2 years | $4,000,000 | #2 |
| JOC-2017-11-HVAC | 11 | HVAC | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-11-PLUMB | 11 | Plumbing | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-11-ELEC | 11 | Electrical | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-12-GC | 12 | General Construction | $2,000,000 | 2 years | $4,000,000 | #2 |
| JOC-2017-12-HVAC | 12 | HVAC | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-12-PLUMB | 12 | Plumbing | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-12-ELEC | 12 | Electrical | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-13-GC | 13 | General Construction | $2,000,000 | 2 years | $4,000,000 | #2 |
| JOC-2017-13-HVAC | 13 | HVAC | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-13-PLUMB | 13 | Plumbing | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-13-ELEC | 13 | Electrical | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-14-GC | 14 | General Construction | $2,000,000 | 2 years | $4,000,000 | #2 |
| JOC-2017-14-HVAC | 14 | HVAC | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-14-PLUMB | 14 | Plumbing | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-14-ELEC | 14 | Electrical | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-15-GC | 15 | General Construction | $2,000,000 | 2 years | $4,000,000 | #2 |
| JOC-2017-15-HVAC | 15 | HVAC | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-15-PLUMB | 15 | Plumbing | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-15-ELEC | 15 | Electrical | $750,000 | 2 years | $1,500,000 | #2 |
| JOC-2017-16-GC | 16 | General Construction | $2,000,000 | 2 years | $4,000,000 | #3 |
| JOC-2017-16-HVAC | 16 | HVAC | $750,000 | 2 years | $1,500,000 | #3 |
| JOC-2017-16-PLUMB | 16 | Plumbing | $750,000 | 2 years | $1,500,000 | #3 |
| JOC-2017-16-ELEC | 16 | Electrical | $750,000 | 2 years | $1,500,000 | #3 |
| JOC-2017-17-GC | 17 | General Construction | $2,000,000 | 2 years | $4,000,000 | #3 |
| JOC-2017-17-HVAC | 17 | HVAC | $750,000 | 2 years | $1,500,000 | #3 |
| JOC-2017-17-PLUMB | 17 | Plumbing | $750,000 | 2 years | $1,500,000 | #3 |
| JOC-2017-17-ELEC | 17 | Electrical | $750,000 | 2 years | $1,500,000 | #3 |

4.2. The Contractor may be issued Job Orders exceeding the Estimated Annual Value during any year of the Contract. The Contractor is not guaranteed to receive this volume of Job Orders. It is merely an estimate.

4.3. Construction Task Catalog #1 applies to Regions 4 and 5. Construction Task Catalog #2 applies to Regions 6-16. Construction Task Catalog #3 applies to Regions 16 and 17.

## 5. REGION MAP AND LIST OF COUNTIES INSIDE EACH REGION

5.1. Region Map:

5.2. List of Counties by region:

**Region 4:** Westchester, Putnam, Rockland

**Region 5:** Dutchess, Ulster, Sullivan, Orange

**Region 6:** Rensselaer, Albany, Greene, Columbia

**Region 7:** Washington, Saratoga, Schenectady, Fulton, Montgomery

**Region 8:** Franklin, Clinton, Essex, Warren

**Region 9:** St. Lawrence, Jefferson, Lewis, Herkimer, Hamilton

**Region 10:** Oswego, Oneida, Onondaga, Madison

**Region 11:** Ostego, Delaware, Schoharie

**Region 12:** Tompkins, Cortland, Chenango, Broome, Tioga

**Region 13:** Steuben, Yates, Schuyler, Chemung

**Region 14:** Wayne, Ontario, Seneca, Cayuga

**Region 15:** Monroe, Livingston

**Region 16:** Niagara, Orleans, Erie, Genesee, Wyoming

**Region 17:** Chautauqua, Cattaraugus, Allegany

## 6. ADJUSTMENT FACTORS

6.1. There are two Adjustment Factors for this Contract. When preparing a Job Order Price Proposal, the Contractor shall select the appropriate Adjustment Factor for each task.

6.2. The Adjustment Factors are as follows:

6.2.1. **Normal Working Hours:** Monday through Friday 7:00 am to 4:00 pm except holidays.

6.2.2. **Other Than Normal Working Hours:** Monday through Friday 4:01 pm to 6:59 am and all day Saturday, Sunday and Owner holidays.

6.3. The Other than Normal Working Hours Adjustment Factor must be equal to or greater than the Normal Working Hours Adjustment Factor.

## 7. BID PRICING

7.1. For bid evaluation purposes only, the following percentages shall be used to determine the Award Criteria Figure:

| Adjustment Factor | % Weight (For Bid Evaluation Only) |
|---|---|
| Normal Working Hours | 70% |
| Other than Normal Working Hours | 30% |

7.2. 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.

## 8. CONTRACTOR'S ADMINISTRATIVE FEE

8.1. The Town selected The Gordian Group's ("Gordian") Job Order Contracting ("JOC") Solution (Gordian JOC Solution™) for their JOC program. The Gordian JOC Solution includes Gordian's proprietary eGordian® JOC Applications and Construction Task Catalog®, which shall be used by the Contractor to prepare and submit Job Order 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 7.25% Contractor Administrative Fee of each payment received from an Owner to obtain access to the Gordian JOC Solution.***

## 9. CHANGES TO STANDARD CLAUSES FOR TOWN OF GREECE CONTRACTS

9.1. Delete paragraph 5 EXPENSES. Refer to Article 3.6 of the JOC Special Conditions contained in Attachment D.

9.2. Delete paragraph 24(D) PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS. In the event the Contractor engages a professional architect or engineer, the Contractor shall verify and submit

a certificate insurance demonstrating that such professional has Professional Liability/Errors and Omissions insurance.

9.3. For purpose of the Insurance Matrix, this contract shall be considered in the category of "Standard Insurance Coverage (Contracts up to $1,000,000)." The Contractor does not have to provide a Certificate of Insurance with its bid. However, the Contractor must sign the Insurance Statement which is part of Attachment C, and if identified as the low bidder, the Contractor must demonstrate that it has the ability to obtain the required insurances. The insurance requirements for individual Owners for specific Job Orders may be different.

## 10. DOCUMENTS TO BE SUBMITTED WITH THE BID

10.1. In order to be considered responsive, the Bidder must include the following documents with the Bid:

10.1.1. ☐ Bid Form (Attachment B)

10.1.2. ☐ Proposal or Bid for Performance of Municipal Contract (Attachment C)

10.1.3. ☐ Non-Collusive Bidders Certification (Attachment C)

10.1.4. ☐ Insurance Statement (Attachment C)

10.1.5. ☐ Signature Page (Attachment C)

10.1.6. ☐ Bonding Company Letter (Attachment C)

## 11. MANDATORY PRE-BID CONFERENCE

11.1. There will be (4) individual pre-bid conferences. In order to be eligible for award, Bidders must attend at least one of the pre-bid conferences and sign the pre-bid sign-in sheet.

11.2. Pre-Bid Dates, Times and Locations are as follows:

**Pre-Bid Meeting #1:** 1/17/17 at 9 AM, Town of Greece at 1 Vince Tofany Blvd., Greece, NY 14612.

**Pre-Bid Meeting #2:** 1/17/17 at 3 PM, Hilton Garden Inn Watertown/Thousand Islands, 1290 Arsenal Street, Watertown, New York, 13601, 315-788-1234.

**Pre-Bid Meeting #3:** 1/18/17 at 10 AM, Hilton Garden Inn Albany Medical Center, 62 New Scotland Avenue, Albany, New York, 12208, 518-396-3500.

**Pre-Bid Meeting #4:** 1/19/17 at 10 AM, Hampton Inn & Suites Yonkers – Westchester, 555 Tuckahoe Road, Yonkers, New York, 10710, 914-963-3200.

## 12. BID SCHEDULE

| | |
|---|---|
| January 2, 2017 | Advertisement Starts |
| January 27, 2017 | Last Day to Submit Questions |
| February 7, 2017 | 1:00 PM Bid Opening Regions 4, 7, 10, & 16 |
| February 9, 2017 | 1:00 PM Bid Opening Regions 5, 6, 8, 9, 11, 12, 13, 14 & 15 |

# ATTACHMENT B – BID FORM

***COMPLETE AND SIGN THIS ATTACHMENT B AND SUBMIT WITH THE BID. IF SUBMITTING A BID ON MORE THAN ONE CONTRACT, MAKE A COPY OF THE BID DOCUMENTS. A SEPARATE SEALED BID PACKAGE MUST BE SUBMITTED FOR EACH CONTRACT BID. ON THE OUTSIDE OF THE ENVELOPE, INCLUDE THE BIDDER'S NAME AND ADDRESS, CONTRACT NUMBER, REGION NUMBER, AND TRADE FOR WHICH THE BID IS SUBMITTED (GENERAL CONSTRUCTION, HVAC, PLUMBING OR ELECTRIC).***

***ADDRESS AND DELIVER THE ENVELOPE TO: ATTENTION TOWN CLERK, TOWN OF GREECE, NY, 1 VINCE TOFANY BLVD., GREECE, NY 14612.***

BIDDER NAME: **John W. Danforth Company**

REGION NUMBER: **5**
(Region 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, OR 17)

CONTRACT TRADE: **JOC-2017-05-HVAC**
(General Construction, HVAC, Plumbing, or Electrical)

The Bidder shall set forth Adjustment Factors in legible figures in the respective space provided. Failure to submit all Adjustment Factors will result in the Bid being deemed non-responsive. The Contractor shall perform the Tasks required by each individual Job Order using the following Adjustment Factors:

| | **Adjustment Factor Name** | **Adjustment Factor Bid** | **X Multiplier** | **= Total** |
|---|---|---|---|---|
| 1. | Adjustment Factor for Normal Working Hours | 1.2289 | X 0.70 | =0.8602 |
| 2. | Adjustment Factor for Other Than Normal Working Hours | 1.2990 | X 0.30 | =0.3897 |
| 3. | **Add all the Total amounts in the right column.**<br>**The Sum of these Total amounts is the Award Criteria Figure.** | | | =1.2499 |

***Notes To Bidder:***

1. Specify lines 1 through 3 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 Normal Working Hours Adjustment Factor.***

3. The weighted percentages shown above are for the sole purpose of calculating the Award Criteria Figure and determining the lowest bid. No assurances are made by the Town that work will be ordered under the Contract in a distribution consistent with the weighted percentages.

4. When submitting Job Order Price Proposals related to specific Job Orders, the Bidder shall use one or more of the Adjustment Factors.

5. The Town reserves the right to correct any arithmetic errors in the calculation of the Award Criteria Figure.

**ATTACHMENT C PROPOSAL OR BID FOR PERFORMANCE OF MUNICIPAL CONTRACT**

TO THE TOWN BOARD OF THE TOWN OF GREECE, MONROE COUNTY, NEW YORK:

The undersigned, desiring to interpose a bid for work to be rendered and/or materials to be furnished in connection with the purchase of:

***2017 Job Order Contracting Services***

do accept all the terms, conditions and agreements contained and set forth in the above captioned bid, and do certify, agree and propose as follows:

> The undersigned declare that the only persons interested in this proposal (or contract) as principals are as stated; that the proposal is in all respects made without collusion or fraud; that no person is directly or indirectly interested therein that they (he) have (has) carefully examined the (location of the proposed work, the annexed proposed form of contract and the plans and) specifications therein referred to; and hereby propose and agree that if this proposal is accepted, that they (he) will contract with the Town of Greece in the materials (supply all necessary machinery, tools and apparatus) and do all of the work specified in the contract in the manner and time herein specified and to take in full payment therefore the following prices, to wit:

The undersigned agree to complete the Detailed Scope of Work for the Job Order Price and within the Job Order Completion Time. The full names and residences of all persons and parties interested in the foregoing bids and principals are as follows:

Dated: **Tonawanda**, New York, the **9th** day of **February**, **2017**.

By _____ **Jason P. Rudich**
**Vice President of Estimating**

**ATTACHMENT C** **NON-COLLUSIVE BIDDERS CERTIFICATION**

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 his knowledge and belief:

1. The prices in this bid have been arrived at independently, without collusion, 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; and

2. Unless otherwise required by law, the prices that 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 with 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.

4. The foregoing is a true and correct copy of the resolution adopted by **John W. Danforth Company** Corporation at a meeting of its Board of Directors held on the **4th** day of **February**, **2016**.

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

Signature

**Jason P. Rudich, Vice President of Estimating**
Typed Name

**INSURANCE STATEMENT**

Bidder agrees as follows:

I certify that it can, if awarded the bid, supply insurance as specified

Bidder Name: **John W. Danforth Company**

Signature:

Print Name: **Jason P. Rudich, Vice President of Estimating**

**TOWN CLERK USE ONLY:**

## SIGNATURES

By these signatures, the parties agree to all the terms, conditions and provisions of this Agreement, containing this cover and signature sheet(s), attachments "A", "B", "C", "D", "E", "F", "G", "H" and the standard clauses for service contract.

DATED this 23 day of March, 2017

**On behalf of the Greece Town Board**

State of New York)
Town of Greece)

On the 23 day of March in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared W. Reilich 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 executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; that she/he executed the foregoing instrument in accordance with Resolution adopted by the Greece Town Board on March 15, 2017.

Notary Public

IAONNIS MINAS DEDES
Notary Public, State of New York
Qualified in Monroe Co., No. 01DE6322562
Commission Expires April 6, 2019

---

DATED this 9th day of February, 2017

**Contractor**
**On Behalf of The John W. Danforth Company**

**Jason P. Rudich, Vice President of Estimating**

State of New York)
Town of Tonawanda)

On the 9th day of February in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared Jason P. Rudich, 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 executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; that she/he executed the foregoing instrument in accordance with Resolution adopted by the Greece Town Board on February 9th, 2017.

Notary Public

KEVIN F. LAURENDI
No. 01LA6346040
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 08/08/2020

ZURICH

**Zurich Surety**
**Fidelity and Deposit Company of Maryland**
**1299 Zurich Way**
**Schaumburg, Illinois 60196-1056**

Attachment C

Date: February 7, 2017

Town of Greece, NY
1 Vince Tofany Blvd
Greece, NY 14612

**Re:** Bonding for Job Order Contracting Services

**CONTRACT NUMBER:** JOC-2017-05-HVAC

**REGION NUMBER:** 5
(Region 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, or 17)

**CONTRACT TRADE:** HVAC
(General Construction, HVAC, Plumbing, or Electrical)

Please be advised that

John W. Danforth Company, 300 Colvin Woods Parkway, Tonawanda, New York 14150,
(insert the Bidder's name)

the Bidder for the above captioned contract, currently has an available bonding capacity equal to or greater than

$ 1,500,000.00,
(insert the Contract's Estimated Annual Value – Attachment A, Section 4)

Sincerely,

Sean Keenan
(signature)

Name: Sean P. Keenan

Title: Attorney-in-fact

Telephone #: 716-362-7358

Email: skeenan@walshins.com

# ATTACHMENT D – JOC SPECIAL CONDITIONS

## 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 amount determined in the Award Criteria Figure Calculation section of Attachment B, 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. **Estimated Annual Value** - An estimate of the value of Job Orders that might be issued to the Contractor each year.

1.7. **Estimated Contract Value - The** estimated value of Job Orders that the Contractor may receive under this Contract.

1.8. **Job Order** - A written order issued by the Owner, such as a Purchase Order, 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.

1.9. **Job Order Completion Time** - The time within which the Contractor must complete the Detailed Scope of Work.

1.10. **Job Order Price** - The value of the approved Job Order Price Proposal and the amount the Contractor will be paid for completing a Job Order.

1.11. **Job Order Price Proposal** - A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.

1.12. **Job Order Proposal** - A set of documents including at least: (a) Job Order Price Proposal; (b) required drawings or sketches; (c) list of anticipated Subcontractors and Materialmen; (d) Construction schedule; and (e) other requested documents.

1.13. **Joint Scope Meeting** - A site meeting to discuss the work before the Detailed Scope of Work is finalized.

1.14. **Non Pre-priced Task** - A task that is not set forth in the Construction Task Catalog®.

1.15. **Normal Working Hours** - Includes the hours from 7:00 a.m. to 4:00 p.m. Monday through Friday, except for Owner holidays.

1.16. **Owner** – agencies, including the Town, who may utilize this Contract and purchase construction services from the Contractor.

1.17. **Option Term** - An additional period of time beyond the Contract's Base Term which extends the termination date of the Contract.

1.18. **Other than Normal Working Hours** - Includes the hours of 4:01 p.m. to 6:59 a.m. Monday through Friday and all day Saturday, Sunday, and Owner Holidays.

1.19. **Pre-priced Task** - A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog®.

1.20. **Project** - The collective improvements to be constructed by the Contractor pursuant to a Job Order, or a series of related Job Orders.

1.21. **Request for Proposal** - A written request to the Contractor to prepare a Job Order Proposal for the Detailed Scope of Work referenced therein.

1.22. **Supplemental Job Order** - A secondary Job Order developed after the initial Job Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the Job Order Completion Time.

1.23. **Technical Specifications** - The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

1.24. **Unit Price** - The price published in the Construction Task Catalog® for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs®.

## 2. PROCEDURE FOR ORDERING WORK – INITIATION OF A JOB ORDER

2.1. As the need exists, the Owner will notify Gordian of a potential Project. Gordian will schedule a a Joint Scope Meeting with the Contractor and the Owner as soon as practicable, generally, within seven (7) days.

2.2. Gordian and the Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:

2.2.1. the general scope of the work;

2.2.2. alternatives for performing the work and value engineering;

2.2.3. access to the site and protocol for admission;

2.2.4. hours of operation;

2.2.5. staging area;

2.2.6. requirements for catalog cuts, technical data, samples and shop drawings;

2.2.7. requirements for professional services, sketches, drawings, and specifications;

2.2.8. construction duration;

2.2.9. liquidated damages;

2.2.10. the presence of hazardous materials;

2.2.11. date on which the Job Order Proposal is due.

2.3. Upon completion of the joint scoping process, Gordian will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. 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, Gordian will issue a Request for Proposal that will require the Contractor to prepare a Job Order Proposal. The Detailed Scope of Work, unless modified by both the Contractor and Gordian, will be the basis on which the Contractor will develop its Job Order Proposal and Gordian will evaluate the same. The Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.

2.4. Gordian 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 Gordian cannot agree on the quantities required, or for any other reason as determined by Gordian. In all such cases, Gordian shall issue a Supplemental Job Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

## 3. PROCEDURE FOR ORDERING WORK – PREPARATION OF THE JOB ORDER PROPOSAL

3.1. The Contractor's Job Order Proposal shall include, at a minimum:

3.1.1. Job Order Price Proposal;

3.1.2. Required drawings or sketches;

3.1.3. List of anticipated Subcontractors and Materialmen;

3.1.4. Construction schedule;

3.1.5. Other requested documents.

3.2. The Job Order Price shall be the value of the approved Job Order Price Proposal.

3.3. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Tasks (unit price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.

3.4. The Contractor will prepare Job Order Price Proposals in accordance with the following:

3.4.1. Pre-priced Task: The Contractor will select the appropriate Pre-priced Tasks, and enter the accurate quantity, and the appropriate Adjustment Factor. The Contractor shall use the Adjustment Factors in effect on the date the Job Order Price Proposal is due.

3.4.2. Non Pre-priced Task.

3.4.3. Information submitted in support of Non Pre-priced Tasks shall include, but not be limited to, the following:

3.4.3.1. Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.

3.4.3.2. If the Contractor will perform the work with its own forces, it shall submit three independent quotes for all material to be installed and shall, to the extent possible, use Pre-priced Tasks for labor and equipment from the Construction Task Catalog®. If the work is to be subcontracted, the Contractor must submit three independent quotes from subcontractors. The Contractor shall not submit a quote or bid from any supplier or subcontractor that the Contractor is not prepared to use. Gordian may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable.

3.4.3.3. The final price submitted for Non Pre-priced Tasks shall be according to the following formula:

**A =** Hourly Labor Rate (for Trades not in the Construction Task Catalog®) x the Quantity required

**B =** Direct Material Costs (supported by three quotes)

**C =** Direct Equipment Costs (for Equipment not in the Construction Task Catalog®)

**D =** Subcontractor Costs (supported by three quotes)

**E =** Allowable Overhead and Profit = (A + B + C) x 15%

**F =** Subcontractor Allowance = D x 10%

**Total Cost of Non Pre-Priced Task =** (A + B + C + D + E + F) / 0.9275
*The division of 0.9275 accounts for the Administrative Fee the Contractor is required to pay.*

3.4.3.4. After a Non Pre-priced Task has been approved by Gordian, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task which will no longer require price justification.

3.4.3.5. Gordian's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

3.5. Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Job Order Price Proposal is less than the cost of the actual labor and material to perform such task, Gordian may permit the Contractor to be paid for such task as a Non Pre-priced Task, or use Pre-priced labor tasks and material component pricing to cover the actual costs incurred. Provided, however, that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed $1,000.

3.6. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid without markup. The cost of expediting services or equipment use fees are not reimbursable. Reimbursable Tasks shall be divided by 0.9275 to account for the Administrative Fee.

3.7. If the Contractor is required to submit Payment and Performance Bonds, and/or a Maintenance Bond, the Owner shall reimburse the Contractor the actual cost of such bonds not to exceed 2% of the Job Order Price. The Contractor shall provide such documents as Gordian may require evidencing the actual cost of the bonds. The cost of such bonds shall be divided by 0.9275 to account for the Administrative Fee.

3.8. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.

3.9. The Contractor's Job Order Proposal shall be submitted by the date indicated on the Request for Proposal. All incomplete Job Order Proposals shall be rejected. The time allowed for preparation of the Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between seven and fourteen days. On complex Job Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.

3.10. In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated on the Request for Proposal or, as described below, the Contractor may be directed to begin work immediately with the paperwork to follow.

3.11. 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. PROCEDURE FOR ORDERING WORK – REVIEW OF THE JOB ORDER PROPOSAL AND ISSUANCE OF THE JOB ORDER

4.1. Gordian will evaluate the entire Job Order Price Proposal and compare these with Gordian's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed.

4.2. The Contractor may choose the means and methods of construction; subject however, to Gordian's right to reject any means and methods proposed by the Contractor that:

4.2.1. Will constitute or create a hazard to the work, or to persons or property;

4.2.2. Will not produce finished Work in accordance with the terms of the Contract; or

4.2.3. Unnecessarily increases the price of the Job Order when alternative means and methods are available.

4.3. Gordian reserves the right to reject a Job Order Proposal or cancel a Project for any reason. The Owner also reserves the right not to issue a Job Order if it is determined to be in the best interests of the Owner. The Owner may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Job Order Proposal with Gordian and the Owner.

4.4. By submitting a Job Order Proposal to Gordian, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal for the total value of the Job Order Price Proposal. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and

Non Pre-priced Tasks and quantities in the Job Order Price Proposal prior to delivering it to Gordian.

4.5. Each Job Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order, signed by the Owner and delivered to the Contractor constitutes the Owner's acceptance of the Contractor's Job Order Proposal. A **signed** copy of the Job Order will be provided to the Contractor.

4.6. In the event that immediate emergency response is necessary, the Contractor shall be required to follow alternative procedures as established by Gordian. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work, or Job Order. The Contractor shall be compensated for such work as if the work had been ordered under the standard procedures.

## 5. ENR CCI ADJUSTMENT OF THE ADJUSTMENT FACTORS

5.1. Economic Price Adjustment: The Adjustment Factors may be updated on each anniversary of the award date to account for changes in construction costs, provided, the Contractor requests in writing, approximately fourteen to thirty days prior to the anniversary of the award date, that the Adjustment Factors be updated. Such request shall be delivered to Gordian and to Gordian. In the event the Contractor fails to deliver the request timely, then the Town shall determine the date on which the Adjustment Factors will be updated, but in no event will such date be later than thirty days after the written request to update the Adjustment Factors is received by Gordian. Thereafter, the Contractor's Adjustment Factors will be adjusted according to the following:

5.1.1. The Contractor's Normal Working Hours and Other than Normal Working Hours Adjustment Factors will be adjusted according to the following:

5.1.1.1. 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. April bid date, Base Year Index is April of the prior year to March of the bid date year).

5.1.1.2. 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. April bid date, Current Year Index is April of the prior year to March of the current year).

5.1.1.3. The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.

5.1.1.4. 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.

5.1.1.5. Averages shall be obtained by summing the 12 month indices and dividing by 12.

5.1.1.6. All calculations in this article shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:

5.1.1.7. The fourth decimal place shall be rounded up when the fifth decimal place is five (5) or greater.

5.1.1.8. The fourth decimal place shall remain unchanged when the fifth decimal place is less than five (5).

5.1.2. 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.

5.1.3. Under all circumstances, should the Contractor submit a Job Order Proposal with inaccurate Adjustment Factors, the act of submission by the Contractor is a waiver of all rights to any further compensation above the Job Order Price submitted in the Job Order Proposal.

5.1.4. The Contractor cannot delay submission of the Job Order Proposal past the due date 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.

## 6. JOC SYSTEM LICENSE AND ADMINISTRATIVE FEE

6.1. The Town selected Gordian's Job Order Contracting system for the execution of the JOC program. The Gordian JOC system includes Gordian's proprietary eGordian® JOC information management applications, construction cost data and Construction Task Catalog® (collectively "Proprietary Information"), which shall be used by the Contractor to prepare and submit Job Order Proposals, subcontractor lists, and other requirements specified in the general conditions and as may be requested by the Town. The Contractor shall be required to execute Gordian's License and User Agreement, and shall pay a 7.25% Contractor Administrative Fee ("Administrative Fee") for each payment received by the Town for access to the Gordian JOC system and Proprietary Information.

6.2. Administrative Fee is due and payable within five (5) days from the date the Contractor receives payment from the Town. Administrative Fees not paid by the specified deadline shall bear an interest rate of 1½% per month until paid. The Administrative Fee is considered to be part of the Contractor's Adjustment Factor and will not be itemized on its Job Order Price Proposal. Gordian and the Contractor shall mutually utilize ezIQC® to track utilization, fees, and payments. The Contractor shall have no claim or right to any portion of the Administrative Fees. Failure to pay Administrative Fees in a timely manner shall be considered a material breach of this Contract and, at the Town's sole discretion, may be deemed grounds for termination of this Contract.

6.3. Remittance of Administrative Fees: The Contractor shall remit Administrative Fees as follows:

| | |
|---|---|
| **Payments Made Payable to:** | ezIQC, LLC |
| **Mail Checks to:** | Attention: A/R Department<br>30 Patewood Drive, Suite 350<br>Greenville, SC 29615 |

## 7. COOPERATIVE PURCHASING

7.1. Other agencies ("Owner") may purchase construction services from the Contractor utilizing this Contract. If the Contract is utilized by Owners, the Contractor agrees to pay Gordian a 7.25% Contractor Administrative Fee ("Administrative Fee") due and payable within five (5) days from the

date the Contractor receives payment from an Owner. Administrative Fees not paid by the specified deadline shall bear an interest rate of 1½% per month until paid. The Administrative Fee is considered to be part of the Contractor's Adjustment Factor and will not be itemized on its Job Order Price Proposal. Gordian and the Contractor shall mutually utilize ezIQC® to track utilization, fees, and payments. The Contractor shall have no claim or right to any portion of the Administrative Fees. Failure to pay Administrative Fees in a timely manner shall be considered a material breach of this Contract and, at the Town's sole discretion, may be deemed grounds for termination of this Contract.

7.2. The Contractor acknowledges that Gordian will administer cooperative purchases through this Contract and that the Town has no obligation to administer purchases by Owners.

7.3. The Town and Gordian authorize the Contractor the use of the Town's and Gordian's names, logos, trademarks, and the Town's and Gordian provided materials solely for the presentation and promotion of the availability and use of this Contract by Owners and potential Owners. The Contractor authorizes the Town and Gordian the use of the Contractor's name, logos, trademarks, and Contractor provided materials in the presentation and promotion of the availability and use of this Contract by Owner and potential Owners.

7.4. The Town and Gordian shall not be liable or responsible for any obligation, including, but not limited to, payments due under a Job Order.

7.5. Remittance of Administrative Fees: The Contractor shall remit Administrative Fees as follows:

**Payments Made Payable to:** ezIQC, LLC

**Mail Checks to:** Attention: A/R Department
30 Patewood Drive, Suite 350
Greenville, SC 29615

7.6. The Contractor shall, within two (2) business days of receipt of a Job Order from an Owner, provide notification to the Owner and Gordian of each Job Order by forwarding a copy of the Job Order via email to PO@ezIQC.com or via facsimile to (864) 233-9100.

7.7. The Contractor shall, within two (2) business days of sending an invoice to an Owner, provide notification to the Town and Gordian of each invoice by forwarding a copy of the invoice via email to Invoice@ezIQC.com or via facsimile to (864) 233-9100.

7.8. The Town and Gordian may request records from the Contractor for all cooperative purchasing through this Contract and payment of all Administrative Fees. The Contractor hereby agrees and authorizes Town and/or Owner to provide a copy of each Job Order issued to Gordian. If discrepancies exist between cooperative purchasing activity and Administrative Fees paid, the Town or Gordian will provide written notification to the Contractor of discrepancies and allow the Contractor ten (10) days from the date of notification to resolve the discrepancy. In the event the Contractor does not resolve the discrepancy to the satisfaction of the Town and/or Gordian, the Town and/or Gordian reserve the right to engage a third party to conduct an independent audit of the Contractor's records and, in the event Contractor is not in compliance with this Contract, Contractor shall reimburse the appropriate party for the cost and expense related to such audit.

## 8. MBE/WBE GOALS

8.1. Owners may establish MBE/WBE participation goals. The Contractor shall meet all such MBE/WBE goals, provided the Owner notifies Contractor of such requirements before the Job Order Proposal is due.

# ATTACHMENT E – GENERAL CONDITIONS

## ARTICLE 1 - CONTRACT DOCUMENTS

1.1 The Contract Documents form the entire agreement between the parties and supersedes all negotiations or agreements, either written or oral.

1.2 The Contract Documents shall not be construed to create any contractual relationship between the Design Professional and the Contractor. The Design Professional shall be entitled to perform the obligations intended for its enforcement. The Contract Documents shall not create any contractual relationship between the Owner or Design Professional and any Subcontractors.

1.3 The "Work" comprises the construction required by a Detailed Scope of Work and includes all labor necessary and all materials, equipment, transportation, and services to be incorporated into the construction.

1.4 The "Project Site" shall be the physical limits of the actual construction work, or as defined by the Owner for a project outside a building, provided however, where the work is within a building, for the purposed of preparing a Job Order Price Proposal using the Construction Task Catalog, the Project Site shall be defined as the perimiter of the building.

1.5 A Detailed Scope of Work may reference Drawings, Sketches, Technical Specifications, other specifications, or other written information. When the term "Detailed Scope of Work" is used herein, it shall be deemed to include all such documents so referenced.

1.6 The organization of the Technical Specifications or the arrangement of the drawings shall not control the Contractor as to the division of the work among Subcontractors or trade.

1.7 Any reference to standards (such as ASTM-American Society for Testing and Materials), where the date is not specified, shall mean the latest edition of such standards published prior to the date of the Technical Specifications, in accordance with the abbreviations referred to in the Technical Provision. Where such a reference is made, the applicable standard is hereby made a part of the Technical Specifications which refers to it to the same extent as if written out in the Technical Specifications in full.

## ARTICLE 2 - DESIGN PROFESSIONAL

2.1 The Design Professional, as that term is used in these General Conditions, is the Architect, Engineer, or other lawfully licensed design professional engaged by the Owner to prepare the Detailed Scope of Work, and is referred to throughout the Contract Documents as if singular in number and masculine in gender. If no such Design Professional is designated for a particular Job Order, then the Owner shall be deemed to be the Design Professional for purposes of that Job Order.

2.2 The Design Professional and its mailing address shall be as indicated in the Detailed Scope of Work.

2.3 The Design Professional and the Owner will provide general administration of the construction required by a Detailed Scope of Work with the Design Professional providing the administration of the Job Order as related to the actual construction process and technical questions arising out of said construction. The undertaking of periodic visits and observations by the Design Professional or its associates shall not be construed as supervision of actual construction.

2.4 The Design Professional will visit the site periodically to familiarize himself with the progress and quality of the work. On the basis of its observations it will keep the Owner informed of the progress of the work, and it will endeavor to protect the Owner against defects in the work.

2.5 The Design Professional will not be responsible for nor control the construction means, methods, safety precautions and programs. The Design Professional will not be responsible for the Contractor to carry out the work in accordance with the Detailed Scope of Work, or the Contractor's acts or omissions or the acts or omissions of its Subcontractors or employees.

2.6 The Design Professional shall have access to the site at all times and shall have the authority to reject work not in conformance with the Detailed Scope of Work.

2.7 Based on its observations of the work, the Design Professional shall evaluate the Contractor's Application for Payment and shall certify those amounts requested by the Contractor for which it is in agreement.

2.8 The Design Professional will render interpretations necessary for the proper execution of the work.

2.9 Disputes between the Contractor and the Owner relating to the execution of the work or an interpretation of the Detailed Scope of Work shall be initially referred to the Design Professional who shall render a written decision.

2.10 All interpretations and decisions of the Design Professional shall be consistent with the intent of the Detailed Scope of Work.

2.11 The Design Professional will review and take appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data, and Samples for conformance with the design concept.

2.12 The Design Professional will have authority to order minor changes which do not alter the Detailed Scope of Work, the Job Order Price or Job Order Completion Time.

2.13 The Design Professional will review construction progress to determine the dates of Substantial Completion and Final Acceptance, and it will receive and forward to the Owner, for its review, written warranties and related documents required by the Detailed Scope of Work, Technical Specifications, or Contract Documents.

2.14 The duties, responsibilities and limitations of the Design Professional as the Owner's representative during construction, as set forth in the Contract Documents, will not be modified without written consent of the Owner and the Contractor.

## ARTICLE 3 - OWNER

3.1 The Owner is the person or body identified as such in the Job Order issued pursuant to this Contract and is referred to throughout the Contract Documents as if singular in number and masculine in gender.

3.2 The Owner shall, at the request of the Contractor, at the time of the execution of the Job Order, furnish to the Contractor reasonable evidence that it has taken the necessary steps to set aside sufficient financial resources to fulfill its obligations under the Job Order.

3.3 The Owner shall furnish, through the Design Professional, all necessary surveys, physical and legal descriptions, and benchmarks for the project.

3.4 The Owner will provide the Contractor, through the Design Professional and free of charge, one copy of the Job Order, Detailed Scope of Work, and any drawings, sketches, schedules, etc. referenced therein.

Additional sets will be provided on request at the cost of reproduction and handling.

3.5 The Owner shall forward all instructions concerning technical matters and the construction process through the Design Professional.

3.6 The Owner may if it so deems desirable, engage a person on a full time basis, hereafter referred to as Clerk-of-the-Works, to view and report on the construction process. The Clerk-of-the-Works will act as a liaison between the Design Professional and the Contractor for the Owner and may be engaged directly by the Owner or engaged through the Design Professional's office. While the Clerk-of-the-Works will act as a liaison, it will not be empowered to render interpretations or binding decisions for either the Owner or the Design Professional. The Clerk-of-the-Works shall have access to the site at all times.

3.7 If the Contractor fails to correct defective work or continually fails to carry out the work in accordance with the Contract Documents, the Owner, by written order, may order the Contractor to stop the work, or any portion thereof.

3.8 If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the Owner to commence corrective actions, the Owner may, after seven (7) days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy it may have, make good such deficiencies. The cost of corrections, including compensation to the Design Professional for any additional service, shall be handled as a deductive Supplemental Job Order. If funds are not available, the Contractor shall pay the difference to the Owner.

## ARTICLE 4 - CONTRACTOR

4.1 The Contractor is the person or body identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number and masculine in gender.

4.2 The Contractor shall study the Detailed Scope of Work and shall report to the Design Professional any inconsistencies or omissions it may discover. The Contractor shall not be liable to the Owner or the Design Professional for any damage resulting from such omissions in the Detailed Scope of Work.

4.3 The Contractor shall use only Shop Drawings and Product Data that have been reviewed by the Design Professional.

4.4 The Contractor shall verify at the building and site all measurements relating to its work. If any discrepancy is found to exist between measurements given in the Detailed Scope of Work and actual job or field dimensions, the Contractor shall notify the Design Professional prior to proceeding with any part of the work affected by such discrepancy. When drawings are referenced in the Detailed Scope of Work, the Contractor will be fully responsible for using only drawings of the very latest dated revised sheets of record.

4.5 After reporting to the Design Professional any error, inconsistency or omission it may discover in the Detailed Scope of Work, the Contractor shall not proceed with any work so affected without the Design Professional's written decision.

4.6 In case of inconsistencies in the Detailed Scope of Work, Technical Specifications, or any Drawings, or between the Detailed Scope of Work, Technical Specifications and Drawings, the Design Professional will determine which requirement will be the most consistent with the design intent.

4.7 The Contractor shall direct the work using its full attention and shall be entirely responsible for all construction means and methods.

4.8 The Contractor will be responsible to the Owner for the acts and omissions of its employees,

Subcontractors, and any other persons performing any of the work with the Contractor.

4.9 Unless otherwise provided in the Detailed Scope of Work, the Contractor shall provide and include all labor, materials, equipment, tools, machinery, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the work.

4.10 All materials which form a part of the work required to be executed under the Detailed Scope of Work or Technical Specifications must conform in all respects with the standard requirements named herein, or to other materials which have been submitted to the Design Professional and have received its approval.

4.11 All material delivered on premises, for which the Owner has been billed, which is to form part of the work is to be considered the property of the Owner and is not to be removed without its consent, but the Contractor shall remove all surplus material from the job site.

4.12 Wherever a material, article or piece of equipment is identified on the Detailed Scope of Work or in the Technical Specifications by reference to manufacturer's or vendor's name, trade names, catalog numbers, or the like, it is so identified for the purpose of establishing a standard, and any materials, article, or piece of equipment of other manufactures or vendors which will perform adequately within the duties imposed by the general design will be considered provided the material, article, or piece of equipment so proposed is, in the opinion of the Design Professional, of equal substance, appearance, and function, and that all technical data for the proposed substitution is submitted to the Design Professional for approval in accordance with the requirements of the Contract Documents.

4.13 The term, "Or Equal" or, "Or Approved Equal", shall mean, "In the opinion of the Design Professional, who shall make the final decision on all equivalent materials or Products submitted by the Contractor." Should the Contractor desire to substitute a process, article, etc., other than those specified, it must submit the proposed substitute to the Design Professional prior to seven (7) calendar days of the Proposal due date. The Design Professional will make the acceptability or non-acceptability of the article known prior to three (3) calendar days, excluding Saturdays, Sundays and any other legal holidays, of the Proposal due date by issuing an updated Detailed Scope of Work.

4.14 The Contractor shall assume responsibility for the proper performance of materials or products submitted as "equal" to those specified. When it is necessary that electrical or mechanical rough-in and services, or other related work be changed as a result of substitutions, the Design Professional must approve such alternate method of installation, and all such changes must be included with the substitution at no extra cost to Owner.

4.15 In all cases the burden of proof that the proposed product offered for substitution is equal or superior in construction and efficiency to that named in the Detailed Scope of Work shall rest on the Contractor and unless the proof is satisfactory to the Design Professional, the substitution will not be approved.

4.16 The Contractor shall secure all written warranties, guarantees, and manuals required in the Detailed Scope of Work or Technical Specifications and shall deliver them to the Design Professional at the time of acceptance of Substantial Completion. Warranties on manufactured items shall be by the manufacturer to the Owner. The Contractor shall secure and provide the Owner with a Use and Occupancy Certificate prior to the final payment being released by the Owner.

4.17 The Contractor shall guarantee, in writing all materials and workmanship for a period of one (1) year from the acceptance of that portion of the work, unless a longer period of time is indicated in the Detailed Scope of Work or Technical Specifications for a particular item or piece of equipment. Should a material supplier provide a warranty to the Contractor, which expires before the Contractor's warranty to the Owner, it is the Contractor's responsibility to obtain separate or extended warranties as needed to meet the guarantee provisions of this article.

4.18 The Contractor shall include verification of a building permit to the Design Professional with the first partial payment request. Plumbing and electrical certificates must be secured when roughing-in is completed. Plumbing, electrical, mechanical, and other applicable inspection certificates must be presented to the Owner prior to or at the time of review for Substantial Completion.

4.19 On award of the Job Order, unless otherwise specified, the Contractor shall take immediate steps to notify all Public Utilities and other interested parties of the requirements of the work, making necessary arrangements with these companies for the removal or rearrangement of any wires, poles, pipes, conduits, vaults, sewers, drains, catch basins, service lines, utilities and similar facilities, both overhead and underground, to accommodate in a proper manner the work which, to the fullest extent possible, the Design Professional has indicated in the Detailed Scope of Work.

4.20 It is the Contractor's responsibility to give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work.

4.21 The Contractor shall enforce discipline and good order among its employees and shall not employ on the work any unfit person or anyone not qualified in the task assigned to him.

4.22 The Contractor warrants to the Owner and the Design Professional that all materials and equipment furnished under this contract will be new unless otherwise specified, and that all work will be free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements may be considered defective. If required by the Design Professional, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

4.23 The Contractor shall not be responsible for making certain that the Detailed Scope of Work is in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Detailed Scope of Work is at variance therewith in any respect, it shall promptly notify the Design Professional in writing, and any necessary changes shall be accomplished by appropriate Supplemental Job Order.

4.24 If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules or regulations, and without such notice to the Design Professional, it shall assume full responsibility and shall bear all costs attributable thereto.

4.25 The Contractor must be fully qualified under all applicable laws for Contractors in effect at the time and at the location of the work before submitting its bid. The Contractor shall be responsible for determining that all of its Subcontractors are duly licensed in accordance with all applicable laws.

4.26 The Contractor shall provide competent engineering services to execute (but not design) the work. It shall verify at the project site all measurements relating to the work. All construction must be considered in relation to the actual location it shall occupy in the finished structure.

4.27 The Contractor will prepare and submit with the Job Order Proposal for Owner and Design Professional's information an estimated progress schedule. The schedule will be updated and submitted at the pre-construction meeting. The schedule will show the order in which the Contractor proposes to carry on the work, the date on which it will start, the major features (including procurement of materials, plant and equipment) and the contemplated dates for completing same. The schedule shall be in the form of a progress chart of suitable scale to indicate approximately the percentage of work scheduled for completion at any time. The Contractor shall enter on the chart the actual progress on a monthly basis. The Contractor shall indicate with its monthly progress payment requests a listing and explanation of any occurrences which will effect a major deviation in the progress schedule. A revised, updated, schedule shall be issued by the Contractor and submitted to the Design Professional and the Owner every three (3) months. If the Contractor fails to submit the information required by this Article, the Owner shall have the right to withhold

payments due the Contractor until such time as the information is submitted.

4.28 The Contractor shall maintain at the site for the Owner one record copy of the Job Order, Detailed Scope of Work and all Drawings, Sketches, Technical Specifications, and other documents referenced therein in good order and marked currently to record all changes made during construction, including Shop Drawings, Product Data and Samples.

4.29 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the work. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product or system for some portion of the work. Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the work will be judged.

4.30 The Contractor shall revise as necessary and submit, with reasonable promptness and in such sequence as to cause no delay in the work or in the work of the Owner or any separate contractor, all Shop Drawings, Product Data and Samples required by the Detailed Scope of Work or Technical Specificaitons. It shall be the Contractor's duty to have Subcontractors provide all necessary details in such numbers as indicated, for review by the Design Professional, and the Contractor shall make sure that the stamp of review is on details before these are used on the job. All work not in accordance with the approved shop drawings and/or samples shall be rejected and must be removed from the site without delay.

4.31 By reviewing and submitting Shop Drawings, Product Data and Samples, the Contractor represents that it has determined and verified all materials, field measurements, and field construction criteria related thereto or will do so, and that it has checked and coordinated the information contained with such submittals with the requirements of the work and of the Detailed Scope of Work and Technical Specifications.

4.32 Any and all Shop Drawings used for the fabrication and/or installation of any equipment or materials in connection with the project must bear the proper review stamps of both the Design Professional and the Contractor. Failure to meet this requirement will be grounds for rejection of the work involved.

4.33 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Detailed Scope of Work by the Design Professional's review of Shop Drawings, Product Data or Samples, unless the Contractor has specifically informed the Design Professional in writing of such deviation at the time of submission and the Design Professional has given written approval to the specific deviation.

4.34 No portion of the work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been reviewed and found acceptable by the Design Professional.

4.35 The Contractor shall be entirely responsible for the work until acceptance as Substantially Complete. Until completion and acceptance of the work, it shall be responsible for the repair of damage or replacement of all or any portions of the work which are rendered unacceptable.

4.36 Upon completion of the work and at the time of Substantial Completion mylars, provided by the Design Professional, marked by the Contractor to record all changes made during construction, shall be delivered to the Design Professional for transmittal to the Owner in the form of "record" drawings. Final payment will not be made until these drawings are received by the Owner. The Design Professional shall review the Contractor's "record" drawings prior to submission to Owner. The Owner may provide computer drawings, or paper drawings, instead of mylars. The Contractor shall provide record drawings in the medium provided by the Owner.

4.37 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Detailed Scope of Work and shall not unreasonably encumber the site with any materials or equipment.

4.38 Except where the Owner specifically grants use of existing facilities for use by the Contractor, it shall provide and maintain sanitary temporary toilets to be located where directed. Said toilets shall be enclosed, weatherproofed, and shall be kept in a sanitary condition at all times and shall meet all requirements of local regulations. At completion of the work, the temporary toilets shall be removed. Contractor shall comply with all health regulations of the State Board of Health. Contractor is to provide sufficient storage space by shed buildings for materials which might be damaged through exposure to weather and such sheds as needed for tools, etc. Contractor shall maintain access road and safety fences as required and shall leave site in first class condition at completion of Contract. It shall place all necessary guards and barricades at the job and, at night, it shall maintain suitable and sufficient lights until acceptance of work by Owner. Contractor shall leave site clean each night.

4.39 The Owner shall have the right to use any and all portions of the building that have reached such a stage of completion as to permit occupancy and substantial acceptance, if desirable to the needs or interest of the Owner, provided such occupancy does not hamper the Contractor or prevent its efficient completion of the work.

4.40 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the work or to make its several parts fit together properly.

4.41 The Contractor shall not damage or endanger any portion of the work or the work of the Owner or any separate contractors by cutting, patching, or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor its consent to cutting or otherwise altering the work.

4.42 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the work it shall remove all its waste materials and rubbish from and about the project as well as all its tools, construction equipment, machinery, and surplus materials. If the Contractor fails to clean up at the completion of the work, the Owner may do so and the cost thereof shall be charged to the Contractor.

4.43 The Contractor shall clean all glass; replace any cracked or broken glass, remove stains, spots, marks, and dirt from all surfaces; clean all fixtures and finished metal work; wash all concrete, tile, terrazzo, or stone floors; clean marble, and clean and wax all resilient floors. Plastic glazing shall be unscratched upon completion of cleaning.

4.44 The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights, and shall save the Owner harmless from loss on account thereof.

4.45 In addition to its obligation to provide insurance as specified herein, the Contractor, its subcontractors, agents and assigns shall defend, indemnify and hold harmless the Town, including but not limited to, its elected officials, and its officers, the Owner and/or the Design Professional from any and all claims made against the Town, the Owner and/or the Design Professional, including but not limited to, damages, awards, costs and reasonable attorneys fees, to the extent any such claim directly and proximately results from the negligent acts, errors, or omissions in performance of services by the Contractor during the Contractor's performance of this Agreement or any other Agreements of the Contractor entered into by reason thereof. The Town, the Owner and/or the Design Professional agree to give the Contractor prompt notice of any such claim and absent a conflict of interest, an opportunity to control the defense thereof.

4.46 In any Claims against the Owner or the Design Professional or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or

other employee benefit acts.

4.47 The obligations of the Contractor shall not extend to the liability of the Design Professional, its agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or Technical Specifications, or (2) the giving of or the failure to give directions or instructions by the Design Professional, its agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

## ARTICLE 5 - SUBCONTRACTORS

5.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the work. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or its authorized representative.

5.2 A Sub-Subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the work. The term Sub-Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Sub-Subcontractor or an authorized representative.

5.3 The Contractor shall submit with each Proposal the names of the persons, entities, material suppliers, and fabricators proposed for each portion of work. The Design Professional will reply promptly notifying the Contractor of any proposed person or entity to whom it or the Owner has a reasonable objection after due investigation.

5.4 The Contractor shall not contract with any such proposed person or entity to whom the Owner or the Design Professional has made reasonable objection. The Contractor shall not be required to contract with anyone to whom it has a reasonable objection after due investigation.

5.5 The Design Professional's and Owner's approval or disapproval of any Subcontractor, person or organization will not relieve the Contractor of its responsibility for the work, nor will the approval of a particular Subcontractor or person or organization be construed as approval of any particular process or materials.

5.6 The Design Professional or Owner will not attempt to settle differences between the Contractor and any of its Subcontractors or a person or organization with whom they have contracted.

5.7 By an appropriate written agreement the Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Contract Documents, assumes toward the Owner and the Design Professional. Said agreement shall preserve and protect the rights of the Owner and the Design Professional under the Contract Documents with respect to the work to be performed by the Subcontractor. The Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with its Subcontractors. The Contractor shall make available to each proposed Subcontractor prior to the execution of the Subcontract, copies of the Detailed Scope of Work and Contract. Each Subcontractor shall similarly make copies of such Documents available to its Sub-Subcontractors.

## ARTICLE 6 - WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 The Owner reserves the right to perform work related to the Project with its own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or

similar conditions of the Contract.

6.2 The Contractor shall afford the Owner and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate its work with theirs as required by the Detailed Scope of Work.

6.3 If any part of the Contractor's work for proper execution or results depends upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the work, promptly report to the Design Professional any apparent discrepancies or defects in such other work that render it unsuitable for proper execution and results. Failure of the Contractor to so report shall constitute an acceptance of the Owner's or separate contractors' work as fit and proper to receive its work, except as to defects which may subsequently become apparent in such work by others.

6.4 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor.

6.5 Should the Contractor wrongfully cause damage to the work or property of the Owner, or any other separate contractor, the Contractor shall promptly remedy such damage. If such separate contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for any attorneys' fees and court or arbitration costs which the Owner has incurred.

6.6 If a dispute arises between the Contractor and any separate contractors as to their responsibility for cleaning up, the Owner may clean up and charge the cost to the Contractor responsible as determined to be just and fair by the Design Professional.

## ARTICLE 7 - MISCELLANEOUS PROVISIONS

7.1 The Contractor agrees to conform to all applicable laws and ordinances and statutes, as amended, of the Federal Government, and the State of New York

7.2 The Owner and the Contractor each binds himself, its partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other. In no event shall anything in this Agreement be deemed to confer upon any person or entity agency status or third party beneficiary rights against the Town.

7.3 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

7.4 Should either party to the Contract suffer injury or damage because of any act or omission of the other party or any of its employees or agents, a claim shall be made in writing to such other party within a reasonable time after the first observance of such damage.

7.5 The Owner may require the Contractor to furnish bonds in a form acceptable to the Owner covering the faithful performance of a Job Order and payment of all obligations arising thereunder. The executed bonds, together with the bonding agent's power of attorney, shall be furnished to the Owner prior to the Owner issuing the Job Order.

7.6 The duties and obligations imposed by the Contract Documents and the rights and remedies available

thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner, Design Professional or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

7.7 If the Detailed Scope of Work, Technical Specifications, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the work to be inspected, tested, or approved, the Contractor shall give the Design Professional timely notice of its readiness so they may observe such inspection, testing. The Owner shall formally authorize all such tests; the Contractor shall be responsible for coordinating such tests.

7.8 The Design Professional may if it determines that any of the work requires special inspection or testing, upon written authorization from the Owner, instruct the Contractor to order such special inspection or testing. If such special inspection or testing reveals a failure of the work to comply with the requirements of the Detailed Scope of Work or Technical Specifications, the Contractor shall bear all costs thereof, including compensation for the Design Professional's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Supplemental Job Order shall be issued.

7.9 Any controversy, dispute or claim arising out of or related to this Agreement or breach of this Agreement may be settled solely by confidential binding arbitration by a single arbitrator in accordance with the commercial arbitration rules of the American Arbitration Association (AAA) in effect at the time the arbitration commences. The award of the arbitrator shall be final and binding. The prevailing party shall be entitled to recover, as part of its judgment, reasonable legal fees and costs from the other party. The arbitration shall be in Hartford County, Connecticut.

7.10 If arbitration is agreed to, notice of the demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Design Professional. The demand for arbitration shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.

7.11 Unless otherwise agreed in writing, the Contractor shall carry on the work and maintain its progress during any arbitration proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

7.12 At any time during normal business hours, and as often as may be deemed necessary, the Contractor shall make available to the Owner, for examination, all records with respect to all matters covered by this Agreement.

7.13 Any failure by the Owner or Contractor to insist upon the strict performance by the other of any of the terms and provisions hereof shall not be a waiver, and each party hereto, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the other, of any and all of the terms and provisions of the Agreement and neither party hereto shall be relieved of such obligation by reason of the failure of the other to comply with or otherwise enforce any of the provisions of this Agreement.

7.14 All rights exercisable by and remedies of the Owner hereunder shall be cumulative and the exercise or beginning of the exercise by the Owner of any of its rights or remedies hereunder shall not preclude the Owner from exercising any other right or remedy granted hereunder or permitted by law.

## ARTICLE 8 - JOB ORDER COMPLETION TIME

8.1 The Job Order Completion Time is the period of time, based on calendar days, allotted in the Job Order for Substantial Completion of the Detailed Scope of Work, including authorized adjustments thereto.

8.2 The date of commencement of the work is the date established in the Job Order. If there is no date set forth in the Job Order, it is the date agreed to by the parties.

8.3 The Date of Substantial Completion of the work or designated portion thereof is the Date certified by the Design Professional when construction is sufficiently complete, in accordance with the Detailed Scope of Work, so the Owner can occupy or utilize the work or designated portion thereof for the use for which it is intended.

8.4 Time is of the essence and completion of the work must be within the Job Order Completion Time, subject to such extensions as may be granted. The Contractor agrees to commence work on the date set forth in the Job Order and to substantially complete the project within the Job Order Completion Time. The Owner shall suffer financial loss if the Project is not substantially complete within such time. The Contractor and its Surety agree that, if the Request for Proposal states that liquidated damages may apply to such Job Order, the Owner may deduct a sum equal to 0.5% of the Job Order Price from the amount of compensation to be paid him for each day after the above mentioned completion time, Sundays, and holidays included, that the Detailed Scope of Work remains incomplete. This amount is agreed upon as the proper measure of the liquidated damages that the Owner will sustain per day, by the failure of the Contractor to complete the work at the stipulated time, and is not to be construed in any sense, as a penalty. The expiration of the Job Order Completion Time without the Detailed Scope of Work having been completed shall in itself constitute a default without the necessity of any notice being given to the Contractor.

8.5 If the Contractor is delayed at any time in the progress of the work by any act or neglect of the Owner or the Design Professional or by any employee of either, or by any separate contractor employed by the Owner, or by changes ordered in the work, or by labor disputes, fire, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the Owner pending arbitration, or by any other cause which the Design Professional determines may justify the delay, then the Job Order Completion Time shall be extended by a Supplemental Job Order or other writing for such reasonable time as the Design Professional and the Owner may determine.

8.6 Any claim for extension of time shall be made in writing at the end of each month to the Design Professional in order for them to be considered; otherwise it shall be waived. In case of a continuing delay only one claim is necessary. The Owner must approve all claims for extension of time.

8.7 Forces employed and rate of progress must be sufficient for the work as scheduled. If at any time the work lags, sufficiently increased forces and hours shall be used to maintain the schedule.

8.8 The completion date for each project shall be established by the number of days stipulated in the Job Order Completion Time and liquidated damages may be assessed for every day beyond that date. If, however, the Contractor requests an extension of time beyond that date and the request is made in writing and if it is granted by the Owner, the date on which liquidated damages shall be assessed shall be altered accordingly.

8.9 The Job Order Completion Time may be extended for extreme inclement weather. The Contractor agrees that the measure of extreme weather shall be the number of days in excess of the construction duration on which there are site conditions verified with and approved by the Design Professional at the time of the delay, which does not permit work immediately after previous inclement weather. Changes in the Job Order

Price will not be authorized because of adjustment of the Job Order Completion Time due to weather.

## ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 The Job Order Price, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the Detailed Scope of Work.

9.2 The Owner 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 Owner may make partial, monthly payments based on a percentage of the work completed.

9.3 Before submitting an Application for Payment (Final or Partial) the Contractor shall reach an agreement with the 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.

9.4 If requested by the Owner, the Contractor shall submit to the Owner and the Design Professional a Schedule of Values. The total of all items shall equal the Job Order Price and shall be consistent with the costs set forth in the Price Proposal. This schedule, when approved by the Owner and Design Professional, shall be used only as a basis for the Contractor's Application for Payment. In general, the Job Order Price shall be distributed in accordance with the types of work designated by the Detailed Scope of Work or sections of the Technical Specifications.

9.5 Monthly, the Contractor shall submit to the Design Professional an itemized Application for Payment, notarized if required by the Owner, supported by such data substantiating the Contractor's right to payment as the Owner or the Design Professional may require. Application for Payment shall be submitted on the date agreed to by the parties each month for the value of labor and materials incorporated in the work and of materials and/or equipment stored at the site as of the end of the preceding month, less retainage as determined by the Owner.

9.6 Prior to the request for final payment, the Contractor shall secure and provide the Owner with a Use and Occupancy Certificate or other required documentation.

9.7 Payments may be made on account of materials or equipment not incorporated in the work but delivered and suitably stored at the site. If approved in advance by the Owner, payments may be made for materials or equipment suitably stored in a bonded warehouse at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the site for materials and equipment stored off the site.

9.8 The Design Professional will, within seven (7) days after the receipt of the Contractor's Application for Payment, either approve such Application for Payment, for such amount as the Design Professional determines is properly due, or notify the Contractor in writing its reasons for withholding a payment or a portion thereof.

9.9 The approval of the Application for Payment will constitute a representation by the Design Professional to the Owner, based on its observations at the site and the data comprising the Application for Payment, that the work has progressed to the point indicated; that, to the best of its knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion); and that the Contractor is entitled to payment in the amount certified. However, by approving an Application for Payment, the Design Professional shall not thereby be deemed to represent that it has made exhaustive or continuous on-site inspections to check the quality or quantity of the work or that it has reviewed the construction means,

methods, techniques, sequences, or procedures, or that it has made any examination to ascertain how or for what purpose the Contractor has used the monies previously paid on account of the Job Order Price.

9.10 After the Design Professional has approved the Application for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents and as required by Connecticut law, less retainage if applicable.

9.11 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's work. The Contractor shall by an appropriate agreement with each Subcontractor, require each Sub-Subcontractor to make payments to its Sub-subcontractors in similar manner.

9.12 Contractor shall pay the Contractor Administrative Fee on each payment received from a Owner as described in more detail in the bid documents. The cost of the Administrative Fee shall be included in the Contractor's Adjustment Factors. Failure to pay such Fee may result in the Contractor being restricted from participating in future projects and/or cancellation of the contract.

9.13 The Design Professional may, on request, and at its discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Design Professional on account of work done by such Subcontractor.

9.14 Neither the Owner nor the Design Professional shall have any obligation to pay or to see to the payment of any monies to a Subcontractor except as may otherwise be required by law.

9.15 No progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any work not in accordance with the Contract Documents.

9.16 When applying for payment, the Contractor shall submit to the Design Professional an original, and copies if requested, of its Application for Payment. All Applications for Payment, if required by the Owner, must be notarized.

9.17 The Contractor shall submit with each Application for Payment, certified payroll records, release of lien statements, warranties, guarantees, or such other documentation as the Owner may require.

9.18 The Design Professional may decline to approve payment, in whole or in part, to the extent necessary to protect the Owner, if in its opinion it is unable to make the representations to the Owner required elsewhere in this Article. The Design Professional may also decline to approve payment because of subsequently discovered evidence or subsequent observations. It may nullify the whole or any part of any approved payment to such extent as may be necessary in its opinion to protect the Owner from loss because of:

a. defective work not remedied;

b. liens;

c. third party claims filed;

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

e. reasonable evidence that the work cannot be completed for the unpaid balance of the Job Order Price;

f. damage to the Owner or another Contractor;

g. persistent failure to carry out the work in accordance with the Contract Documents.

9.19 The Owner shall review the request for payment and shall pay all amounts certified by the Design Professional with which it is in agreement. If the Owner pays less than the amount recommended by the Design Professional, it shall notify the Contractor and the Design Professional in writing of its actions and the reasons for the actions taken. If the Design Professional does not approve an Application for Payment, through no fault of the Contractor, on a timely basis after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor on a timely basis any amounts certified by both him and the Design Professional, then the Contractor may, upon seven (7) days written notice to the Owner and the Design Professional, stop the work until payment of the amount owing has been received. A Supplemental Job Order shall be issued compensating the Contractor for the amount of the Contractor's substantiated costs of shut down, delay, and start-up.

9.20 When the Contractor considers that the Detailed Scope of Work, or a designated portion thereof which is acceptable to the Owner, is substantially complete, it shall prepare for submission to the Design Professional a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents. When the Design Professional on the basis of an inspection determines that the Detailed Scope of Work or designated portion thereof is substantially complete, it will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion. Warranties required by the Detailed Scope of Work or Technical Specificaitons shall commence on the Date of Substantial Completion unless otherwise provided and agreed upon. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

9.21 When the project has been accepted as "Substantially Complete", a "punch list of incomplete items", and/or, "exceptions" and a dollar value related thereto will be prepared. Payment withheld from the Contractor will be the sum of the following items:

a. Normal retainage for the completed portion of work.

b. Value of incomplete or, "punch list" portion of work.

c. Value of recorded liens, third party claims filed, payroll under-payment claims as filed with the Contractor.

9.22 Upon receipt of written notice that the work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Design Professional will promptly make such inspection and, when it finds the work acceptable under the Contract Documents and the Detailed Scope of Work fully performed, it will promptly issue a final Certificate for Payment stating that to the best of its knowledge, and information, and observations and inspections, the Detailed Scope of Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance noted in said final Certificate, is due and payable.

9.23 If all punch list items have not been completed by the end of the forty-five (45) day lien period, through no fault of the Design Professional or Owner, the Owner may hold the Contractor in default. If the Owner finds the Contractor is in default, the Surety shall be notified. If within forty-five (45) days after notification, the Surety has not completed the punch list, through no fault of the Design Professional or Owner, the Owner may, at its option, contract to have the balance of the work completed and pay for such work with the unpaid fines remaining in the Job Order Price. Finding the Contractor in default shall constitute a reason

for disqualification of the Contractor from bidding on future Owner contracts. If the Surety fails to complete the punch list within the stipulated time period, the Owner may not accept bonds submitted, in the future, by the Surety.

9.24 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Owner:

a. an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Owner or its property might in any way be responsible, have been paid or otherwise satisfied including submission of a clear Lien and Privilege Certificate;
b. Consent of Surety, if any, to final payment;
c. a Use and Occupancy Certificate;
d. satisfactory completion of all compliance requirements and acceptance by the Owner of all compliance documents; and
e. if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Job Order, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.25 If, after completion of the Detailed Scope of Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Supplemental Job Orders affecting final completion, and the Design Professional so confirms, the Owner shall, upon application by the Contractor and certification by the Design Professional, and without terminating the Job Order, make payment of the balance due for that portion of the work fully completed and accepted. If the remaining balance for work not fully completed or corrected is less than the retainage stipulated, the written consent of the surety to the payment of the balance due for that portion of the work fully completed and accepted shall be submitted.

9.26 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

a. unsettled liens;

b. faulty or defective work appearing after Substantial Completion or latent defects in the materials or items provided;

c. failure of the work to comply with the requirements of the Detailed Scope of Work, Technical Specifications or other Contract Documents; or

d. terms of any special warranties required by the Detailed Scope of Work or Technical Specifications.

The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

9.27 Should there be any defects in labor, material, or installation which were not previously discovered, and/or which have not been corrected by the time final payment is due, the Owner may, if it wishes, withhold from the final payment sufficient funds to cover the cost of making such corrections.

9.28 Contractor shall submit to Design Professional an original and three copies of all warranties, guarantees, and maintenance manuals for distribution to the Owner.

## ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

10.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs. It shall take all reasonable precautions for the safety and shall take all reasonable steps to prevent damage, injury, or loss of the work itself and all material and equipment incorporated, other property at the site or adjacent thereto, and all employees or other persons affected by the work.

10.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

10.3 The Contractor must adhere to any security and/or property entrance policies and procedures established for particular Owner locations. It is the responsibility of the Contractor to understand and adhere to such policies and procedures prior to any attempt to enter the premises.

10.4 The Contractor shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Owners and users of adjacent utilities.

10.5 When the use or storage of hazardous materials or equipment is necessary for the execution of the work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.6 The Contractor shall be entirely responsible for the work until acceptance as Substantially Complete. Until completion and acceptance of the work, it shall be responsible for the replacement of broken, cracked, scarred or otherwise damaged glass as well as for the proper repair of damage to or replacement of all or any other parts or portions of the work including materials, fixtures and equipment furnished by the Contractor, its Subcontractors, or their Subcontractors.

10.7 The Contractor shall be responsible for the adequate strength and safety of all scaffolding, staging and hoisting equipment and for temporary shoring, bracing and tying.

10.8 The Contractor shall comply with applicable safety and health regulations for construction published and in force as of the bid date by the Department of Labor, Bureau of Labor Standards, and any subsequent relations issued by the Department of Labor requiring compliance with the Occupational Safety and Health Act of 1970.

10.9 The Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and the Design Professional.

10.10 The Contractor shall not load or permit any part of the work to be loaded so as to endanger its safety.

10.11 In any emergency affecting the safety of persons or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided elsewhere in these conditions.

## ARTICLE 11 - INSURANCE

11.1 The Contractor shall purchase and maintain insurance as required by the bid documents.

11.2 Before an Owner issues a particular Job Order, the Contractor shall deliver to that Owner certificates of insurance, which may differ from the insurance requirements set forth above.

11.3 An Owner may require the Contractor to obtain a Builder's Risk Policy for a particular project. The cost of such Builder's Risk policy divided by 0.9275 shall be reimbursed to the Contractor without mark-up.

## ARTICLE 12A – CONTRACT MODIFICATIONS

12A.1 Changes to the Contract may be accomplished after execution of the Contract and without invalidating the Contract, by Change Order.

## ARTICLE 12B - CHANGES IN THE DETAILED SCOPE OF WORK

12B.1 The Owner, without invalidating the Job Order or this Contract, may order changes in the Detailed Scope of Work consisting of additions, deletions or other revisions. Such changes shall be embodied in a Supplemental Job Order developed in accordance with the Procedure for Developing all Proposals and Job Orders. A Supplemental Job Order may alter the Job Order Completion Time. All such changes in the Detailed Scope of Work shall only be authorized by Supplemental Job Order.

12B.2 The cost to the Owner resulting from a change in the Detailed Scope of Work shall be determined by the Procedure for Developing all Proposals and Job Orders. Credits for Pre-priced and Non Pre-priced Tasks shall be given at 100% of the value at which they were included in the original Job Order Price Proposal.

12B.3 If the Contractor wishes to make a claim for an increase in the Job Order Price, it shall give the Design Professional written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the work, except in an emergency endangering life or property.

12B.4 If the Contractor claims that additional cost is involved because of, but not limited to: (1) any written interpretation; (2) any order by the Owner to stop the work where the Contractor was not at fault; (3) any written order for a minor change in the work; or (4) failure of payment by the Owner, the Contractor shall make such claim within twenty days after the occurrence.

12B.5 The Design Professional will have the authority to order minor changes in the Detailed Scope of Work not involving an adjustment in the Job Order Price or an extension of the Job Order Completion Time and not inconsistent with the intent of the Detailed Scope of Work. Such changes shall be effected only by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

## ARTICLE 13 - UNCOVERING AND CORRECTION OF WORK

13.1 If any portion of the work should be covered contrary to the request of the Design Professional or to requirements specifically expressed in the Detailed Scope of Work or Technical Specifications, it must, if required in writing by the Design Professional, be uncovered for its observation and replaced at the Contractor's expense.

13.2 If any other portion of the work has been covered which the Design Professional has not specifically requested to observe prior to being covered, the Design Professional may request to see such work and

it shall be uncovered by the Contractor. If such work is found in accordance with the Detailed Scope of Work and Technical Specifications, the cost of uncovering and the replacement thereof shall, by appropriate Supplemental Job Order, be charged to the Owner. If such work is found not in accordance with the Detailed Scope of Work and Technical Specifications, the Contractor shall pay such costs unless it is found that this condition was caused by the Owner or a separate contract in which event the Owner shall be responsible for the payment of such costs.

13.3 The Contractor shall bear all costs involved, including compensation for any Additional Services by the Design Professional that were made necessary, in promptly correcting any work rejected by the Design Professional as failing to conform to the Detailed Scope of Work and Technical Specifications.

13.4 If, within one year after the Date of Substantial Completion of the work or designated portion thereof or within one year after acceptance by the Owner of designated equipment, or within such longer period of time as may be prescribed by law, or by the terms of any applicable special warranty required by the Detailed Scope of Work or Technical Specifications, any of the work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

13.5 If the Contractor does not proceed with correction of such defective or non-conforming work within a reasonable time fixed by written notice from the Design Professional, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay for the cost of such removal and storage within ten days thereafter, the Owner may upon ten additional days and written notice, sell such work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Design Professional's Additional Services made necessary thereby. If such proceeds of sale do not cover all costs that the Contractor should have borne, the difference will be charged to the Contractor and an appropriate Supplemental Job Order will be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor will pay the difference to the Owner.

13.6 If the Owner prefers to accept defective or non-conforming work, it may do so instead of requiring its removal and correction, in which case a Supplemental Job Order will be issued to reflect a reduction in the original Job Order Price where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 14 - EVENTS OF DEFAULT AND REMEDIES

### 14.1 Events of Default

Any of the following occurrences or acts shall constitute an Event of Default under this Contract:

a. If default shall be made by the Contractor, its successors or assigns, in the performance or observance of any of the covenants, conditions or agreements on the part of the Contractor set forth in this Contract; or

b. If any determination shall have been made by competent authority such as, but not limited to, any federal, state or local government official, or a certified public accountant, that the Contractor's management or any accounting for its funding, from whatever source, is improper, inadequate or illegal, as such management or accounting may relate to the Contractor's performance of this contract; or

c. If a decree or order by a court having jurisdiction in the matter shall have been entered adjudging the

Contractor bankrupt or insolvent or approving as properly filed a petition seeking reorganization, readjustment, arrangement, composition or similar relief for the Contractor under the federal bankruptcy laws, or any other similar applicable federal or state law; or

d. If any competent authority shall have determined that the Contractor is in default of any federal, state or local tax obligation; or

e. If the Design Professional has not issued a Certificate for Payment and the Owner has not made payment thereon, within 45 calendar days.

14.2 **Election of Remedies**

If any Event of Default hereunder shall have occurred and be continuing, the Owner may elect to pursue any one or more of the following remedies, in any combination or sequence:

a. Take such action as it deems necessary, including, without limitation, the assessment of liquidated damages; and/or
b. Suspend the provision of services; and/or
c. Require the Contractor to correct or cure such default to the satisfaction of the Owner; and/or
d. Terminate the Job Order for Cause in accordance with Section 15 hereof.

The selection of any remedy shall not prevent nor stop the Owner from pursuing any other remedy and shall not constitute a waiver by the Owner of any other right or remedy.

## ARTICLE 15 - TERMINATION OF THE JOB ORDER

"Termination", for the purpose of this Contract, shall mean the cessation, upon the effective date of termination, of the following obligations only: The Contractor's obligation to perform the services described in the Detailed Scope of Work and in accordance with any issued Job Orders, and the Owner's obligation, as described in Article 9 - Payments And Completion herein, to pay for such uncompleted services.

15.1. Termination for Cause - Upon the occurrence of any Event of Default, as set forth in Article 14 above, the Owner may terminate the Job Order by giving ten (10) days written notice thereof to the other party.

15.2 Termination for Convenience - The Owner may terminate the Job Order at any time by giving thirty (30) days written notice thereof to the Contractor.

15.3. Payment upon Termination - In the event the Job Order is terminated as herein provided, the Owner shall make full payment to the Contractor for all services performed up to and including the date of termination within ten (10) days of such date of termination, calculated in accordance with the Procedure for Developing all Proposals and Job Orders. However, if the Contractor has damaged the Owner, such payment may be withheld until the Owner determines whether or by how much such payment should be reduced.

15.4 If the work is stopped for a period of thirty days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the work under a contract with the Contractor, or if the work should be stopped for a period of thirty days by the Contractor because the Design Professional has not issued a Certificate for Payment or because the Owner has not made payment thereon, then the Contractor may, upon seven additional days written notice to the Owner and Design Professional, terminate the Job Order and recover from the Owner payment for all work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including

overhead and profit calculated in accordance with the Procedure for Developing all Proposals and Job Orders.

15.5 If the Contractor is adjudged as bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which an extension of time is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which an extension of time is provided, to supply enough properly skilled workmen or proper materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the Owner, upon certification by the Design Professional that sufficient cause exists to justify such action, may without prejudice to any right or remedy and after giving the Contractor and its surety, if any, seven days written notice, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the work by whatever method it may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished.

15.6 If the unpaid balance of the Job Order exceeds the costs of finishing the work, including compensation for the Design Professional for Additional Services made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or to the Owner as the case may be, shall be certified by the Design Professional and this obligation for payment shall survive the termination of the Job Order.

15.7 If an agreed sum of liquidated damages has been established, termination by the Owner under this Article will not relieve the Contractor of its obligations under the liquidated damages provisions and the Contractor shall be liable to the Owner for per diem liquidated damage, unless it is shown that the Owner did not have proper and sufficient grounds to terminate the contract for non-performance by the Contractor.

## ARTICLE 16 - FORCE MAJEURE

16.1 Owner and/or Contractor shall not be in default if either is unable to fulfill, or is delayed in fulfilling, any of its respective obligations hereunder in spite of its employment of best efforts and due diligence, as a result of natural disasters, unusually severe weather, catastrophic events, war, governmental preemption in a national emergency, or enactment of or change in law, rule or regulation which adversely affect Owner and/or Contractor's ability to perform its respective obligations under this Contract. If the Owner and/or Contractor believe that a hindrance or delay has occurred, it shall give prompt written notice to the other party of the nature of such hindrance or delay, its effect and the action needed to avoid the continuation of such hindrance or delay. Notwithstanding notification of a claim of hindrance or delay by the Owner and/or Contractor, such request shall not affect, impair or excuse the other party to this Contract from the performance of its obligations hereunder unless its performance is impossible, impractical or unduly burdensome or expensive.

16.2 If a Force Majeure effects the use of property or equipment for which lease payments are being made then those payments will be waived until their use has been restored. Waived payments will not be subject to interest penalties or other fees.

16.3 Changes in the economics of this Contract or changes in Contractor's economic condition shall not constitute a Force Majeure excusing Contractor's performance under this Contract.

## ARTICLE 17 - STATE LICENSING REQUIREMENTS

17.1 The Contractor and its subcontractors must obtain and maintain as current all licenses required by state or local laws, codes, regulations or rules. The Contractor shall upon request at any time during the term of

this Contract submit to the Owner evidence that it and its subcontractors hold the required licenses.

## ARTICLE 18 - PREVAILING WAGE RATES

18.1 The Contractor shall comply with all laws and regulations concerning Prevailing Wage Rates. If required, certified payroll records will be submitted with each Application for Payment.

## ARTICLE 19 - EQUAL EMPLOYMENT OPPORTUNITY/AMERICANS WITH DISABILITIES ACT

19.1 The Contractor agrees to abide by Executive Orders Number 3 and 17 of the State of Connecticut; and Presidential Executive Orders Number 11246, 11375 and 11063.

In carrying out this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, mental disability, physical handicap, or sexual preference.

The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment without regard to their race, color, religion, age, sex, national origin, mental disability, physical handicap, or sexual preference. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training; including apprenticeship.

The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government, setting forth the provisions of the non-discrimination clause. The Contractor shall state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, age, sex, national origin, mental disability, physical handicap, or sexual preference. The Contractor shall incorporate, or cause to be incorporated, this provision in any and all subcontracts entered into pursuant to this Agreement.

19.2 The Contractor shall not discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of the Contractor, or be subjected to discrimination by the Contractor. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations provided by the Contractor.

Any television public service announcement that is produced or funded in whole or in part under this Contract shall include closed captioning of the verbal content of such announcement. The Contractor shall not discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

The Contractor shall not permit coercion, intimidation, threatening, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

## ARTICLE 20 - OSHA 10 HOUR TRAINING

20.1 When applicable for a Job Order, Contractor shall comply with all applicable provisions of the law which requires for certain projects, that each contractor furnish proof that all employees performing manual labor have completed coursework in construction safety and health approved by the federal Occupational Safety and Health Administration.

End of General Conditions

**JOB ORDER CONTRACTING**
**FORM OF CONTRACT**

CONTRACT NUMBER: JOC · 2017 · 05 · HVAC

REGION 5

CONTRACT TRADE HVAC

This Agreement dated 3/23/2017, by and between the Town of Greece, hereinafter referred to as the Town and JOHN W. DANFORTH COMPANY at the following address _____

hereinafter referred to as the CONTRACTOR.

WITNESSETH: TOWN and CONTRACTOR for the consideration hereafter agree as follows:

## ARTICLE 1. CONTRACT DOCUMENTS

A. Contract Documents: This Form of Contract; the Standard Agreement, including Attachment A: Scope of Work, Attachment B: Bid Form, Attachment C: Required Forms, Attachment D: JOC Special Conditions, Attachment E: General Conditions, Attachment F: Form of Contract, Attachment G: Construction Task Catalog, Attachment H: Technical Specifications, the Contractor's Bid, any addenda issued prior to execution of the Contract, any Contract Modifications issued after the execution of the Contract, all Job Orders and related documents including, but not limited to: the Detailed Scope of Work, the Contractor's Job Order Proposal, and any Supplemental Job Orders.

B. Additional terms and conditions of a Job Order issued by an Owner in connection with any Project, including supplemental technical specifications referenced therein, shall govern.

C. The Contractor shall, within two (2) business days of receipt of a Job Order from an Owner, provide notification to Gordian. of each Job Order by forwarding a copy of the Job Order via email to PO@EZIQC.com or via facsimile to (864) 233-9100.

D. The Contractor shall, within two (2) business days of sending an Invoice to an Owner, provide notification to Gordian or their designated representative of each Invoice by forwarding a copy of the Invoice via email to Invoice@EZIQC.com or via facsimile to (864) 233-9100.

## ARTICLE 2. SCOPE OF WORK

A. The Contractor shall provide the services required to develop each Job Order in accordance with the procedures for developing Job Orders set forth in Attachment D.

B. Each Job Order developed in accordance with this Agreement will be issued by the Town or an individual Owner. The Job Order will require the Contractor to perform the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price.

C. It is anticipated that the Contractor will perform Work primarily in the assigned region. However, the parties may agree that the Contractor can perform Work in a different region at its current Adjustment Factors.

## ARTICLE 3. THE AGREEMENT PRICE

A. This Form of Contract is an indefinite-quantity contract for construction work and services. The Estimated Annual Value of this Agreement is $ 750,000. The Contractor may be issued Job Orders exceeding the Estimated Annual Value during any year of the Contract. The Contractor is not guaranteed to receive this volume of Job Orders. It is merely an estimate.

B. The Contractor shall perform any or all Tasks in the Construction Task Catalog for the Unit Price appearing therein multiplied by the following Adjustment Factors:

**Normal Working Hours Adjustment Factor:** Contractor shall perform Tasks Monday through Friday 7:00 am to 4:00 pm except holidays.

1.2289
(Specify to four (4) decimal places)

**Other than Normal Working Hours Adjustment Factor:** Contractor shall perform Tasks Monday through Friday 4:01 pm to 6:59 am and all day Saturday, Sunday and Owner holidays.

1.2990
(Specify to four (4) decimal places)

## ARTICLE 4. TERM OF THE AGREEMENT

A. The Base Term of the Contract is one year. There is one (1) bilateral Option Term. Both parties must agree to extend the Contract for an Option Term. The duration of the Option Term is one year. The Town and the Contractor may agree to extend the term of the Option Term.

B. All Job Orders issued during the 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.

# ATTACHMENT G – THE CONSTRUCTION TASK CATALOG®

The Construction Task Catalog® is a separate document available as a PDF attachment contained on the CD-ROM. The Construction Task Catalog® is hereby included as a Contract Document by reference.

The CD-ROM contains three (3) Construction Task Catalogs®. Refer to the list below to determine which Construction Task Catalog® applies to a specific region.

**Construction Task Catalog® #1** applies to Regions 4 and 5

**Construction Task Catalog® #2** applies to Regions 6 – 15

**Construction Task Catalog® #3** applies to Regions 16 and 17

# ATTACHMENT H – THE TECHNICAL SPECIFICATIONS

The Technical Specifications is a separate document available as a PDF attachment contained on the CD-ROM. The Technical Specifications are hereby included as a Contract Document by reference.

# AMENDMENT #1

**Dated: January 10, 2017**

**AMENDMENT**
**TOWN OF GREECE**
**STANDARD AGREEMENT FOR SERVICES**
**2017 JOB ORDER CONTRACTING SERVICES**

This Amendment applies to all contracts (General Construction, HVAC, Plumbing and Electric) for all Regions, as listed on Attachment A, Scope of Work, pages 11 and 12: JOC-2017-04-GC through JOC-2017-17-ELEC

There was an error in the description of the Regions covered by Construction Task Catalog #2. Delete the following sentence in Paragraph 4.3, Attachment A, Scope of Work:

> "Construction Task Catalog #2 applies to Regions 6-16."

And, insert the following sentence in its place:

> "Construction Task Catalog #2 applies to Regions 6-15."

As a result, the Regions covered by the different Construction Task Catalogs are as follows:

Construction Task Catalog #1 applies to Regions 4 and 5.
Construction Task Catalog #2 applies to Regions 6-15.
Construction Task Catalog #3 applies to Regions 16 and 17.

All other provisions of the bid documents shall remain as written.

End of Amendment #1

# AMENDMENT #2

**Dated: January 20, 2017**

**AMENDMENT**
**TOWN OF GREECE**
**STANDARD AGREEMENT FOR SERVICES**
**2017 JOB ORDER CONTRACTING SERVICES**

This Amendment applies to all contracts (General Construction, HVAC, Plumbing and Electric) for all Regions, as listed on Attachment A, Scope of Work, pages 11 and 12: JOC-2017-04-GC through JOC-2017-17-ELEC

In Paragraph 12, entitled "Bid Schedule" in Attachment A, Scope of Work, Region 17 was omitted from the list of Regions for which bids are due on February 9.

All bids for Region 17 are due on February 9 at 1:00pm.

All other provisions of the bid documents shall remain as written.

End of Amendment #2

# AMENDMENT #3

**Dated: January 27, 2017**

## AMENDMENT
## TOWN OF GREECE
## STANDARD AGREEMENT FOR SERVICES
## 2017 JOB ORDER CONTRACTING SERVICES

This Amendment applies to all contracts (General Construction, HVAC, Plumbing and Electric) for all Regions, as listed on Attachment A, Scope of Work, pages 11 and 12: JOC-2017-04-GC through JOC-2017-17-ELEC

The following are answers to questions submitted by potential bidders regarding the insurance requirements. We have not changed any of the insurance requirements. This Amendment merely clarifies those requirements. As a general statement, the contractor is not required to submit a certificate of insurance, or provide any insurance policy, at the time of bidding. The contractor has to sign the Insurance Statement indicating that it can provide the required insurance. These contracts are master contracts pursuant to which the awarded contractor will perform individual construction projects for different Owners. Insurance certificates will be provided to individual Owners with the Proposal for a particular project.

Question 1. Owner's Protective Liability – Are they requiring an Owners Contractors Protective Liability policy which is written in the name of the Owner? (Contractors are not listed as named insured's on an OCP policy). Or do they mean a Commercial General Liability policy, which this policy which shows the contractor as a name insured and the Owner as an additional insured.

OCP policies are based per job on a cost bases cannot be obtained or estimated in advance without a cost of work. Each job would have a different cost depending on various factors.

*Answer: The insurance policy that the contractor must be able to obtain is an Owners Contractors Protective Liability policy with the specific Owner as the named insured. See Paragraph 9.3 set forth below. No insurance policies are required at the time of bidding. And this policy may not be required for all Owners or for all projects.*

Question 2. Professional Liability/Errors and Omissions – matrix states this is for Professional Services, but 'D' states the contractor is being required to have this policy. Are you being required to have this coverage for any one of the four bids?

*Answer: The Contractor is not required to have Professional Liability/Errors and Omissions Insurance. Refer to Paragraph 9.2 of Attachment A, Scope of Work which reads: Delete paragraph 24(D) PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS. In the event the Contractor engages a professional architect or engineer, the Contractor shall verify and submit a certificate insurance demonstrating that such professional has Professional Liability/Errors and Omissions insurance.*

*This requirement will only apply if the contractor works on a project for a particular Owner and has to engage an architect or engineer to provide professional services for that project. The contractor does not have to obtain this insurance.*

3. Insurance Matrix – Are you the follow the 'Standard Insurance Coverage' or the 'Construction projects'? What combined CGL coverage are they looking for, policy are not written with BI & PD as separate coverages.

Matrix states 'Work with a value in excess of $1,000,000 shall have $3,000,000/$5,000,000 for General Liability/Property Damage' – will the accept your GL policy limits of $1,000,000/$2,000,000 along with your Umbrella policy limits of $5,000,000/$5,000,000 to meet these requirements?

*Answer: The insurance requirements are for construction projects. Refer to Paragraph 9.3 of Attachment A, Scope of Work which reads: For purpose of the Insurance Matrix, this contract shall be considered in the category of "Standard Insurance Coverage (Contracts up to $1,000,000)." The Contractor does not have to provide a Certificate of Insurance with its bid. However, the Contractor must sign the Insurance Statement which is part of Attachment C, and if identified as the low bidder, the Contractor must demonstrate that it has the ability to obtain the required insurances. The insurance requirements for individual Owners for specific Job Orders may be different.*

Question 4. Attachment E Article 11 Insurance 11.3 states 'The Owner may require the Contractor to obtain a Builder's Risk policy for a particular project. Based on this, I am unable to tell you what insurance cost to include in your bids as the policies are based per job on a cost bases cannot be obtained or estimated in advance without a cost of work. Each job would have a different cost depending on various factors.

*Answer: Refer to paragraph 11.3 of Attachment E, General Conditions which reads: An Owner may require the Contractor to obtain a Builder's Risk Policy for a particular project. The cost of such Builder's Risk policy divided by 0.9275 shall be reimbursed to the Contractor without mark-up.*

*We will divide the cost of the insurance by 0.9275, to account for the administrative fees to be paid by the contractor. The result will be that the contractor is reimbursed for the full cost of the policy.*

Question 5. Specs require coverage for 'Claims for damages insured by usual personal injury liability coverage which are sustained by a person as a result of an offense directly or indirectly related to the employment of such person by Contractor or by another person' - However, the way that this statement reads is in that order to comply with this requirement, you would need to purchase an Employee Practices Liability Insurance Policy. If you would like us to pursue a formal quote please let me know.

*Answer: The contractor is only required to have the ability to obtain insurance policies set forth in the Insurance Matrix, as further explained above. No insurance policies, or certificates or insurance, are required at the time of bid.*

Question 6. On page 7 of the insurance they indicate: ***OWNER'S PROTECTIVE LIABILITY INSURANCE*** *issued to the Contractor and the Town of Greece, which covers the liability for damages imposed by law on the Town with respect to all work performed by the Town Contractor and his subcontractors under*

*the agreement resulting from this bid offering. Will you please ask them to clarify if they are looking for an Owner's and Contractor's Protective Liability policy (aka OCP)? If yes, I need confirmation of the limits required. I need to know if they are going to be looking for (1) OCP per contract.*

*Answer: See the answers to Questions 1 and 3 above. If required by a particular Owner for a particular project, the contractor will have to provide the insurances listed at that time. No insurance is required at the time of bid, and the insurance will be on a project specific basis, not for the overall contract. So, the contractor will not provide an OCP policy, or any policy, for the overall contract.*

All other provisions of the bid documents shall remain as written.

End of Amendment #3