

LEGAL NOTICE
BD – 14 – 17

Sealed proposals will be received by the officers of the Board of Public Utilities, City of Jamestown, New York, at its 92 Steele Street office until 1:00 PM EST on Monday, November 13, 2017 for furnishing labor and equipment to perform tree clearing work as directed by the Board of Public Utilities

Detailed specifications and proposal forms may be obtained at the office of the Board of Public Utilities located at 92 Steele Street, Jamestown, New York, or at www.jamestownbpu.com, under Quick Links, choose Legal Notice.

The City of Jamestown reserves the right to reject any or all bids, the right to waive any informalities, the right to permit exceptions deemed not to be of substance, and the right to accept any bid which the City deems to represent the prudent and economical expenditure of the public monies for the benefit of the City's inhabitants by securing the maximum quality at the lowest possible cost.

Proposals shall be placed in a sealed envelope addressed to the General Manager, Board of Public Utilities, City of Jamestown, New York, be plainly marked on the outside, "**PROPOSAL NO. BD – 14 – 17**" and be delivered at the Board's office located at 92 Steele Street.

David L. Leathers, General Manager
Board of Public Utilities
City of Jamestown
92 Steele Street
Jamestown, New York 14701

TABLE OF CONTENTS

| | | |
|-----------------|--|------------------|
| <u>1</u> | <u>INSTRUCTION TO BIDDERS</u> | <u>5</u> |
| <u>2</u> | <u>GENERAL INFORMATION</u> | <u>7</u> |
| 2.1 | DEFINITION OF TERMS | 7 |
| 2.2 | INTERPRETATION OF SPECIFICATIONS | 7 |
| 2.3 | COMPARABLE INSTALLATIONS | 7 |
| 2.4 | PROPOSALS | 7 |
| 2.5 | EXCEPTIONS | 8 |
| 2.6 | PROPOSAL BOND | 8 |
| 2.7 | ACCEPTANCE OR REJECTION OF BIDS | 9 |
| 2.8 | WITHDRAWAL OF BIDS | 9 |
| <u>3</u> | <u>LEGAL REQUIREMENT</u> | <u>10</u> |
| 3.1 | SUITS IN COURTS | 10 |
| 3.2 | LAWS TO BE OBSERVED | 10 |
| 3.3 | NO WAIVER OF LEGAL RIGHTS | 10 |
| 3.4 | SAVE HARMLESS | 10 |
| 3.5 | INSURANCE | 10 |
| 3.5.1 | WORKER'S COMPENSATION INSURANCE | 10 |
| 3.5.2 | PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE | 11 |
| 3.5.3 | COVERAGE LIMITS OF LIABILITY | 11 |
| <u>4</u> | <u>FINANCIAL</u> | <u>12</u> |
| 4.1 | INTENT AND MEANING OF SPECIFICATIONS | 12 |
| 4.2 | TERMS OF PAYMENT | 12 |
| 4.3 | EXTRA WORK | 12 |
| 4.4 | PURCHASER NOT LIABLE | 12 |
| 4.5 | CHANGES IN PLANS | 12 |
| 4.6 | INCIDENTAL WORK AT CONTRACTOR'S EXPENSE | 12 |
| 4.7 | ACCEPTANCE | 13 |
| <u>5</u> | <u>NEW YORK STATE WAGE RATES</u> | <u>13</u> |
| 5.1 | FAILURE TO COMPLY | 13 |
| <u>6</u> | <u>EVALUATION FACTORS</u> | <u>13</u> |
| <u>7</u> | <u>CONTRACT AND CERTIFICATIONS</u> | <u>14</u> |

| | | |
|-----------|---|-----------|
| 8 | <u>CONTRACT</u> | 15 |
| 9 | <u>PROPOSAL BD – 14 – 17</u> | 20 |
| 9.1 | FORM OF PROPOSAL | 20 |
| 9.2 | NON-COLLUSIVE CERTIFICATE | 22 |
| 9.3 | GUARANTY FOR PROPOSAL CONTRACT | 23 |
| 9.4 | STATEMENT OF SURETY | 24 |
| 9.5 | NON-COLLUSIVE BIDDING CERTIFICATE (CORPORATION) | 25 |
| 9.6 | NON-COLLUSIVE BIDDING CERTIFICATION (INDIVIDUAL OR PARTNERSHIP) | 26 |
| 10 | <u>GENERAL CONDITIONS OF THE CONTRACT</u> | 27 |
| 10.1 | INTRODUCTION | 27 |
| 10.2 | DEFINITIONS | 27 |
| 10.3 | INTENT OF DOCUMENTS AND INSTRUCTIONS | 29 |
| 10.4 | MODIFICATIONS | 30 |
| 10.5 | ERRORS AND DISCREPANCIES | 30 |
| 11 | <u>ADMINISTRATIVE PROVISIONS</u> | 30 |
| 11.1 | EXEMPTION FROM SALES AND COMPENSATING USE TAXES OF THE STATE OF NEW YORK AND/OR CITIES AND COUNTIES | 30 |
| 11.2 | PURCHASE OF MATERIALS BY THE CONTRACTOR | 30 |
| 11.3 | PAYROLL RECORDS | 31 |
| 11.4 | ANTI-DRUG AND ALCOHOL ABUSE | 31 |
| 12 | <u>PROSECUTION AND PROGRESS</u> | 31 |
| 12.1 | PRECONSTRUCTION CONFERENCE | 31 |
| 12.2 | ON-SITE JOB MEETINGS | 31 |
| 12.3 | COORDINATION WITH OTHER CONTRACTORS, UTILITIES AND OWNER FORCES | 32 |
| 12.4 | CORRECTION OF WORK | 32 |
| 12.5 | PAYMENTS TO THE CONTRACTOR | 33 |
| 12.6 | PAYMENTS WITHHELD | 33 |
| 12.7 | TEMPORARY SUSPENSION OF WORK | 34 |
| 12.8 | EXTRA WORKAND/OR CHANGES IN THE WORK | 34 |
| 12.9 | EMERGENCIES | 35 |
| 12.10 | DIFFERING SITE CONDITIONS | 35 |
| 12.11 | CLAIMS FOR EXTRA COST | 36 |
| 12.12 | DELAYS AND EXTENSION OF TIME | 36 |
| 12.13 | DELAY DAMAGES | 37 |
| 12.14 | RIGHT TO USE WORK | 37 |

| | | |
|--------------|--|------------------|
| 12.15 | GUARANTEE PERIOD | 37 |
| 12.16 | OWNER’S RIGHT TO TERMINATE AND/OR COMPLETE CONTRACT | 38 |
| 12.17 | REMOVAL OF EQUIPMENT AND SUPPLIES | 38 |
| 13 | <u>MATERIAL AND WORK REQUIREMENTS</u> | <u>38</u> |
| 13.1 | WORKMANSHIP | 38 |
| 13.2 | STANDARD PRODUCTS AND MATERIALS | 39 |
| 13.3 | ADDITIONAL ENGINEERING SERVICES | 39 |
| 13.4 | DIMENSIONS | 39 |
| 14 | <u>SITE CONDITIONS</u> | <u>39</u> |
| 14.1 | SITE INVESTIGATION | 39 |
| 14.2 | SUPERINTENDENCE | 40 |
| 14.3 | SAFETY AND PROTECTION | 40 |
| 14.4 | ACCIDENTS | 40 |
| 14.5 | STORAGE AND HANDLING OF MATERIALS | 41 |
| 14.6 | PROTECTION OF WORK, MATERIALS AND EQUIPMENT | 41 |
| 14.7 | PROTECTION OF PROPERTY | 41 |
| 14.8 | CLEANING UP | 42 |
| 14.9 | INSPECTION OF WORK | 42 |
| 15 | <u>TECHNICAL SPECIFICATIONS</u> | <u>44</u> |
| 15.1 | LINE CLEARANCE SPECIFICATIONS | 45 |
| 16 | <u>APPENDIX A: CHAUTAUQUA COUNTY PREVAILING WAGE SCHEDULE</u> | <u>47</u> |

1 INSTRUCTION TO BIDDERS

Proposals for the work referred to in the foregoing Legal Notice and covered by the attached Specifications, must be submitted within the specified time and must be accompanied by such information, as the Specifications require. In making tenders, Bidders shall use the forms included with these Specifications, returning the same, intact, with such supplementary specifications, data, drawings, etc., as are to be included. All requirements in the way of deposits or bonds as evidence of good faith must be complied with.

A bid cannot be withdrawn after the expiration of the time set for receiving bids, nor can letter, telegram, or verbal statement make any change in price or other details. The prices and other information must be legibly written (or printed) in ink, the bid price, or prices being written in words as well as figures.

Bidders must acquaint themselves fully with the amount and nature of the work to be done by carefully studying the Specifications and drawings and by visiting the site, examining existing construction, and inquiring into any local conditions which may affect their work.

No bid will be accepted from, nor will any contract be awarded to any person who is in arrears with the Board of Public Utilities upon debt or contract, or who is in default, as surety or otherwise, upon any obligation to said Board or whose work has heretofore proven unsatisfactory or dilatory.

Each proposal shall be accompanied by a proposal bond (guaranty) issued by a surety company authorized by license to write insurance contracts in New York State and rated "A" or better by A. M. Best Company, Inc. in Best's Key Rating Guide, and otherwise acceptable to the City, or by a certified check in solvent bank in an amount of \$5,000 as an evidence of good faith that the Bidder will, within ten (10) days after the date of notification that its Proposal has been accepted, enter into contract with the Board of Public Utilities of the City of Jamestown, New York, to execute its proposal. If the certified check is furnished, it shall be drawn to the order of the Treasurer of the City of Jamestown, New York. If a bond is furnished, it shall be on the blank form attached hereto.

If the Bidder to whom this contract is awarded fails to sign same, and execute the required contract bond within ten (10) days after the award is made, the award may be canceled and in that event, the Bidder will forfeit to the City such portion of the check or guaranty as may be required to pay the difference between its bid and that of the Bidder who shall eventually accept and fulfill the contract, or shall be used to reduce the cost of the work if done by the City.

A bid which is not accompanied by the required check or guaranty, or a bid which is incomplete or which contains alterations, erasures, discrepancies, or a conditional proposal, or a bid in which the surety company is not named, may be rejected. All certified checks will be returned to their respective depositors immediately after the contract has been signed and the Contractor's bond herein required has been furnished and approved by the City's properly authorized representatives.

Each Bidder shall furnish with the Proposal, a "Statement by Surety" to the effect that, should the bid be accepted, the Surety is willing to be bound with the Bidder in the sum of \$5,000, conditioned upon the faithful and satisfactory performance of all obligations and requirements of the contract and guaranty of materials and workmanship for two (2) years following final acceptance of the work by the City. At the option of the Bidder, it may meet this requirement with a certified check drawn on a solvent bank in the amount of \$5,000, to be returned to the Bidder upon the faithful and satisfactory performance of all obligations under the contract, including the two-year guarantee. If a certified check is furnished, it shall be drawn to the order of the

Treasurer of the City of Jamestown, New York. If a bond is furnished, it shall be on the blank form attached hereto.

The Bidder to whom any contract hereunder shall be awarded may be required to appear in person, or represented by a duly authorized person, at the office of the Board of Public Utilities, Jamestown, New York, with its surety, or the duly signed and sealed bonds of such surety, and execute a contract for the work awarded to it, within ten (10) days after the date of service of written notice to that effect. In case of failure or neglect to do so, said Bidder will be considered as having abandoned the contract and as in default to the City and thereupon the work may be awarded to the next lowest and acceptable Bidder, or may be re-awarded and re-let, and the Bidder so defaulting with its surety, will be held responsible for the difference between the sum to which it would have been entitled on the completion of the work, and that which the City may be obliged to pay to any higher and acceptable Bidder to whom the contract may be later awarded.

The City of Jamestown reserves the right to reject any bid or all bids, the right to waive any informalities, the right to permit exceptions deemed not to be of substance, and the right to accept any bid which the City deems to represent the prudent and economical expenditure of the public moneys for the benefit of the City's inhabitants by securing the maximum quality at the lowest possible cost.

All proposals shall be submitted in an opaque sealed envelope or package plainly marked on the outside with the name, address, and phone number (including FAX number) of the person, firm, partnership, or corporation bidding and the name of their respective representatives whom they expect to be present when the bids are opened. The SPECIFICATION - PROPOSAL - CONTRACT NUMBER on which the bid is submitted shall be plainly marked on the outside of the sealed envelope containing the bid. If forwarded by mail, the envelope containing each proposal shall be placed in another envelope addressed to Mr. Dave Leathers, General Manager, Board of Public Utilities, 92 Steele St., Jamestown, New York. If forwarded otherwise than by mail, it must be delivered to Mr. Dave Leathers, General Manager, Board of Public Utilities.

Two (2) proposals from a firm, corporation, or association under different names will not be considered. Reasonable grounds for supposing that any bidder is interested in more than one proposal for this work will be cause for the rejection of all proposals in which it has been interested. Any or all proposals will be rejected if there is reasonable ground for supposing that there is collusion among bidders, and all participants in such collusion will receive no further recognition for this work.

The bidder shall submit a complete proposal providing prices for all options and supply any information (with the proposal) which may be required to completely evaluate its proposal or the bid may be declared irregular.

If the Bidder should encounter any condition not provided for in the Contract Documents, that will affect its bid or the performance of its contract obligations should the Bidder be awarded the contract, the Bidder shall notify the City in writing, at least five (5) days prior to the opening of the bids and enclose a copy of such letter with the bid.

2 GENERAL INFORMATION

If a firm or partnership makes the bid, the name and the place of residence of each member of the firm or partnership must be given. If made by a corporation, the person signing the bid shall state under the laws of what state the corporation was chartered and the name and title of officer or officers having authority under the by-laws to sign contracts. Anyone signing a proposal as agent must file it with legal evidence of his or her authority to do so.

2.1 DEFINITION OF TERMS

The terms and expressions used in these specifications and contract shall be understood as follows:

- The word "City" to mean the City of Jamestown, New York acting through its Board of Public Utilities.
- The word "Bidder" to mean any individual, firm or corporation submitting a proposal to the Board of Public Utilities of the City of Jamestown, New York.
- The word "Contractor" to mean any individual, firm or corporation undertaking this contract with the City of Jamestown, New York.
- The word "General Manager" to mean the General Manager of the Board of Public Utilities, City of Jamestown, New York.
- The word "Inspector" to mean the person appointed to inspect the materials used and the work performed under this contract.
- The word "days" when used in this contract shall be held to mean calendar days unless otherwise specified.
- The "amount of the contract" shall be held to mean the total amount bid in the Contractor's proposal.

2.2 INTERPRETATION OF SPECIFICATIONS

The Information for Bidders, the Specifications, the Proposal (s), and Instructions to Contractor (s), the Guaranty (s), and Accompanying Plans are intended to describe and provide for the complete work and each form a part of the Contract (s). They are to be cooperative and what is called for by one is as binding as if called for by all.

It is important, therefore, that Bidders not only familiarize themselves with the detailed "Information for Bidders", the "Plans and Specifications", and "Proposal Form", but also with the "Instructions to Contractors", the "Performance Guarantee", and the "Contract" to be executed before submitting their proposals.

2.3 COMPARABLE INSTALLATIONS

Bidder must be skilled and regularly engaged in the class of work on which it bids, and shall submit with the proposal, a list of installations made by it comparable with the whole or with comparable component parts of this project. Such installations shall have been in service at least five (5) years.

2.4 PROPOSALS

Each proposal shall be based on the performance of the work to conform to the annexed plans, specifications, and contract form, and shall be submitted on the form provided for that purpose in these specifications.

Each Bidder must fill in all tabulation forms attached to these specifications.

Each Bidder shall declare in its proposal that the annexed specifications and contract form have been carefully examined, that its proposal conforms to the specifications and contract form hereto

annexed, and if its proposal is accepted it will contract with the Board of Public Utilities of the City of Jamestown, New York in accordance with the specifications and contract form hereto annexed.

This proposal shall be submitted in a sealed envelope or package plainly marked on the outside with the name, address, and phone number (including FAX number) of the person, firm, partnership, or corporation bidding and the name of their respective representatives whom they expect to be present when the bids are opened. The PROPOSAL-CONTRACT NUMBER on which the bid is submitted shall be plainly marked on the outside of the sealed envelope containing the bid.

Two (2) complete copies of the Proposal shall be provided in sealed envelopes marked "BD – 14 – 17 - COPIES" and include the bidders information as indicated above.

If forwarded by mail, the envelope containing each proposal shall be placed in another envelope addressed to Mr. Dave Leathers, General Manager, Board of Public Utilities, City of Jamestown, New York. If forwarded otherwise than by mail, it must be delivered to Mr. Dave Leathers, General Manager, Board of Public Utilities.

All figures written by the Bidder on the proposal shall appear in ink. Where a gross sum is requested, both figures and words shall be used to express the amount.

Two (2) proposals from a firm, corporation, or association under different names will not be considered. Reasonable grounds for supposing that any Bidder is interested in more than one proposal for this work will be cause for the rejection of all proposals in which it has been interested. Any or all proposals will be rejected if there is a reasonable ground for supposing that there is a reasonable ground for supposing that there is collusion among Bidders, and all participants in such collusion will receive no further recognition for this work.

2.5 EXCEPTIONS

Any exceptions to the bidding specifications shall be noted on the Proposal Form in the space provided, if additional space is required the Bidder shall note in the space that the exceptions are stated on an attached page(s). The attached page(s) shall be numbered and inserted immediately following the signature page of the Proposal Form and clearly titled "EXCEPTIONS".

2.6 PROPOSAL BOND

Each proposal shall be accompanied by a proposal bond (guaranty) issued by a surety company authorized by license to write insurance contracts in New York State and rated "A" or better by A. M. Best Company, Inc. in Best's Key Rating Guide, and otherwise acceptable to the City, or by a certified check on a solvent bank in the amount of \$5,000, as an evidence of good faith that the Bidder will, within ten days after the date of notification that its proposal has been accepted, enter into contract with the Board of Public Utilities of the City of Jamestown, New York, to execute its proposal. If a certified check is furnished, it shall be drawn to the order of the Treasurer of the City of Jamestown, New York. If a bond is furnished, it shall be on the blank form attached hereto.

If the Bidder to whom this contract is awarded fails to sign same, and execute the required contract bond within ten days after the award is made, the award may be canceled and in that event the Bidder will forfeit to the City such portion of the check or guaranty as may be required to pay the difference between its bid and that of the Bidder who shall eventually accept and fulfill the contract, or shall be used to reduce the cost of the work if done by the City.

A bid which is not accompanied by the required check or guaranty, or a bid which is incomplete or which contains alterations, erasures, discrepancies, of a conditional proposal, or a bid in which the surety company is not named, may be rejected as informal. Certification of the surety being licensed and rated in the State of New York shall be furnished with the Proposal.

All certified checks will be returned to their respective depositors immediately after the contract has been signed and the Contractor's bond herein required has been furnished and approved by the City's properly authorized representatives.

2.7 ACCEPTANCE OR REJECTION OF BIDS

The City of Jamestown reserves the right to reject any or all bids, the right to waive informalities, the right to permit exceptions deemed not to be of substance, and the right to accept any bid which the City deems to represent the prudent and economical expenditure of the public moneys for the benefit of the City's inhabitants by securing the maximum quality at the lowest possible cost. In comparing proposals, consideration will not be confined to first, cost only, and the judgment of the City shall be final as to which bid will best serve its interests.

2.8 WITHDRAWAL OF BIDS

Permission will not be given to withdraw any proposal after it has been deposited with the General Manager of the Board of Public Utilities.

3 LEGAL REQUIREMENT

3.1 SUITS IN COURTS

In case any action of law or suit in equity may or shall be brought by or against the City or any of its officers or agents for or on account of any claims under this Contract or otherwise, such action of law or suit in equity shall be brought in the courts of the State of New York, Chautauqua County.

3.2 LAWS TO BE OBSERVED

The Contractor at all times shall observe and comply with all Federal, State and City laws, ordinances, and regulations, in any manner affecting the conduct of the work, and all such orders or decrees as exist at present and those that may be enacted later, of bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless the City and all its offices, officers, agents, and employees, against any claim or liability arising from or based on the violations of any such law, ordinance, regulation, order, or decree, whether by the Contractor, or its employees.

3.3 NO WAIVER OF LEGAL RIGHTS

Neither the inspection by the City, nor by any of its duly authorized agents, nor any order, measurement, or certificate by the City, or said agents nor any orders by the City for the payment of money, nor any payment for, nor acceptance of, any work by the City, nor any possession taken by the City or its duly authorized agents, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damage herein provided, nor shall any waiver of breach of this Contract be held to be a waiver of any subsequent breach.

3.4 SAVE HARMLESS

Contractor agrees to indemnify and save harmless the City from and against any loss, expense, claims by reason of damage to property, or for bodily injury or both arising out of the performance of this Contract where such damage or injury is attributable to the negligence of Contractor or its subcontractors, and in the event that such damage or injury is caused by the joint or concurrent negligence of the City, the loss shall be borne by the Contractor and the City proportionately to their degree of negligence.

3.5 INSURANCE

The Contractor shall procure and maintain at its own expense and without expense to the City until final acceptance by the City of the work covered by the contract, and covering the full periods covered by the contract, insurance for liability for damages imposed by law, of the kinds and in the amounts hereinafter provided. Said insurance shall be procured through insurance companies authorized by license to write insurance contracts in New York State and rated "A" or better by A. M. Best Company, Inc. in Best's Key Rating Guide, and otherwise acceptable to the City covering all operations under the contract whether performed by it or by subcontractors. Before commencing the work, the Contractor shall furnish to the City a certificate or certificates of insurance in forms satisfactory to the City showing that it has complied with this paragraph, which certificate or certificates shall provide that the policy shall not be changed or canceled until ten (10) days written notice has been given to the City. The kinds and amounts of insurance follow.

3.5.1 WORKER'S COMPENSATION INSURANCE

A policy covering the obligations of the Contractor in accordance with worker's compensation law covering all operations under the contract, whether performed by it, or its 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 benefit of, and keep insured during the life of

said Contract, such employees in compliance with the provision of the workmen's compensation law.

3.5.2 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

The Contractor shall take out and maintain during the life of this contract such public liability and property damage insurance as shall insure and protect it, any subcontractor performing work covered by this contract, and the City of Jamestown from claims for damages for personal injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract.

Public Liability insurance or general comprehensive liability insurance shall be in the amount of not less than \$500,000 per occurrence and no less than \$1,000,000 aggregate; property damage insurance in the amount not less than \$300,000 aggregate.

All policies of insurance for public liability as above provided shall name the City of Jamestown as an additional insured.

3.5.3 COVERAGE LIMITS OF LIABILITY

| COVERAGE | | LIMITS OF LIABILITY |
|----------|---|--|
| 1. | Worker's Compensation Including U S L & H | Statutory |
| 2. | Employer's Liability Including: Owned, non-owned, hired Including: Environmental Restoration Endorsement | \$500,000 occurrence BI & PD Combined |
| 3. | Comprehensive Automobile Liability Including: Owned, non-owned, hired Including: Environmental Restoration Endorsement | \$500,000 each occurrence BI & PD Combined |
| 4. | Comprehensive General Liability Including: Premises & Operations; X, C, U Coverage's; Personal Injury Liability; Completed Operations & Product Liability; Environmental Impairment Liability | \$1,000,000 per occurrence BI & PD Combined |
| 5. | Umbrella Liability – First Layer | \$3,000,000 per occurrence |
| 6. | All Risk Property Including Fire, Theft and Extended Coverage | \$3,000,000 per occurrence |

Notes: U S L & H - United States Longshoreman & Harbor Compensation Act
 X – Explosion
 C – Collapse
 U – Underground
 BI – Bodily Injury
 PD – Property Damage

THE FOLLOWING PARAGRAPH MUST BE TYPED ON THE CERTIFICATE OF INSURANCE TO INDICATE THAT THE INSURANCE POLICIES INCLUDE THE CONTRACTOR'S INDEMNIFICATION OBLIGATION:

"The Contractor shall indemnify, hold harmless and defend the City of Jamestown from any and all damages and liability by reason of personal injury, or property damage arising either directly or indirectly from the work to be performed under the terms of this contract."

Included with the Proposal the Person(s) shall supply either a certificate showing the meeting of the above levels of insurance, or a statement from its insurance agent that the above levels will be supplied.

If the Person proposes the furnishing of insurance levels lower than those indicated above it shall be so stated and noted as an exception to the proposal. In making the exception the Person shall indicate the cost of obtaining the limits requested herein, as a deduction to the base bid to arrive at the Persons proposed levels. Where possible the Person shall supply as much detailed information including costs for various levels of insurance to allow complete evaluation of its proposal.

4 FINANCIAL

4.1 INTENT AND MEANING OF SPECIFICATIONS

It is the intent and meaning of the specifications that the price bid is to include all expenses in connection with furnishing all labor, materials, tools, equipment, and supervision to completely fulfill the items covered by the prints and attached specifications, whether or not all items necessary for such complete assembly of the items of equipment are mentioned in these specifications (except those items which are specifically stated to be furnished by the City) and the contract shall read accordingly.

4.2 TERMS OF PAYMENT

Payments on account of the work done by the Contractor will be made by the City on monthly detailed report submitted by the Contractor and approved by the General Manager of the Board of Public Utilities. Payments will be made on Monday following the third Tuesday of the month upon prior to the 10th of the month.

4.3 EXTRA WORK

In case it becomes necessary to perform extra work of a character not covered by this contract, it shall be done by the Contractor when so ordered by the City and shall be paid for by the City on a basis of actual work plus the percentage stated on the bid sheet. However, no extra work shall be done without written orders from the General Manager of the Board of Public Utilities.

4.4 PURCHASER NOT LIABLE

Neither the City, nor any agent, officer, nor representative thereof, shall be liable for, or be held to pay any money to the Contractor, except as herein provided; and the acceptance by the Contractor of the final payment shall operate as and shall be a release to the City, its officers, and agents, from all claims and liability to the Contractor for anything done, or furnished for, or relating to the work, or for any act or neglect of the City or any person relating to or affecting the work.

4.5 CHANGES IN PLANS

The City shall have the right to make changes in plans. In making such changes, the changes in price (unless a special arrangement between the City and the Contractor as to the prices is made at the time changes are ordered) shall be calculated on the same basis as extra work. Should such changes result in decreased cost, the Contractor will pay to the City an amount to be agreed upon by the City and the Contractor.

4.6 INCIDENTAL WORK AT CONTRACTOR'S EXPENSE

All work to be done by the Contractor, specified or mentioned in the plans or specifications, as well as minor details of work not specifically mentioned but obviously necessary for the proper completion of the work, shall be considered as incidental, and as being a part of, and included in, the contract. The Contractor will not be entitled to any extra or additional compensation for the same.

4.7 ACCEPTANCE

Acceptance shall be made by the City based on the compliance of the equipment with the specifications requirements, as determined by the General Manager. Compliance shall be judged by the results of test, operation and inspection.

The Contractor hereby agrees that the final inspection and acceptance of the work is to take place at the completion of the entire work under the contract, and that any inspection or acceptance of materials and workmanship at the mills, shops, or elsewhere, to facilitate the progress of the work shall not waive the City's right to reject said materials or workmanship thereafter if same be found unsuitable or not in complete accord with the specifications.

5 NEW YORK STATE WAGE RATES

THE NEW YORK STATE WAGE RATES ARE APPLICABLE TO THIS CONTRACT, AS IT INCLUDES LABOR AS WELL AS MATERIAL AND ENGINEERING SERVICE.

"Appendix B: Chautauqua County General Construction Rates", includes all prevailing wage information. Additionally, weekly payroll and certification forms are available for use.

5.1 FAILURE TO COMPLY

When the Bureau of Public Work finds that a contractor or subcontractor on a public work project failed to pay or provide the requisite prevailing wages or supplements, the Bureau is authorized by Sections 220-b and 235.2 of the Labor law to so notify the financial officer of the Department of Jurisdiction that awarded the public work contract. Such office **MUST then withhold or cause to be withheld from any payment due the prime contractor on account of such contract the amount indicated by the Bureau of Public Work as sufficient to satisfy the unpaid wages and supplements, including interest and any civil penalty that may be assessed by the Commissioner of Labor.**

The Department of Jurisdiction shall comply with an order of the Commissioner of Labor or of the Court with respect to the release of the funds so withheld.

Contractors are required to post the schedule on the jobsite and provide copies of the schedule to all their contractors.

The Board of Public Utilities shall, at its discretion; request copies of certified payroll records from the vendor awarded this contract to verify compliance.

6 EVALUATION FACTORS

The Bidder's proposal will be evaluated based on the following factors:

- Conformance with all requirements of all bidding documents including the Contract Documents and Technical Specification. Exceptions (or clarifications, which, in the City's judgment, are exceptions) subject the Bidder's proposal to possible rejection by the City unless the bidder can adequately demonstrate to the City that the exceptions taken are in the best interests of the City.
- Firm prices.
- Bid bond or check as required in the Contract Documents.
- Demonstration of adequate qualifications (see Qualification Section).
- Evaluated City's costs.

- Contract Schedule and details of the manner in which the job would proceed presented with the bid and the time requirements indicated by the Bidder to complete the project.
- Costs associated with any extra work that may be involved with the project.
- Completeness of bidding documents including all details of the proposed work to be done. (All bids must be submitted in a manner and providing enough detail to allow the Board of Public Utilities the information needed to properly evaluate each bid.)

7 CONTRACT AND CERTIFICATIONS

8 CONTRACT

It is agreed between _____ a domestic corporation, herein after called "Contractor", and the City of Jamestown, New York, a municipal corporation, hereinafter called "City", as follows:

1. The Contractor covenants with the City to provide the necessary engineering, materials, equipment, technical supervision to perform the engineering and installation work associated with the UTILITY TREE CLEARING work as specified in the technical specification BD – 14 – 17.
2. It is agreed the Contractor's proposal of _____, 20____, is made part of this instrument and is as binding upon both parties as is if incorporated herein in detail.
3. The Contractor covenants to and with the City:
 - a. That the provisions of the Charter and Ordinances of the City and of the Laws of the State of New York relating to municipal contracts applicable hereto including but not limited to Sections 103a, 103d, 108, and 109 of the General Municipal Law, are hereby made part of this contract as though set forth fully herein and the parties hereto hereby agree to comply with all the requirements contained therein; and that in the event of the failure of the Contractor to so comply, the City of Jamestown may at its election declare this agreement to be void and of no effect or may resort to any other legal remedy. Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein; and if through mistake or other wise any such provision is not inserted or is incorrectly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion.
 - b. That pursuant to Section 103a of the General Municipal Law, upon the refusal of a member, partner, director or officer of the Contractor, when called before a Grand Jury to testify concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision there or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract (a) the Contractor and such member, partner, director or officer, shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation or fire district, or any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that (b) any and all contracts made with any municipal corporation or any public department, agency or official thereof on or after July 1, 1959 or with any fire district or any agency or official thereof on or after September 1, 1960, by such person, and by any firm, partnership, or corporation of which he is a member, partner, director or officer may be canceled or terminated by the municipal corporation or fire district without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the municipal corporation or fire district for goods delivered or work done prior to the cancellation or termination shall be paid.

- c. That pursuant to Section 103d of the General Municipal Law, the Contractor hereby certifies in connection with the bid submitted by them that (a) the bid was arrived at by the bidder independently and was submitted without collusion with any other vendor of materials, supplies, or equipment of the type described in the invitation for bids and (b) the contents of the bid were not communicated by the bidder nor to its best knowledge and belief by any of its employees or agents, to any person not an employee or agent of the bidder or its surety on any bond furnished herewith prior to the official opening of the bid.
- d. That pursuant to Section 108 of the General Municipal Law, this contract shall be void and of no effect unless the Contractor shall secure workmen's compensation insurance for the benefit of those employed hereon and keep insured during the life of this contract all employees who are required to be insured under the provisions of the Workmen's Compensation Law of the State of New York.
- e. That pursuant to Section 109 of the General Municipal Law, the Contractor shall not assign, transfer, convey sublet or otherwise dispose of this contract or its right, title, or interest therein or its power to execute such contract to any other person or corporation without the previous consent in writing of the City.
- f. That pursuant to Sections 220 and 220d of the Labor Law, no laborer, workman, or mechanic in the employ of the Contractor, subcontractor, or other person doing or contracting to do the whole or part of the work contemplated by the contract shall be permitted or required to work more than eight (8) hours in any one (1) calendar day or more than five (5) days in any one (1) week, except in cases of extraordinary emergency caused by fire, flood or danger to life or property. The wages to be paid for a legal day's work to all classes of such laborers, workmen, or mechanics upon such work or upon the material to be used thereon shall not be less than the prevailing rate of a day's work in the same trade or occupation in the locality where such work is being constructed. Each such laborer, workman, or mechanic shall receive a rate of wages which shall not be less than that shown in the schedule attached hereto as fixed by the Director of Finance of the City of Jamestown in accordance with the provisions of Section 220 of the Labor Law. The Contractor and every subcontractor shall post in prominent and accessible places on the site of the work legible statements of all wage rates as specified in the contract to be paid for the various classes of laborers, workmen, and mechanics employed on the work, and the Engineer shall be given access to the payrolls to determine compliance with the provisions of Chapter 220 of the Labor Law.
- g. That, pursuant to Section 220e of the Labor Law, the Contractor with the municipality agrees:
 - i. That in hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color sex, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
 - ii. That no contractor, subcontractor nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, disability, sex, or national origin;

- iii. That there may be deducted from the amount payable to the contractor by the state or municipality under this contract a penalty of fifty dollars (\$50.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;
 - iv. That this contract may be canceled or terminated by the municipality and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract; and
 - v. The aforesaid provisions of this section covering every contract for, or on behalf of the municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.
- h. That if in the construction of the public work a harmful dust hazard is created for which appliances or methods for the elimination of harmful dust have been approved by the Board of Standards and Appeals, such appliances or methods shall be installed and maintained and effectively operated by the Contractor; and that if the provisions of Section 222a concerning harmful dust hazards are not complied with, the contract shall be void.
4. The City covenants with the Contractor that upon the fulfillment of each and all of the Conditions of this instrument, it will pay to the Contractor, in due course of municipal audit, and in accordance with the terms of payment, (\$ _____), as quoted in the Contractor's proposal hereto attached.

IN WITNESS WHEREOF, the Contractor has caused its proper officer to execute and acknowledge this instrument on its behalf, and the City, by due resolution of its Board of Public Utilities, has caused the Mayor of the City of Jamestown to execute and acknowledge this instrument on its behalf, and to attach their corporation seals, this _____ Day of _____, in the year 20_____.

(Contractor)

By
(Contractor's Representative)

As

CITY OF JAMESTOWN, NEW YORK
BOARD OF PUBLIC UTILITIES

By
(General Manager)

State of

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

Notary Public

State of New York
County of Chautauqua

On this day of _____ day of _____, in the year of 20__, before me personally came _____, to me known, who, being by me duly sworn, did depose and say: That he/she resides in the City of Jamestown, New York; that he/she is General Manager of the Board of Public Utilities of the City of Jamestown, the municipal corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Public Utilities of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

CERTIFICATE OF CORPORATION COUNSEL

In accordance with the Charter provisions, the undersigned Corporation Counsel of the City of Jamestown, New York, hereby certifies that the above contract is in due and proper form, and that the City of Jamestown, through the above-named officer, has a right to enter into this agreement.

Corporation Counsel

Dated

9 PROPOSAL BD – 14 – 17

9.1 FORM OF PROPOSAL

Board of Public Utilities
 City of Jamestown, New York
 Gentlemen:

Date

The undersigned, a _____ (individual, partnership, corporation) represented by _____ proposes to furnish all of the engineering, material, equipment, tools, and supervision to perform all of the work covered by the accompanying specification BD – 14 – 17 and abide and submit to all conditions embodied therein:

| Item # | Description | Price per Hr. |
|--------|---|---------------|
| | EQUIPMENT | |
| 1 | Pickup truck | |
| 2 | Aerial truck (must have 60' working height) | |
| 3 | Chippers (one must have 12" grinding capacity) | |
| 4 | Loader / clam truck | |
| 5 | Dump truck (min 2-1/2-ton capacity) | |
| 6 | Stump Grinder | |
| 7 | Winch truck | |
| | LABOR | |
| 8 | Line clearing foreman (min 10yrs experience) | |
| 9 | Line clearing climbers (min 5yrs experience) | |
| 10 | Ground man | |
| | | |
| | PLEASE ATTACH RATE SHEET FOR OVERTIME, SUNDAYS, HOLIDAYS, AND CALLOUTS | |

We (I) the undersigned declare that we (I) have carefully examined the specifications and will fully comply with the requirements of the specifications, except (note exceptions, if any)

We (I) have included ability to meet stated levels of insurance by the submissions of:

Insurance Certificate_____

Statement from insurance agent_____

Terms of payment _____

9.2 **NON-COLLUSIVE CERTIFICATE**

In addition to the provisions herein contained to be done by the Contractor as part of this agreement, the Person Certified, pursuant to the provisions of Section 103d of the General Municipal Law that

- a. the proposal has been arrived at by the Person independently and has been submitted without collusion with any other vendor of materials, supplies and equipment of the type described in the invitation for bids, and
- b. the contents of the proposal have not been communicated by the Person, nor to its best knowledge and belief, by any of its employees or agent of the Person or its surety on the bond furnished prior to the official opening of the proposal.

Witness hand this day of , 20__.

Proposal by _____

Witness _____

Address _____

By _____

As _____

9.3 GUARANTY FOR PROPOSAL CONTRACT

KNOW ALL MEN BY THESE PRESENTS, that we _____, a corporation organized and having principal offices at _____ are held and firmly bound unto in the penal sum of \$ _____ Dollars (\$ _____), lawful money of the United States of America, to be paid to _____ or to its certain attorneys, successors, or assigns; for which payment will and truly to be made we bind ourselves, our successors, and assigns, jointly and severally by these presents.

WHEREAS _____ has presented a proposal to the Board of Public Utilities, of the City of Jamestown, New York on the foregoing proposal sheets.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the said proposal, herewith accompanying, dated _____ be accepted as to any or all of the items offered, and if within ten (10) days after notice of such acceptance, said Person shall enter into contract with the Board of Public Utilities, of the City of Jamestown, New York and shall furnish a bond with good and acceptable sureties, as required, then this obligation shall be void and of no effect; otherwise, it shall remain in full force and virtue.

IN WITNESS WHEREOF, the _____ has caused its corporate seal to be hereto affixed this _____ day of _____, 20____, and these presents to be signed by its _____ pursuant to a resolution of its passed on the _____ day of _____, 20____, a certified copy of which resolution is hereto attached.

ATTESTS: _____

By _____

9.4 STATEMENT OF SURETY

Having examined the "General Provisions" and "Technical Specification", and the proposal of _____ hereto attached, we hereby declare that, if said proposal or any part thereof be accepted, we are willing to be bound with said Person(s) in the sum of \$5,000, conditioned upon the faithful and satisfactory performance of all the obligations and requirements of the Contract.

Surety _____

Address _____

By _____

As _____

9.5 NON-COLLUSIVE BIDDING CERTIFICATE (CORPORATION)

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

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

The person signing this bid or proposal certifies that they have fully informed themselves regarding the accuracy of the statements contained in this certification and under the penalties of perjury, affirms the truth thereof, such penalties being applicable to the bidder as well as to the person signing in its behalf.

IN WITNESS WHEREOF, the undersigned corporation has caused its corporate seal to be hereto affixed, and these presents to be signed by its duly authorized officer, this

day of 20__.

(Corporate Seal)

Name of Corporation_____

By_____

Title of Office Executing_____

9.6 NON-COLLUSIVE BIDDING CERTIFICATION (INDIVIDUAL OR PARTNERSHIP)

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 their knowledge and belief:

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

The person signing this bid or proposal certifies that they have fully informed themselves regarding the accuracy of the statements contained in this certification and under the penalties of perjury, affirms the truth thereof, such penalties being applicable to the bidder as well as to the person signing in its behalf.

Dated _____, 20__

(Signature) _____
or if partnership

(Name of Partnership) _____
(Signature of Partner) _____

10 GENERAL CONDITIONS OF THE CONTRACT

10.1 INTRODUCTION

The purpose of these General Conditions of the Contract is to set forth the general manner in which the OWNER, CONTRACTOR, and CONSULTANT will perform under the Contract. The provisions of the Special Conditions of the Contract shall modify specific requirements of the General Conditions as hereinafter stated.

10.2 DEFINITIONS

- A. The Contract Documents consists of the Notice to Bidders, Instructions to Bidders, Proposal, Bid Guaranty, Agreement, Performance and Labor and Material Bonds, the General Conditions, the Special Conditions, the Drawings and Specifications, including all modifications thereof incorporated in the Contract Documents before execution of the Agreement. The Contract Documents form the Contract hereunder, along with any change order or amendments to the Contract executed in writing by the CONTRACTOR and the OWNER.
- B. The OWNER, the CONTRACTOR, and the CONSULTANT are those mentioned as such in the Agreement. They are treated throughout the Contract Documents as if each were of singular number and masculine gender.
- C. The term "work" shall be understood to mean the furnishing of all labor, materials, equipment, and other incidentals necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed by the contract.
- D. "Final completion": The project shall be considered finally complete upon issuance of the final certificate which shall be a written certification that the project (1) has been completed to OWNER satisfaction, and (2) has been performed in accordance with the requirements of the Contract Documents and is accepted by the OWNER. The guarantee period shall commence with the date specified in the final certificate.
- E. "Final Payment": The final payment shall be made upon the expiration of the guarantee period, or upon the completion of any work to be performed during the guarantee period, whichever time is greater.
- F. "Specification": Description of a commodity and the conditions for its purchase.
- G. "CONTRACTOR": A person, firm or corporation who is under contract with, or is issued a permit by, the OWNER.
- H. "Agreement": The written agreement between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.
- I. "Approved, Directed, Required": Wherever in the Contract Documents the words "approved", "directed", "required" or words of the like effect are used, it shall be understood that the approval, direction or requirement of the OWNER is intended, unless otherwise specified.
- J. "AOBE": shall mean As Ordered By the Engineer.
- K. "Bid": The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- L. "Bid Bond": The security to be furnished by the bidder as guarantee of his ability to procure the minimum equipment and liquid assets specified and that he will enter into a contract with the "OWNER" for the performance of the work, if the work involved in the proposal is awarded to him.
- M. "Bidder": Any individual, firm or corporation submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.

- N. "Bidding Documents": Notice to bidders or advertisement, if any, instructions to bidders, other bidding information and requirements, bidding forms and attachments, contract and bond forms, and the proposed Contract Documents, including any Addenda issued prior to receipt of Bids.
- O. "Bonds": Bid, performance and payment bonds and other instruments of security.
- P. "Change Order": A written order to CONTRACTOR signed by OWNER authorizing an addition, deletion or revision of the Work, or an adjustment in the Contract Price or the Contract Time issued after the Effective Date of the Agreement.
- Q. "Contract Documents": The contract covering the performance of the work, Addenda, Notice to Bidders, Instructions to Bidders, Proposal, General Contract Conditions, Supplementary Conditions, Contract and Bid Bonds, Plans and Drawings, Specifications, and any and all other modifications issued after execution of the Contract which are necessary to complete the project.
- R. "Contract Drawings": The contract drawings include the plans and any supplementary drawings issued by the OWNER as addenda. The OWNER may issue detailed drawings and instructions from time to time during the work. Except for drawings issued in conjunction with change orders, these will be true developments of the plans, inferable there from, and consistent with the scope of the work under this contract.
- S. "Contract Price": The moneys payable by OWNER to CONTRACTOR under the Contract Documents as stated in the Agreement.
- T. "Contract Time": The number of days or the date stated in the Agreement for the completion of work.
- U. "Employee": Any person working on the project and who is under the direction and control or receives compensation from the CONTRACTOR.
- V. "Equipment": All machinery and equipment. Together with the necessary supplies for upkeep, maintenance and operation, and also tools and apparatus necessary for the proper construction and acceptable completion of work.
- W. "General Requirements": Sections of Division 1 of the Specifications.
- X. "Labor and Materials Bond": The approved form of security furnished by the CONTRACTOR his surety as a guarantee of the payment all employees and material suppliers.
- Y. "Notice to Award": The written notice by OWNER to the apparent successful Bidder stating the upon compliance by the apparent successful Bidder with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.
- Z. "Notice to Proceed": A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform his obligations under the Contract Documents.
- AA. "Site Representative": A representative of the OWNER assigned to the project to observe methods and materials relating to work on and off the site of the Contract. Unless otherwise specified in the Contract Documents, the site representative does not have the authority to accept any materials incorporated in the work or approve constructions methods.
- BB. "Material": Any approved material acceptable to the OWNER and conforming to the requirements of the specifications.
- CC. "Owner": The use of the word Owner may be used as reference to the City of Jamestown Department of Public Works.
- DD. "Performance Bond": The approved form or security furnished by the CONTRACTOR and his surety as a guarantee of the completion of the project.
- EE. "Plans": The drawings, profiles, cross sections, working drawings, or exact reproductions thereof, approved by the OWNER, which show the location, character, dimensions and details of the work to be done.

- FF. "Project": The total construction of which the Work to be provided under the Contract Documents may be the whole or a part as indicated elsewhere in the Contract Documents.
- GG. "Proposal": The prepared bid form on which the bidder is to submit or has submitted a proposal for the work contemplated.
- HH. "Shop Drawings": All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.
- II. "Specifications": Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
- JJ. "Substantial Completion": The Work has progressed to the point where, in the opinion of the OWNER, it is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it was intended.
- KK. "Supplementary Conditions": Modifications and additions to the General Conditions.
- LL. "Surety": The corporate body licensed to do business in the State of New York which is bound with and for the contractor and which is primarily liable and responsible for the payment of all obligations pertaining to and for the acceptable performance of the work required by this contract.
- MM. "Unit Price Work": Work to be paid for on the basis of unit prices.

10.3 INTENT OF DOCUMENTS AND INSTRUCTIONS

- A. The Specifications, Drawings, and any instructions as set forth herein are complementary, are intended to provide for, and include everything necessary for, the proper and orderly execution and completion of the work. Any work shown on the Drawings for which there are no particular specifications, or the omission from both Drawings and Specifications of express reference to any work which obviously was intended per the Contract, shall not excuse or relieve the CONTRACTOR from furnishing the same. Work or materials described in words which have a generally accepted technical or trade meaning, shall be interpreted by such customary and recognized standard of meaning.
- B. Wherever the words "directed", "required", "permitted", "designated", "prescribed", or words of like import are used in the Specifications or on the Drawings, it shall be understood that the direction, requirement, permission, order, designation, and prescription of the OWNER is intended. Similarly, the words "approved", "acceptable", "satisfactory", and words of the like import shall mean approved by, acceptable to, and satisfactory to the OWNER, unless otherwise expressly stated.
- C. Written notice shall be deemed to have been given if delivered in person to the individual or to a member of the firm, or to an officer of the corporation for whom it is intended, or if delivered at or sent by first-class mail, overnight delivery, or facsimile to the last known business address.
- D. All time limits stated in the Contract Documents are of the essence.
- E. The laws of the State of New York, without regard to its conflicts of laws provisions, shall govern this Contract.

10.4 MODIFICATIONS

- A. No oral statements of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract.
- B. The results of any previous negotiation, agreement or understanding, whether oral or in writing, have been incorporated in the Contract Documents and such Documents contain the full intent of the parties.
- C. The OWNER shall issue all directives to the CONTRACTOR unless otherwise specified in these Contract Documents. All inquires by the CONTRACTOR shall be directed to the OWNER.

10.5 ERRORS AND DISCREPANCIES

The Drawings are intended to agree with the Specifications. Should any discrepancy arise between them or any error, discrepancy, or inconsistency appear or occur in Drawings of Specifications or in work performed by other Contractors employed by the OWNER, the CONTRACTOR, before proceeding with the work, shall notify the OWNER for clarification and in no case shall he proceed with the work until advised in writing by the OWNER. Any determinations made by the OWNER in this connection shall be final and conclusive. Absent a determination by the OWNER, the Specifications shall take preference over the drawings. Where work is shown schematically on the Drawings, the CONTRACTOR shall be responsible for the proper arrangement of the work to avoid interferences with adjacent work.

11 ADMINISTRATIVE PROVISIONS

11.1 EXEMPTION FROM SALES AND COMPENSATING USE TAXES OF THE STATE OF NEW YORK AND/OR CITIES AND COUNTIES

The OWNER is exempt from payment of sales and compensating use taxes of the State of New York and of cities and counties on all materials separately sold to the OWNER pursuant to this Contract. This exemption does not, however, apply to tools, machinery, equipment or other property purchased by, leased by or to the CONTRACTOR or a subcontractor, or to supplies or materials not incorporated into the completed project. The CONTRACTOR shall be responsible for and pay any and all applicable taxes, including sales and compensating use taxes, on such unincorporated supplies and materials, and the provisions set forth below will not be applicable to such tools, machinery, equipment, property, supplies or materials.

11.2 PURCHASE OF MATERIALS BY THE CONTRACTOR

The purchase by the CONTRACTOR of the materials sold hereunder will be a purchase or procurement for resale and therefore not subject to the New York State sales or compensating use taxes or any such taxes of cities or counties. The sale of such materials by the contractor to the OWNER will not be subject to the aforesaid sales or compensating use taxes. With respect to such materials sold hereunder, the CONTRACTOR, at the request of the OWNER, shall furnish to the OWNER, such bills of sale and other instruments as may be required by it, properly executed, acknowledged and delivered, assuring it to title to such materials free of encumbrances and the CONTRACTOR shall mark or otherwise identify all such materials as the property of the OWNER.

11.3 PAYROLL RECORDS

- A. The CONTRACTOR shall submit a copy of all payrolls to the OWNER. The CONTRACTOR shall also be responsible for, upon the request of the OWNER, the submission of copies of payrolls of all subcontractors. The copy shall be accompanied by a statement signed by the CONTRACTOR indicating that the payrolls are correct 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 laborer or mechanic including apprentices and trainees, conform with the work he performed. In federally aided projects the higher of the federal or New York State Wage Rates shall apply. The CONTRACTOR shall make the records required under this clause available for inspection by authorized representatives of the OWNER and the New York Department of Labor, and shall permit such representatives to interview employees during working hours on the job.
- B. The Contractor and every subcontractor shall keep original payrolls or transcripts thereof, subscribed and affirmed as true, showing the hours and days worked by each worker, laborer or mechanic, the occupation at which he worked, the hourly wage rate paid and the supplements paid or provided. These documents shall be submitted to the Owner within 30 days after issuance of its first project payroll and every 30 days thereafter.

11.4 ANTI-DRUG AND ALCOHOL ABUSE

All CONTRACTORS, or their agents, shall comply with Federal Highway Administration regulations for any driver who holds a commercial driver's license (CDL), as per the requirements of 49 CFR Part 40, Part 382 and Part 391. The CONTRACTOR will, at the request of the OWNER, provide certain proof of participation of all required employees or subcontractors in an anti-drug and alcohol abuse plan which meets the requirements of 49 CFR Part 40, Part 382 and Part 391 and provide the OWNER access to all required testing records.

12 PROSECUTION AND PROGRESS

12.1 PRECONSTRUCTION CONFERENCE

At the direction of the OWNER, and prior to commencement of the work, the CONTRACTOR and his major subcontractors shall attend a preconstruction conference with the OWNER. The conference will include discussions on matters relative to the proper coordination of the work and maintenance of schedules and other pertinent aspects of the project.

12.2 ON-SITE JOB MEETINGS

On-site job meetings will be held during the performance of the work of this Contract. Supervisory personnel representing the CONTRACTOR and major subcontractors that are deemed necessary at the time, must attend as required at the sole discretion of the OWNER.

12.3 COORDINATION WITH OTHER CONTRACTORS, UTILITIES AND OWNER FORCES

- A. The OWNER reserves the right to let other contracts in connection with this work, even of like character to the work under this contract. The OWNER also reserves the right to perform additional work related to the project by its own forces, or have additional work performed by utilities. The CONTRACTOR shall cooperate to the fullest extent to prevent delays and increased costs in the overall project. He shall familiarize himself with the work of others whose work affects or ties in with his own, and he shall be fully responsible for the finished result of his own work. The CONTRACTOR shall afford other contractors adequate opportunity for the introduction and storage of their materials, and the execution of their work, and shall promptly connect and coordinate his work with theirs.
- B. If any part of the CONTRACTOR'S work depends upon the work of any other contractor for proper execution or results, the CONTRACTOR shall inspect and promptly report to the OWNER any defect in such work that renders it unsuitable for such proper execution and results. His failure to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the receipt of his work, except as to defects which may develop in the other contractor's work after the execution of subsequent work.
- C. To insure the proper execution of his subsequent work, the CONTRACTOR shall measure work already in place, and shall at once report to the OWNER any discrepancy between the executed work and the Drawings.
- D. Extra costs, which include without limitation additional testing, inspection and compensation for OWNER'S services and expenses including CONSULTANTS and OWNER'S engineering fees, caused by defective or ill-timed work, or by the neglect or refusal of the CONTRACTOR to provide or complete any portion of his work at the proper time and in the proper manner, shall be borne directly by the CONTRACTOR and at no additional cost to the OWNER.

12.4 CORRECTION OF WORK

- A. The CONTRACTOR shall promptly remove from the premises all materials condemned by the OWNER as failing to meet contract requirements, whether incorporated in the work or not, and the CONTRACTOR shall promptly replace and re-execute his own work in accordance with the contract and without expense to the OWNER. The CONTRACTOR shall bear the expense of additional testing, inspection and compensation for the OWNER'S services and expenses which include CONSULTANT'S and OWNER'S engineering fees made necessary thereby and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
- B. If the CONTRACTOR does not proceed with the correction of such nonconforming work within a seven-day period after receipt of written notice from the OWNER, the OWNER may after such seven-day period give the CONTRACTOR a second written notice to correct such deficiencies within a second seven-day period. If the CONTRACTOR within such seven-day period after receipt of such second notice fails to correct any deficiencies, the OWNER may after such second seven (7) day period, without prejudice to other remedies, use whatever means necessary in its sole discretion, including its own forces, to correct such deficiencies. In such case an appropriate Change Order shall be

issued deducting from payments then or thereafter due the CONTRACTOR the costs of correcting such deficiencies, including compensation for the CONSULTANT'S and OWNER'S additional engineering services and expenses made necessary by failure to correct such defective work. If payments then or thereafter due the CONTRACTOR are not sufficient to cover such amounts, the CONTRACTOR shall pay the difference to the OWNER, and the OWNER, may, upon seven (7) calendar days written notice, sell non-conforming materials at auction or at private sale and shall pay to the CONTRACTOR the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the CONTRACTOR.

- C. If the OWNER prefers to accept work that is not in accordance with the requirements of the Contract Documents, the OWNER may do so instead of requiring its removal and correction, in which case the Contract sum will be reduced as appropriate and payment amounts withheld accordingly.

12.5 PAYMENTS TO THE CONTRACTOR

- A. The OWNER will make progress payments to the CONTRACTOR on the terms and conditions stated in the Agreement and in accordance with Section 106-b of New York General Municipal Law. At least fifteen (15) days before submission of the first application by the CONTRACTOR for progress payment, the CONTRACTOR shall furnish to the OWNER a complete breakdown of all lump sum items bid for the Contract. This breakdown, modified where directed by the OWNER, will be used as a basis for preparing progress payments throughout the duration of the contract.
- B. Except as otherwise provided in the Paragraph 13 Material Delivered to Site, no payment will be made for materials or equipment not incorporated in the work or for bonds, mobilization, etc.
- C. No payment will be made for modification until the formal change order for the modification is fully executed.
- D. Neither the final payment nor any partial payment shall constitute acceptance of any defective workmanship or material, or noncompliance with the Drawings and Specifications.

12.6 PAYMENTS WITHHELD

The OWNER may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any payment to such extent as may be necessary in its reasonable opinion to protect the OWNER from loss due to:

- A. Defective work not remedied.
- B. Claims filed or reasonable evidence indicating probable filing of claims.
- C. Failure of the CONTRACTOR to make payments properly to subcontractors or for material or labor.
- D. A reasonable doubt that the contract can be completed for the balance then unpaid.
- E. Damage to another contractor.

- F. The OWNER incurring expense to correct deficiencies in the work pursuant to Paragraph 26.
- G. Acceptance of nonconforming work by the OWNER pursuant to Paragraph 25.
- H. Failure to comply with provisions of the Contract Documents relating to the receipt of State and/or Federal aid for the project, and after receiving written notification from the OWNER that said compliance is necessary.
- I. Any costs and expenses including without limitation additional testing, inspection and compensation for OWNER'S services and expenses, including CONSULTANT'S and OWNER'S engineering fees, in connection with correction of nonconforming work which fails to meet contract requirements.
- J. Failure to comply with other requirements of this contract.

If the above grounds are removed, payment shall be made for amounts withheld because of them.

12.7 TEMPORARY SUSPENSION OF WORK

The OWNER shall have the authority in its sole discretion to immediately stop the work wholly or in part by written order for such period as may be deemed necessary due to conditions the OWNER considers unfavorable for the suitable prosecution of the work, or due to failure on the part of the CONTRACTOR to correct conditions considered to be unsafe for workers or the general public, or endangering life or property, or failure to carry out orders given or to perform any provisions of the contract. This paragraph shall not in any manner relieve the CONTRACTOR of responsibility for providing and taking all necessary safeguards and protection required for the safety of all persons and property affected by the performance of the work.

12.8 EXTRA WORK AND/OR CHANGES IN THE WORK

- A. The OWNER may order extra work or make changes altering, adding to or deducting from the work without invalidating the Contract. All such additional or changed work shall be performed under the conditions of the original Contract and any applicable written change order. Upon receipt of direction from the OWNER to alter the work, the CONTRACTOR shall in writing notify the OWNER within seven (7) days in the event the CONTRACTOR intends to make a claim for extension of time or additional costs to perform such revised or additional work. The CONTRACTOR shall proceed with the altered or additional work upon execution of a change order in writing by the CONTRACTOR and OWNER, and no oral modification or change order shall be valid between the parties.
- B. The CONTRACTOR shall promptly submit to the OWNER a proposal for performing the changed work including a detailed price breakdown itemizing all major items of cost, quantity or number of units, material and labor unit prices. To these costs, there shall be added a fixed fee to be agreed upon which shall not exceed fifteen percent (15%) of the cost of work. The fee shall be considered full and adequate compensation to cover the cost of supervision, overhead, bonds, profit, and any other general expenses. The CONTRACTOR shall promptly comply with all requests from the OWNER for additional supporting documentation for the CONTRACTOR'S proposal.

- C. The OWNER shall have the authority to make minor changes in the work not involving extra costs and not inconsistent with the purposes of the Project. The CONTRACTOR shall proceed with such changed work upon written or verbal receipt of the OWNER'S direction. In the event the CONTRACTOR claims that any such work is extra work or is contrary to the terms and conditions of the Contract Documents, the CONTRACTOR shall make a claim for extra costs in accordance with Paragraph 31 below.
- D. With respect to all additional work or modifications to be performed by the CONTRACTOR, the CONTRACTOR shall be obligated to diligently perform such work upon execution of an appropriate change order and to mitigate any and all costs associated with such work.

12.9 EMERGENCIES

In the event of any emergency endangering life or property, the OWNER shall have the authority to order the CONTRACTOR to perform work necessary to avert or minimize the effect of such emergency. The CONTRACTOR shall proceed with such work upon receipt of the OWNER'S written direction in the form of a change order. In the event the CONTRACTOR claims any such work is extra work, the CONTRACTOR shall make a claim for extra costs in accordance with Paragraph 32 below. In directing or authorizing changes in the work in any emergency situation, the OWNER shall not be responsible for directing the CONTRACTOR'S methods and techniques necessary to implement such changes. Changes directed or authorized by the OWNER in an emergency situation shall not relieve the CONTRACTOR of his responsibility for safety. If the CONTRACTOR does not satisfactorily respond to the OWNER'S request to perform work necessary to avert or minimize an emergency situation, the OWNER retains the right to immediately perform such work and charge the CONTRACTOR for all additional expenses in performing such work. Such additional expenses shall be deducted from contract sum and withheld accordingly.

12.10 DIFFERING SITE CONDITIONS

- A. The CONTRACTOR shall immediately upon discovery, and before such conditions are disturbed, notify the OWNER in writing of:
 - a. Subsurface or latent physical conditions at the site differing materially from those indicated in this contract, the plans, specifications, boring reports and other data made available for inspection by the CONTRACTOR.
 - b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans, specifications, borings and all other data made available to CONTRACTOR.
- B. The OWNER shall promptly investigate the conditions and, if such conditions do materially so differ and cause an increase or decrease in the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed as a result of such conditions, an adjustment shall be made and the Contract modified in writing accordingly by the CONTRACTOR and OWNER.
- C. No claim by the CONTRACTOR under this clause shall be allowed unless the CONTRACTOR has given the notice required in (A) above.

- D. The CONTRACTOR shall continue to proceed with the work, unless otherwise directed by OWNER, pending the outcome of the OWNER'S investigation of the condition and the execution of any contract change order that may result there from.

12.11 CLAIMS FOR EXTRA COST

- A. If the CONTRACTOR claims that any work he has been ordered to do shall be considered extra work outside of the scope of the bid specifications, or that any action or omission of the OWNER is contrary to the terms and provisions of the contract documents, he shall, within seven (7) days after receipt of such orders or action or omission on the part of the OWNER, file a written statement with the OWNER stating the basis of his claim.
- B. In the event the OWNER recognizes CONTRACTOR'S claim for extra work outside the bid specifications, the OWNER shall execute an appropriate written change order.
- C. In the event further investigation is needed in order to determine CONTRACTOR'S claim for extra work, the CONTRACTOR, upon receipt of a written acknowledgement from the OWNER of a pending claim for extra costs, shall diligently proceed with the performance of the Contract and in accordance with all instructions of the OWNER.
- D. Except in an emergency endangering life or property, the CONTRACTOR shall not proceed with any alleged extra work until the above noted acknowledgement of his claim is received.
- E. The CONTRACTOR shall set up a separate cost record system, satisfactory to the OWNER, for substantiation and verification of all costs incurred in performing each claim of alleged extra work.

12.12 DELAYS AND EXTENSION OF TIME

- A. If the CONTRACTOR shall be delayed in the completion of his work by reason of unforeseen causes beyond his control and without his fault or negligence, including, but not restricted to acts of God, or the public enemy, floods, epidemics, quarantine, restrictions, strikes, riots, civil commotions, freight embargoes, priority regulations, or unusually severe weather, the period hereinafter specified for completion of his work shall be extended for such reasonable time as approved by the OWNER.
- B. No extensions of time shall be deemed a waiver by the OWNER of his right to terminate the CONTRACTOR for abandonment or delay by the CONTRACTOR as herein provided or relieve the CONTRACTOR from full responsibility for performance of his obligation hereunder.
- C. All claims for delay must be clearly communicated to the OWNER immediately upon realization by the CONTRACTOR that such a delay is necessary. The claim must then be submitted in writing to the Owner. No extensions will be granted if the CONTRACTOR did not adequately inform the OWNER of his intentions. No extension shall be made for claims for delay if not made within a fifteen (15) day period. In the case of a continuous cause for delay, only one claim is necessary.

- D. This article does not exclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

12.13 DELAY DAMAGES

The CONTRACTOR agrees to make no claim for damages for delay in the performance of this contract, except that if the CONTRACTOR'S delay is caused by OWNER'S bad faith or willful, malicious or grossly negligent conduct, and such delay causes an increase in the cost of performance of the work, then the contract price shall be adjusted accordingly. The adjustment of price shall include only those costs directly attributable to the delay and shall be limited to:

- A. Increased labor costs (direct and indirect)
- B. Increased material costs
- C. Increased field supervision costs
- D. Increased field office overhead

Any such increased cost shall be subject to verification by the CONSULTANT and/or the OWNER.

12.14 RIGHT TO USE WORK

The OWNER shall have the right to take possession of or use any part of the completed or partly completed work before final acceptance. Such possession or use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. No extension of time shall be given CONTRACTOR in the event the OWNER takes possession of partially completed premises in which completion has been delayed due to the CONTRACTOR not performing in accordance with the contract specifications and construction schedule.

12.15 GUARANTEE PERIOD

- A. The guarantee period shall commence upon the date specified in the final certificate and continue for a period of one year. The guarantee period shall have a value of five percent (5%) of the final Contract amount.
- B. Upon completion and acceptance of the work by the OWNER and CONSULTANT, the CONTRACTOR shall submit to the OWNER duplicate copies of a general guarantee for the entire work. The guarantee shall be unconditional and over all labor, material, and equipment furnished. All guarantees shall be written in a form satisfactory to the OWNER.
- C. The CONTRACTOR shall remedy any defective work appearing within one (1) year from the date of commencement of the guarantee period and shall pay for damages caused by such defective equipment, work, or materials or occasioned in correcting the same.
- D. If any defects occur within the guarantee period, the CONTRACTOR shall, within seven (7) days after receipt of notification of such defects, take the necessary action to correct such defects. The correction of any defects in equipment,

materials, and workmanship which may develop during the guarantee period shall be at the expense of the CONTRACTOR. If the CONTRACTOR fails to comply with the requirements of this paragraph within the time stated, the OWNER may have the corrective work done and charge the CONTRACTOR for the work plus a ten percent (10%) administration fee. The CONTRACTOR shall bear the expense of correcting defects which shall include without limitation any additional testing, inspection and compensation for OWNER'S services and expenses which include CONSULTANTS and OWNER'S engineering fees made necessary thereby.

- E. Request for final payment for the work may be submitted upon expiration of the guarantee period unless any defects in equipment, materials, and workmanship remain at such date.
- F. Final payment for the work shall be retainage withheld by the OWNER in accordance with the Agreement, less any charges for corrective work or damages for defective equipment, materials, and workmanship or those charges occasioned in correcting the same.

12.16 OWNER'S RIGHT TO TERMINATE AND/OR COMPLETE CONTRACT

Should the CONTRACTOR become insolvent, or should he refuse or neglect to prosecute the work in a proper manner and as directed by the OWNER, or otherwise fail in the performance of any of his obligations under this Contract, and Surety after proper request fails to complete the Contract, then the OWNER, upon the certificate of the CONSULTANT that sufficient cause exists to justify such action, and after giving the CONTRACTOR and his Surety thirty (30) calendar days written notice, may, without prejudice to any other right or remedy, terminate the employment of the CONTRACTOR and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method he may deem expedient. In such cases, no further payment shall be made to the CONTRACTOR. Should such expense exceed the unpaid balance, the CONTRACTOR and his sureties shall pay the difference to the OWNER. The OWNER shall audit and certify the expense incurred by it in finishing the work and the damage incurred through the CONTRACTOR'S fault.

12.17 REMOVAL OF EQUIPMENT AND SUPPLIES

In the case of termination of this Contract before completion from any cause whatever, the CONTRACTOR, if notified to do so by the OWNER, shall promptly remove any part of all of his equipment and supplies from the property of the OWNER, failing which OWNER shall have the right to remove such equipment and supplies at the expense of the CONTRACTOR.

13 MATERIAL AND WORK REQUIREMENTS

13.1 WORKMANSHIP

Unless otherwise specifically stipulated in the Specifications, all workmanship shall be of the best quality and all workmanship and services rendered shall meet any applicable building codes applicable and statutory requirements. All equipment and articles

incorporated in the work shall be new and of the best grade of their respective kinds for the purchase.

13.2 STANDARD PRODUCTS AND MATERIALS

All materials, equipment, and accessories shall be new and unused and shall be essentially the standard product of a manufacturer regularly engaged in the production of such material or equipment, and shall essentially duplicate material or equipment that has been in satisfactory operation at least five (5) years. The CONTRACTOR shall, if required, furnish evidence as to the kind and quality of materials used by the CONTRACTOR. The OWNER reserves the right to reject any material or equipment manufacturer who, although he meets the above requirements, does not provide satisfactory evidence indicating adequate and prompt post-installation repair and maintenance service, as required to suit the operational requirements of the OWNER. Items of any one type of materials or equipment shall be the product of a single manufacturer.

13.3 ADDITIONAL ENGINEERING SERVICES

- A. In the event that the CONSULTANT and/or OWNER are required to provide additional engineering services as a result of substitution of equivalent materials or equipment by the CONTRACTOR, or changes by the CONTRACTOR in dimension, weight, power requirements, etc., of the equipment and accessories furnished, or if the CONSULTANT and/or OWNER are required to examine and evaluate any changes proposed by the CONTRACTOR for the convenience of the CONTRACTOR, then the CONSULTANTS and OWNER'S expenses in connection with such additional services shall be paid by the CONTRACTOR and may be deducted from any monies owed to the CONTRACTOR.

- B. In the event that the CONSULTANT and/or OWNER are required to provide additional engineering services as a result of CONTRACTOR'S errors, omissions, or failure to conform to the requirements of the Contract Documents, or if the CONSULTANT and/or OWNER are required to examine and evaluate any changes proposed by the CONTRACTOR solely for the convenience of the Contractor, then the CONSULTANT'S and/or OWNER'S expenses in connection with such additional services shall be paid by the CONTRACTOR and may be deducted from any monies owed to the CONTRACTOR.

13.4 DIMENSIONS

If any dimensional or space allocations are required to be changed to accommodate the equipment furnished by the CONTRACTOR, all cost thereof shall be borne by the CONTRACTOR including all CONSULTANT and OWNER expenses in connection therewith.

14 SITE CONDITIONS

14.1 SITE INVESTIGATION

The CONTRACTOR acknowledges that he has satisfied himself as to the nature and location of the work, the general and local conditions, particularly those bearing upon transportation, disposal, handling, and storage of materials, availability of labor, water, electric power, roads, uncertainties of weather, groundwater table or similar physical

conditions at the site, the conformation and condition of the ground, the character, quality and quantity of surface and subsurface materials to be encountered, the character of equipment and facilities needed prior to and during the prosecution of the work and all other matters which can in any way affect the work or the cost thereof under this Contract. Any failure by the CONTRACTOR to acquaint himself with all the available information concerning these conditions will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work.

14.2 SUPERINTENDENCE

The CONTRACTOR shall have present on the work site a competent Superintendent and any necessary assistants, all satisfactory to the OWNER. In no event shall work begin prior to OWNER'S approval of CONTRACTOR'S Superintendent. The Superintendent shall not be replaced without the consent of the OWNER, unless the Superintendent proves to be unsatisfactory to the CONTRACTOR and ceases to be in his employ or Superintendent proves to be unsatisfactory to the OWNER and OWNER directs CONTRACTOR to replace said Superintendent. The Superintendent shall represent the CONTRACTOR in his absence and all directions given to him, verbally or otherwise, shall be binding on the CONTRACTOR. The CONTRACTOR shall give efficient supervision to the work using his best skill and attention.

14.3 SAFETY AND PROTECTION

- A. The CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The CONTRACTOR shall comply with Local Health and Safety Regulations and all applicable statutes and regulations of the State of New York and the Occupational Safety and Health Administration (OSHA) pertaining to work safety. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage or injury to or loss of:
 - a. all employees on the site and other persons who may be affected thereby
 - b. all the work and all products to be incorporated therein, whether in storage on or off the site, and
 - c. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
- B. When working in the Right-Of-Way, the CONTRACTOR shall require all on-site employees or subcontractors, as a minimum, wear brightly colored outer-garments and/or safety vests and work boots. The safety clothing shall be worn at all times while performing work under the Agreement. Additional personal protection, such as safety glasses, earplugs and hard hats shall be worn as required.

14.4 ACCIDENTS

The CONTRACTOR shall provide at the site, such equipment and medical facilities as are necessary to supply first-aid service to any of his personnel who may be injured in connection with the work. The CONTRACTOR shall promptly report in writing to the

OWNER all accidents whatsoever arising out of, or in connection with, the performance of the work, whether on or adjacent to the site, which caused death, personal injury to property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to both the CONSULTANT and the OWNER. If any claim is made by anyone against the CONTRACTOR or a subcontractor on account of any accidents, the CONTRACTOR shall promptly report the facts in writing to the OWNER, giving full details of the claim. In addition, the CONTRACTOR shall comply with the provisions of OSHA 29 CFR Part 1926 et. Seq. in the investigation and reporting of accidents, job-related illnesses, etc.

14.5 STORAGE AND HANDLING OF MATERIALS

- A. The CONTRACTOR shall store his equipment and materials at the job site in a manner which conforms to applicable statutes, ordinances, regulations and rulings or proper public authority and in a manner which conforms with any directives given by the OWNER. The CONTRACTOR shall not store unnecessary materials or equipment on the job site and shall take care to prevent any structure from being loaded with a weight that will endanger its security or the safety of persons. The CONTRACTOR shall enforce the instructions of the OWNER respecting signs, fire, and smoking.
- B. Materials shall not be placed within 30 feet of fire hydrants. Gutters and drainage inlets shall be kept unobstructed at all times. The CONTRACTOR shall not store materials or encroach upon private property or other contractor's work areas without prior written consent.

14.6 PROTECTION OF WORK, MATERIALS AND EQUIPMENT

During the progress of the work and up to the date of final acceptance, the CONTRACTOR shall be solely responsible for the care and protection of all work and materials covered by this contract. All work and materials shall be protected against damage or loss from any cause whatsoever and the CONTRACTOR shall make good any such damage or loss at his own expense. Protective measures shall be subject to the approval of the OWNER.

14.7 PROTECTION OF PROPERTY

- A. The CONTRACTOR shall be responsible for the preservation and protection of property adjacent to the work site against damage or loss as a result of his operations under this contract. Any damage or loss occurring on account of any act, omission or neglect on the part of the CONTRACTOR shall be restored in a proper and satisfactory manner or replaced by and at the expense of the CONTRACTOR.
- B. It is the CONTRACTOR'S responsibility to make himself aware of and comply with such safety regulations as may be required by jurisdictional agencies and shall at all times conduct his operations so as to avoid and eliminate any unsafe conditions created by his operations.
- C. In the event of any claims for damage or alleged damage to private property as a result of work under this contract, the CONTRACTOR shall be responsible for all costs in connection with the settlement, or defense against, such claims. Prior to

commencement of work in the vicinity of private property, the CONTRACTOR at his own expense shall take such surveys as may be necessary to establish the existing conditions of the property. Before final payment can be made, the CONTRACTOR shall furnish satisfactory evidence that all claims for damage have been legally settled or sufficient funds to cover such claims have been placed in escrow, or that an adequate bond to cover such claims has been obtained.

- D. In the event that the CONTRACTOR has trespassed upon private property in the prosecution of the work of this contract, the OWNER may withhold payment for the value of such damage or alleged damage in or on the property, but in any case not less than a sum of \$1,000 for each property trespassed, until the Contractor has secured a notarized written release from the property owner upon whose property the trespass was committed, holding the OWNER harmless.

14.8 CLEANING UP

The CONTRACTOR shall at all times keep the premises and site free from accumulations and waste materials or rubbish caused by his employees or work, or the employees or work of any of his subcontractors. At the completion of the work he shall remove all rubbish so caused from and about the site of the work and all temporary structures, tools, scaffolding and surplus materials, supplies and equipment which he or any of his subcontractors may have used in the performance of the work. In case of dispute, the OWNER may remove the rubbish and charge the cost of such removal to the CONTRACTOR, which shall be deducted from any monies owed to CONTRACTOR. Any salvaged material not specified to be disposed of otherwise shall become the property of the CONTRACTOR and shall be removed by the CONTRACTOR from the site.

14.9 INSPECTION OF WORK

- A. The OWNER, CONSULTANT, other representatives of the OWNER, and representatives of other agencies having jurisdiction may inspect the materials furnished and the work done during the course of construction, and shall have unrestricted access to all parts of the work and to all points of manufacture or fabrication of materials and equipment. The CONTRACTOR shall provide such facilities as are reasonably necessary to carry out the inspection. If witnessed shop tests or inspections are required at the point of manufacture, the CONTRACTOR shall keep the OWNER advised as to the progress of the work so that he may arrange for inspection at the proper time and place.
- B. If the Specifications, OWNER'S instructions, ordinances, or any public authority requires any work to be specially tested or approved, the CONTRACTOR shall give the OWNER timely notice of its readiness for inspection and if the inspection is by an authority other than the OWNER, of the date fixed for such inspection. If any work is covered without the approval or consent of the OWNER, the OWNER may require such work to be uncovered for examination and properly restored at the CONTRACTOR'S expense.
- C. At any time during the progress of the work and up to the date of final acceptance, the OWNER shall have the right to reject any work that does not conform to the requirements of the Contract Documents, even though such work has been previously inspected and paid for. Any omissions or failure on the part of the OWNER to disapprove or reject any work or materials at the time of inspection shall not be construed as an acceptance of any defective work or

materials as the CONTRACTOR remains responsible for ensuring that its work meets the requirements of the Contract Documents. If any work or materials shall be condemned by the OWNER as defective, or improperly done, such work shall be removed and replaced, or the defects otherwise remedied in a manner satisfactory to the OWNER, and consistent with the intent of the Contract. All costs and expenses in connection with the CONTRACTOR'S failure to meet contract requirements, including without limitation retesting costs, additional inspection costs, and compensation for OWNER'S and CONSULTANT'S engineering services will be the CONTRACTOR'S expense.

15 TECHNICAL SPECIFICATIONS

The Technical Specifications and Details are contained herein:

The Contractor will coordinate its work with the Board of Public Utilities and other contractors who may be working for the City.

Maintenance of trees near high voltage electric lines at various locations as required and monitored under the direction of the Jamestown Board of Public Utilities (BPU). This would include, but not be limited to, tree removal, pruning, trimming, and non-environmental damage diagnosis and stump removal.

The BPU will supply the Contractor with work orders for tree maintenance required. These work orders will identify the areas and the type tree maintenance required. The BPU may from time to time request a recommendation from the Contractor on how to deal with a particular situation. These consultations will be provided at no charge. The BPU will provide the Contractor with direction as how to proceed with regard to the recommendation. All work given the Contractor on these work orders will be completed as directed by the BPU.

The Contractor shall submit a weekly report to the BPU designated representative, indicating the type of work accomplished, location of the work and the number of hours for each location.

Contractor shall supply a necessary labor, equipment and materials for work requested. It is anticipated that the majority of the work shall be completed by two-person crew consisting of a line clearing foreman and a line clearing climber.

The contract will be effective January 1st 2017 through December 31st 2017. Work is expected to begin January 3rd, 2017. It is anticipated that a two person will be required 40 hours per week, Monday – Friday, excluding BPU observed Holidays. A list of holidays will be made available at the time of the contract award. The crew(s) shall work the same daily hours as the BPU line department. The department works 7:30 A.M. and 4:00 P.M during “winter” months and 7:00 A.M. and 3:30 P.M during “summer” months. The designated BPU representative will notify the contractor of the line department schedule. The BPU reserves the right to suspend work, at any point within the contract period, with at least 24-hour written notification to the contractor.

The crew(s) is to keep the Line Department Supervisor or designated representative, informed daily of the area(s) they will be working in.

Contractor shall be responsible for disposal of all tree materials removed in conjunction with tree maintenance. Clean up shall be to BPU specifications; additional clean up (if not to specifications) shall be done at no charge to the BPU. The BPU will provide a list of locations where chips may be unloaded at no cost to the Contractor, if requested.

Contractor shall be responsible for obtaining utility locations before tree maintenance starts from DSNY and the Board of Public Utilities as may be required.

The Contractor may store his trucks and equipment at the BPU office, 86 Steele Street. He shall supply all fuels and supplies for his crew(s) and equipment.

Hourly rates for workers and equipment for any extra work must be stated, and the periods for which those rates apply shall also be supplied on the sheets provided.

Contractor must be able to be onsite and begin work during emergency conditions, on city emergency calls (24 hours per day, 7 days per week), within two hours after receipt of call from BPU.

The contractor shall be able to provide additional crew(s) during emergency situations (storm damage, etc).

15.1 LINE CLEARANCE SPECIFICATIONS

The contractor shall do all work, furnish all labor, tools, machinery and transportation necessary for the trimming and/or cutting of trees to provide adequate clearance for energized overhead electric lines of various distribution voltages through 35KV of the Jamestown BPU as detailed on the attached sheets. All trimming is to be performed while the electric lines are energized. The crews shall be OSHA certified under the 1910.269 Standard for work around energized conductors.

Before cutting or trimming any trees, the contractor shall procure any necessary permission from abutting property owners and shall comply with all building and sanitary laws and all Federal, State, County, Town and Municipal Laws, ordinances and regulations pertaining to the work. Specific reference is made to State of New York, Department of Public Works Manual of Rules and Regulations, Article II, Permits relating to State Highways, Section 7, Subdivision 1-C, and the Department of Labor Prevailing Wage Schedule.

Wherever it is necessary to cross private property, the Contractor is to contact the landowner and agree on a point of ingress and egress, before crossing his property, and then abide by the same. If in violation of such agreement or if there is failure to enter into such an agreement, Contractor shall be held liable and indemnify The Jamestown BPU for any claims for damages to crops, land, trees or otherwise resulting from such violation or failure.

The Contractor is to replace or make necessary repairs to all fences destroyed or damaged during the work and exercise due care and diligence in adequately protecting from damage all properties both real and personal, of whatsoever nature crossed over and on, or near the work. If the Contractor neglects or fails to make promptly said repairs, or make good said destruction, Jamestown BPU may make the same and the Contractor agrees to promptly reimburse the BPU the amount of its cost and expenses thereafter.

The Contractor shall trim or cut trees to provide a minimum clearance of three (3) feet for service wires, ten (10) feet for primary, six (6) feet for secondary and street lighting wires. All dead wood in the trees that, in falling, might interfere with wires shall be removed.

When trimming, all cuts shall be made at a parent branch or limb so that no stub shall remain. In cutting back a branch, the cut shall be made at a crotch having a branch at least one-third the diameter of the cut branch. Climbing irons or spurs shall not be used in a tree to be saved.

The Contractor shall not permit the accumulation of refuse on the work site. All debris shall be disposed of daily according to governmental regulations and to the satisfaction of property owners.

All work shall be done to the satisfaction of the authorized representatives of the BPU as to quantity, quality, and acceptability. All work shall be performed with diligence and shall be done in a good workmanlike manner.

The Contractor shall comply with the most recent ANSI standards and those of the National Arborist Association. The Contractor shall practice standards of tree pruning as recommended by Dr. Alex Shigo in "PRUNING TREES NEAR ELECTRIC UTILITY LINES".

All work shall be performed within the confines of the Right-of-Way acquired or owned by the BPU, and the Contractor shall be held responsible for all damage caused beyond the boundaries of such Right-of-Way.

16 APPENDIX A: CHAUTAUQUA COUNTY PREVAILING WAGE SCHEDULE

<https://applications.labor.ny.gov/wpp/publicViewProject.do?method=showIt&id=1435780>