**DOCUMENT 007303**

**SUPPLEMENTARY CONDITIONS - COST PLUS FIXED FEE CONTRACT**

These supplements modify the General Conditions. Where any part of the General Conditions is modified by these supplements, the unaltered provisions of that part shall remain in effect.

**ARTICLE 1 - THE CONTRACT DOCUMENTS**

1.1 Delete this paragraph in its entirety and replace with the following:

1.1 The Contract Documents consist of the Agreement, the General Conditions, the Supplementary Conditions, Appendix A, the Drawings and Specifications, Addenda issued prior to the receipt of bids and all subsequent modifications and changes issued pursuant to the General Conditions.

1.1.1 Delete this sub-paragraph in its entirety:

1.1.1 The Performance and Payment Bonds are not a part of Single Trade Contract less than two hundred thousand dollars.

**ARTICLE 2 - DEFINITIONS**

Add the following paragraphs:

2.24 The term "fixed fee" shall include all expenses not specifically enumerated as a cost, including but not limited to:

2.24.1 The salaries and fringe benefits of all clerical/secretarial staff for the Contractor's use, both at the main office and in the field office;

2.25 The term "cost" means the following items of expense, to the extent deemed reasonable, actual, and necessary, expended in the performance of the Work and substantiated to the satisfaction of the Contracting Officer:

2.25.1 Labor, including all wages, required wage supplements and insurance required by law (workers' compensation, social security, disability, unemployment, etc.) paid to or on behalf of foremen, workers and other employees below the rank of Contractor's designated representative directly employed at the Site of the Project.

2.25.2 Materials.

2.25.3 Equipment, excluding hand tools which are defined as tools and equipment having a new purchase price of less than FIVE HUNDRED DOLLARS, and which will be used exclusively and directly on the Work. For the purposes of computing the Contractor's cost for self-owned equipment, the rate used for periods of under five days shall be the monthly rate set forth for the item of equipment in the "Rental Rate Blue Book" published by Penton Business Media (800) 669-3282 divided by 22 days to establish a daily rate and divided again by eight hours to establish an hourly rate. The rate used for periods of 5 days or more shall be 45% of the published monthly rate. In the event the "Rental Rate Blue Book" does not list the item of equipment used, the applicable rate shall be determined in the same manner as set forth above except that the monthly rate used shall be that set forth in "The AED Green Book" published by Penton Business Media (800) 669-3282. In the event that a rate is not established in the "Rental Rate Blue Book" or "The AED Green Book" for a particular piece of equipment, the Contracting Officer shall establish a rate for ownership costs and operating costs for that piece of equipment, which is consistent with its cost and expected life. Self-owned equipment is defined to include equipment rented from controlled or affiliated companies. Rented equipment will be paid for at the actual cost. Notwithstanding the foregoing, if the State should determine that the nature or size of the equipment used by the Contractor in connection with the Work is larger or more elaborate, as the case may be, than the size or nature of the minimum equipment determined by the State to be suitable for the Work, the cost of equipment will not be based upon the equipment used by the Contractor but instead will be based on the smallest or least elaborate equipment determined by the State to have been suitable for the performance of the Work.

2.25.4 All required Bond and Liability and Builder's Risk Insurance Premiums for Bonds or Insurance Policies whether such Bonds or Policies are required by this Contract or a subcontract between the Contractor and a subcontractor actually performing any Work, unless the subcontract cost has been determined in accordance with Paragraph 6.7 herein.

2.25.5 If the Contractor employs subcontractors in the performance of the Work, the actual cost to the Contractor of subcontracts the cost of which has been determined in accordance with Paragraph 6.7 herein.

2.25.6 Overtime, bonus or premium pay but only if approved in advance in writing by the Director.

**ARTICLE 6 - CONTRACTOR'S SUPERVISION**

Add the following paragraphs:

6.7 The Contractor agrees that, as a condition precedent to the award of any subcontract for the performance of Work exceeding TWENTY FIVE THOUSAND DOLLARS, or the issuance of any contract or purchase order for the furnishing of equipment in an amount exceeding TWENTY FIVE THOUSAND DOLLARS from a single supplier, written bids must be obtained from at least 3 sources. The proposals must provide a description of the work to be performed and the type and quantity of the materials, labor or equipment to be provided. The contractor must not solicit bids from any firm that has been debarred or disqualified from bidding by any local, state or federal government entity.

6.8 If the Contractor for good cause shown cannot fulfill the requirements of 6.6 for a particular procurement, the Director may, in their sole discretion, issue a written waiver of the subcontractor or supplier bidding requirements. Such written waiver shall contain either the approved subcontract amount or a description of the method to be used to determine the subcontract amount. The contractor must not solicit or otherwise use any firm that has been debarred or disqualified from bidding by any local, state or federal government entity.

**ARTICLE 10 - ORDERS ON CONTRACT (CHANGE ORDERS)**

Change the Heading of Article 10 to read as follows:

**ARTICLE 10 - FIELD ORDERS AND ORDERS ON CONTRACT (CHANGE ORDERS)**

Change Paragraph 10.2 to read as follows:

10.2 No change in the work, the value of which **DOES NOT** increase the estimate or the time for performance of the Work, shall be binding upon the Contractor unless in the form of a field order signed by the Director's Representative. No change in the work, the value of which **DOES** increase the estimate or the time for performance of the Work, shall be binding upon the Contractor unless in the form of an order on contract signed by the Contracting Officer. The order on contract or field order shall describe or enumerate the work to be performed. If the extent of the work is not determinable until after the changed work is performed, the order on contract or field order shall specify the method for determining the extent of the changed work when completed. If the Contractor disagrees as to any element of the field order or order on contract, the Contractor shall promptly indicate such disagreement in writing by certified mail directed to the Contracting Officer and shall promptly proceed in accordance with the field order or order on contract. The Contractor's letter of disagreement shall identify by number the field order or order on contract with which the Contractor is disagreeing, the elements with which the Contractor disagrees and a statement as to why there is a disagreement on each element. The letter of disagreement shall be accompanied by documentation of every material element of the Contractor's basis for disagreement. The Contracting Officer shall promptly review the Contractor's letter and supporting documentation and advise the Contractor in writing of any modifications to the field order or order on contract or of the confirmation of the field order or order on contract as issued. The Contracting Officer may, in the exercise of discretion, conduct informal discussions or meetings with the Contractor and/or State Officials, employees or agents prior to rendering a decision.

Add the following paragraph:

10.8 No increase in fee shall be allowed on the contract unless there is an increase in the estimate or the time for performance of the Work. Any increase in fee shall bear the same relationship to the cost in excess of the estimate as the fixed fee bears to the estimate or where time for performance only is changed, the increase shall be calculated by dividing the fee by the original number of days for performance of the Work and multiplying the result by the number of days added to the time for performance.

Add the following Article:

## ARTICLE 26 – EQUAL EMPLOYMENT OPPORTUNITY (EEO)

26.1 The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over $25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed, or rendered or furnished to, the contracting State agency (“the Work”) except where the Work is for the beneficial use of the Contractor.

26.1.1 Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.

26.1.2 By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

The Contractor will include the provisions of Clause 26.1.2 and Clause 26.3 of this Article, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

26.2 New York State Contract System Workforce Utilization Reporting Module (Construction)

The Contractor shall submit, and shall require each of its subcontractors to submit, a Workforce Audit throughout the term of this Contract, by the 10th day of each month to report the actual workforce utilized during the previous month in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the New York State Contract System Workforce Audit Module found at the following website:

**https://ny.newnycontracts.com/**

The Workforce Audit must be submitted electronically in the New York State Contract System (NYSCS). Separate audits shall be completed by Contractor and all subcontractors. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Workforce Audit and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor’s total workforce during the subject time frame, not limited to work specifically performed under the Contract.

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

**END OF DOCUMENT**