

ORANGE AND ROCKLAND UTILITIES, INC.

STANDARD TERMS AND CONDITIONS

of

CONSTRUCTION CONTRACTS

July 14, 2006
Revised October 1, 2007

1. Definitions. For purposes of these Standard Terms and Conditions, the following definitions shall apply:

- Orange and Rockland - Orange and Rockland Utilities, Inc.
- Contractor - The contractor named on the face of the Orange and Rockland purchase order.
- Contract - The contract between Orange and Rockland and Contractor consisting of: (a) the Orange and Rockland purchase order; (b) the relevant Orange and Rockland invitation for bids or request for proposals; (c) these Standard Terms and Conditions; and (d) any and all plans, schedules, specifications, addenda drawings and other documents, to the extent that they are directly or indirectly incorporated by reference in (a), (b) and (c) above. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions all refer to the Contract.
- Work - The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.
- Subcontractor - Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2. Contract Formation. A legally enforceable agreement shall arise upon the mailing or delivery by other means of the Orange and Rockland purchase order or other writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's bid contains terms additional to or different from those on which bids were invited by Orange and Rockland which are not accepted in writing by Orange and Rockland, a legally enforceable agreement shall not arise until the signing by Contractor of a copy of the Orange and Rockland purchase order or such other writing issued by Orange and Rockland (or of another document expressing

Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the purchase order or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

3. Specifications, Plans, and Drawings

- A. The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Orange and Rockland. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Orange and Rockland directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Orange and Rockland whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Orange and Rockland's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

- B. Orange and Rockland may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.
- C. Contractor shall, throughout the time during which the Work is being performed, keep at the erection site available for inspection by Orange and Rockland one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Orange and Rockland, and all shop and work drawings approved by Orange and Rockland.
- D. Where required by the Purchase Order, Contractor shall submit designated documents, such as drawings and process procedures,

for review and approval by Orange and Rockland. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Orange and Rockland for review and approval prior to their implementation.

4. Price and Payment.

- A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt of acceptable invoices by the Accounts Payable Department at the address shown on the Purchase Order for remittance of invoices. Unless otherwise specified in the purchase order, payment shall be made within 30 days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, to the extent requested by Orange and Rockland, no invoice shall be processed unless and until Contractor furnishes to Orange and Rockland a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record all liens and contain a covenant to defend, indemnify and hold harmless Orange and Rockland (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Orange and Rockland and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).
- B. For unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Orange and Rockland as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.
- C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Orange and Rockland, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates,

Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Orange and Rockland will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule, Orange and Rockland shall pay the remaining progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Orange and Rockland as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

- D. Orange and Rockland shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Orange and Rockland for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Orange and Rockland that Contractor has previously been overpaid. Orange and Rockland shall be entitled to retain any and all amounts so withheld until Contractor has, in Orange and Rockland's judgment, either performed the obligation or obligations in question or furnished security which Orange and Rockland deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.
- E. Orange and Rockland at any time may, after notifying Contractor in writing, pay directly any unpaid claims against Contractor based on the Work, and in so doing Orange and Rockland shall be conclusively deemed to be acting as Contractor's agent. Any payment made by Orange and Rockland to discharge a claim against Contractor shall be treated as a payment made under the Contract from Orange and Rockland to Contractor.
- F. Orange and Rockland shall not be liable to the Contractor for interest on any late payments unless expressly provided for herein. If for any reason Orange and Rockland is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

- G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Orange and Rockland and of all liability of Orange and Rockland to Contractor for things done or furnished in connection with the Work and for every act and neglect of Orange and Rockland and others for whom Orange and Rockland may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.
- H. Contractor shall submit invoices in a form reasonably acceptable to Orange and Rockland. Each invoice shall constitute a representation by Contractor that (i) the partial payment then requested reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Orange and Rockland; provided, however, that Orange and Rockland shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Orange and Rockland, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) the Work which is the subject of such invoice has been performed in strict accordance with the Contract Documents and all applicable legal requirements, and (vii) that the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work.

5. ~~Time for Completion~~ 5. Time is of the essence of this Contract and of each and every portion thereof for which a certain length of time is fixed for

performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Orange and Rockland and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Orange and Rockland shall be performed without additional expense to Orange and Rockland. If, in the opinion of Orange and Rockland, Contractor falls behind schedule, Orange and Rockland shall have the right to require contractor, at no additional cost to Orange and Rockland, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Orange and Rockland of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Orange and Rockland to provide access due to plant malfunctions, and inability to perform caused solely by Orange and Rockland's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Orange and Rockland shall not be liable for any additional costs incurred as a result of such delay.

7. Safeguards in Work.

- A. Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.
- B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.
- C. In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.
- D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendation in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

- E. If in the opinion of Orange and Rockland's authorized representative the Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Orange and Rockland may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when Orange and Rockland's authorized representative is not present at the site, an Orange and Rockland employee directs the Contractor to discontinue an operation because it may be unsafe or illegal, the Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact Orange and Rockland's authorized representative for instructions. The Contractor shall obtain the employee's name and employee identification number and report this information to Orange and Rockland's authorized representative.
- F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Orange and Rockland against any liability resulting in whole or in part from such failure or neglect.
- G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Orange and Rockland, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. ~~Knowledge of Work Conditions and Requirements~~ Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof. Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work.

Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Orange and Rockland other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

9. Contractor's Performance

- A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Orange and Rockland as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.
- B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for the Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Orange and Rockland.
- C. Contractor shall perform the Work in accordance with the following:
 - (a) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good

working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Orange and Rockland, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

- (b) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances. Access to all underground facilities, as for example through Orange and Rockland, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.
- (c) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

10. ~~Orange and Rockland's Authority~~

- A. Orange and Rockland shall have the authority to decide any and all questions which arise in connection with the work, and Orange and Rockland's decisions shall be conclusive and final. Orange and Rockland shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Orange and Rockland shall have

the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

- B. Orange and Rockland shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Orange and Rockland) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Orange and Rockland by Contractor.

12. Warranties.

- A. Contractor warrants the Work for a period of one (1) year from the date of completion and acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:
 - (a) As to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry, and
 - (b) As to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet any and all tests and comply with all performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.
- B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Orange and Rockland, Contractor shall, at no cost to Orange and Rockland, promptly repair, replace, or reperform the defective Work, as directed by Orange and Rockland, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion

of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Orange and Rockland, then Orange and Rockland may, at its option, either correct the defective work and charge Contractor for the costs and expenses it occurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

- C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Orange and Rockland, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

13. Changes (Including Extra Work)

- A. Orange and Rockland shall have the right at any time, by written notice to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Orange and Rockland at its discretion determines not to use such unit prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Orange and Rockland has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials basis at rates for labor, equipment and materials approved by Orange and Rockland. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.
- B. The following time and materials rates are approved by Orange and Rockland for Work performed on a time and materials (T & M) basis:
 - (a) Labor

The Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in Orange and Rockland's schedule of rates entitled "2007 thru 2010 – Underground Electric and Gas Operations Eastern And Northern Division Blanket Prices" as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by an approved Subcontractor. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

(b) Materials

Contractor will be compensated for all materials used for the Work at the actual net cost plus ten percent.

(c) Equipment

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Orange and Rockland for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

- C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Orange and Rockland's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Orange and Rockland.

- D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Orange and Rockland's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16 ("Claims"), and comply with the requirements thereof.
- E. Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Orange and Rockland unless evidenced by a Contract modification or change order signed and issued by Orange and Rockland. Contractor shall not have the right to make changes in the Work without the prior written approval of Orange and Rockland.
- F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

14. Labor.

- A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. Whenever Contractor knows or believes that any actual or potential dispute with workers is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Orange and Rockland notice thereof, including all relevant information with respect thereto. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event any such dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and avail itself of all remedies and under applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to the seeking of an injunction.
- B. The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons

assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify Orange and Rockland, its directors, officers, agents and employees against any and all liability under the Act arising in any way out of services performed by or Orange and Rockland's use of persons furnished by Contractor.

- C. Contractor shall not employ any Orange and Rockland or Consolidated Edison Company of New York, Inc. employee to perform any Work without the prior written permission of Orange and Rockland.

15. Time and Material and Cost Reimbursable Work

- A. Orange and Rockland shall have the right to generally supervise, direct, control and approve the extent and character of work done on a time and material or other cost reimbursable basis.
- B. Work performed on the basis of time and material shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Orange and Rockland's duly authorized representative.

If Contractor should perform work on a premium time basis without obtaining such consent then all cost relating to the premium time portion shall be borne solely by Contractor without recourse to Orange and Rockland.

- C. For time and material work Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift worked. These reports are to be submitted to the Orange and Rockland site representative for approval (subject to future audit and adjustment if found to be in error). Orange and Rockland shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.
- D. All work performed on a time and material basis shall be subject to the warranties provision of Article 12 above.
- E. The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

- F. No obligation of Orange and Rockland to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16. Claims.

- A. The only claims that may be made by Contractor are claims for: (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Orange and Rockland's breach of the Contract (hereafter "Increased Costs").

- B. For each claim for Non-Contract Work, as defined in (A)(i), Contractor must give written notice to Orange and Rockland's designated representative within 5 days of when Contractor began to perform such work. The notice must identify such work with particularity, the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Orange and Rockland representative alleged to have ordered such work. For each claim for Increased Cost, as defined in (A)(ii), Contractor must give written notice to Orange and Rockland's designated representative within 5 days of Contractor's discovery of Orange and Rockland's breach. The notice must identify the breach with the following particularity: for an act of Orange and Rockland identify the act, the location of the act, the individual who performed the act, and the date of the act; for an omission by Orange and Rockland, identify the specific action Contractor believes Orange and Rockland should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Orange and Rockland, identify the representation alleged to be incorrect by document, page, section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

- C. For claims for which Contractor has given timely notice, Contractor must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Orange and Rockland upon request. Ten days after submitting the notice required by paragraph (B) of this Article, Contractor must begin submitting weekly detailed itemizations of such costs to Orange and Rockland. For each claim for Non-

Contract Work, as defined in (A)(i), these detailed records shall include:

- (1) The name, title, trade, local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed, and
- (2) The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work and from whom purchased or rented.

For each claim for Increased Costs, as defined in (A)(ii), these detailed records must include:

- (1) The date the Increased Costs were incurred,
- (2) The name, title, trade local, and number of the workers who performed the work whose costs were increased,
- (3) The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to the Contractor to perform such work, and the amount of the Increased Costs that Contractor claims Orange and Rockland is responsible for.
- (4) The nature and quantity of any materials, plant, and equipment whose cost was increased by Orange and Rockland's act, omission, or misrepresentation.

- D. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time or schedule related impact of any nature for which Contractor asserts Orange and Rockland is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Orange and Rockland a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the

schedule as they are encountered). Each Impact Analysis shall be submitted to Orange and Rockland within ten (10) days of the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

- E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including but limited to the documentation of costs required by paragraph (C) and the Impact Analysis required by paragraph (D), available for inspection and audit by Orange and Rockland and its representatives at all times, including after the termination or expiration of the Contract. Contractor's failure to provide timely notice of a claim, as required by paragraph (B), or to collect, segregate, maintain, and make available for inspection and audit by Orange and Rockland and its representatives all books, records and accounts relating to the claims permitted by this Article, 16 including but limited to the documentation of all costs sought in the claim, as required in paragraph (C), or to timely submit such costs on a weekly basis, as required by paragraph (C), or to timely submit the Impact Analysis to the extent required by paragraph (D) shall be deemed a conclusive and binding determination by Contractor that neither Contractor nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither Contractor nor any of its subcontractors have had their costs increased by a breach of the Contract by Orange and Rockland, and such failure shall be deemed a waiver of the claim. Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

- D. Contractor's failure to provide timely notice of a claim, as required by paragraph (B), or to collect, segregate, maintain, and make available to Orange and Rockland documentation of all costs sought in the claim, as required in paragraph (C), or to timely submit such costs on a weekly basis, as required by paragraph (C), shall be deemed a conclusive and binding determination by the Contractor that neither the Contractor nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither the Contractor nor any of its subcontractors have had their costs increased by a breach of the Contract by Orange and Rockland, and such failure shall be deemed a waiver of the claim.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Orange and Rockland and those which the Contract specifically requires Orange and Rockland to obtain. Contractor shall comply with all federal state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Orange and Rockland, its trustees, officers, agents and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Orange and Rockland in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Orange and Rockland with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, which is incorporated in these Standard Terms and Conditions as if fully set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property.

- A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Orange and Rockland shall be borne by Contractor.
- B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, fences and railings, give such warnings, display such lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Orange and Rockland. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, extinguishing equipment and water lines shall be

- continually inspected by Contractor and shall at all times be accessible and ready for immediate use.
- C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Orange and Rockland. Safety hats shall be worn at all times in the Work area by Contractor's employees.
 - D. Contractor shall, at no additional cost to Orange and Rockland, comply with all reasonable requests of Orange and Rockland to enclose or specially protect Work, property or persons. If Orange and Rockland determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.
 - E. Contractor shall promptly report in writing to Orange and Rockland all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage is caused, Contractor shall immediately report the accident by telephone to Orange and Rockland.
 - F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Orange and Rockland, giving full details of the claim.
 - G. Contractor will not be permitted to perform any field work until it has submitted to Orange and Rockland and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Purchase Order.

- H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Orange and Rockland are advisable, Contractor shall implement such precautions and advise Orange and Rockland thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Orange and Rockland thereof.

20. Vehicle Spills Contractor is required to assure that all vehicles, including those of subcontractors and suppliers, used in the performance of work for Orange and Rockland are maintained in good working condition and are not leaking any fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

The driver must immediately notify an Orange and Rockland authorized representative in the event of a leak or spill from a vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point.

The driver will be required to eliminate the leak or spill before leaving the job site. Contractor shall be required to reimburse Orange and Rockland for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Orange and Rockland representative all refuse, rubbish, scrap materials, and debris so that at all times the Work site shall present a neat, orderly and workmanlike appearance; and, before final payment, remove all surplus material, false work, and temporary structures, including any foundations thereof. If, in the opinion of Orange and Rockland, Contractor has failed to comply with any provisions of this Article, Orange and Rockland may order any or all of the Work suspended until the conditions is corrected, and all costs associated therewith shall be borne by Contractor.

22. Subsurface Conditions Found Different. Orange and Rockland shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any that are shown on the drawings, plans or specifications, it shall immediately give notice to Orange and Rockland of such conditions before the conditions are disturbed. Orange and Rockland will thereupon promptly investigate the conditions, and if it

finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13 ("Changes").

23. Inspection and Tests and Correction of Defects

- A. Orange and Rockland shall have the right to inspect any and all records of Contractor or its subcontractors whenever Orange and Rockland believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Purchase Order and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Orange and Rockland. Orange and Rockland shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Orange and Rockland's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Orange and Rockland shall have the right to witness any test Contractor or any third party acting on behalf of Contractor conducts relating to the Work, and Contractor shall give Orange and Rockland advance written notice thereof. Orange and Rockland shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Orange and Rockland shall be borne by Orange and Rockland unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.
- B. No inspection, failure to inspect, or waiver of inspection on the part of Orange and Rockland or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.
- C. Should it appear to Orange and Rockland at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Orange and Rockland shall have the option to:
 - (a) Halt the continuation of such Work; and

- (b) require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Orange and Rockland , to reconstruct, replace or correct the applicable Work and remedy any damage to property of Orange and Rockland and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or
- (c) Perform or have performed by another all tasks stated in subparagraph (b), immediately above, and withhold or recover the cost thereof from Contractor; or
- (d) Accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Orange and Rockland deems equitable.

In any event, Contractor shall reimburse Orange and Rockland for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24. Effect of Orange and Rockland Approval. Contractor's obligations under this Contract shall not be affected by the grant to, or the exercise or non-exercise by, Orange and Rockland of rights to inspect, test, review or approve Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Orange and Rockland of any materials, workmanship, equipment, documents or other act or thing done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Orange and Rockland was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms.

25. Subcontracting.

- A. Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Orange and Rockland as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Orange and Rockland has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Orange and Rockland in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by

reason of any such approved subcontracting.

- B. Contractor, shall, notwithstanding Orange and Rockland's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Orange and Rockland, Orange and Rockland shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Orange and Rockland. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor naming both Orange and Rockland and contractor as additional insured's. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Orange and Rockland has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Orange and Rockland.

26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Orange and Rockland shall be in Orange and Rockland, but this shall not affect Orange and Rockland's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Audit. In the event the Contract now provides or in the future is modified to provide that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), time-and-materials basis or similar basis, or if payment on such basis is to be made under Article 32 ("Suspension"), or Article 33 ("Termination for Convenience"). Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Orange and Rockland and its authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If audit discloses that Orange and Rockland has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used, Contractor shall refund to Orange and Rockland an amount equal to such payment.

28. Orange and Rockland's Performance. Orange and Rockland shall perform

any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Orange and Rockland to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Orange and Rockland shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing. Nonperformance by Orange and Rockland shall be excused where caused by an act or omission of Contractor.

29. Liens. Contractor shall defend, save harmless and indemnify Orange and Rockland against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work. Contractor shall deliver the Work to Orange and Rockland free and clear of all liens, claims, and encumbrances, and shall furnish Orange and Rockland a certificate to that effect upon request. If requested by Orange and Rockland, Contractor shall furnish Orange and Rockland with a Contractor Affidavit – Final Full Release and Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release and Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Orange and Rockland (as well as any owner of the real property on which the property is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Orange and Rockland and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). If such documents are requested by Orange and Rockland neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. If any lien remains unsatisfied after final payment has been made to the Contractor, Contractor shall refund to Orange and Rockland all monies that Orange and Rockland may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Orange and Rockland. Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Orange and Rockland. The premiums for all such bonds which are required by law or which have been requested by Orange and Rockland prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Orange and Rockland after the Contract is executed, Contractor shall be reimbursed the cost thereof, if it has been previously approved by Orange and Rockland, upon submission by Contractor of satisfactory evidence of payment

therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Orange and Rockland shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

31. Other Contractors.

- A. Contractor shall fully cooperate with other contractors and any Orange and Rockland employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Orange and Rockland.
- B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Orange and Rockland based on such loss or damage, Orange and Rockland shall notify Contractor, and Contractor shall indemnify and save Orange and Rockland harmless against any such claim and any loss or liability arising therefrom.
- C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Orange and Rockland contractors at the Work site (and of Orange and Rockland) and shall notify Orange and Rockland immediately of lack of progress or defective workmanship on the part of any of them (or of Orange and Rockland). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Orange and Rockland shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Orange and Rockland. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Orange and Rockland (obtained through audit if required by Orange and Rockland) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Orange and Rockland in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing

within thirty (30) days after Orange and Rockland's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience

- A. Orange and Rockland may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Orange and Rockland in the notice of termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated .except to the extent that Orange and Rockland requests that any such order or subcontract be assigned to Orange and Rockland, in which case Contractor shall assign such designated orders and subcontracts to Orange and Rockland with additional cost or expense to Orange and Rockland. Upon Orange and Rockland's request, Contractor shall promptly provide Orange and Rockland with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each change order thereunder.

- B. In the event of such termination, Orange and Rockland shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Orange and Rockland shall reimburse Contractor any unavoidable out-of-pocket costs of cancellation payments to

Subcontractors resulting directly from the termination which Orange and Rockland agrees in writing were not taken account of in the aforementioned payments. Upon Orange and Rockland's request, Contractor shall promptly provide Orange and Rockland with a sworn statement itemizing these cancellation costs and promptly furnish to Orange and Rockland all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Orange and Rockland.

- C. If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded to Orange and Rockland. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination. In no event shall Orange and Rockland be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

34. ~~Confidentiality~~. All reports, specifications, software, drawings, photographs, technical information, and information regarding locations of facilities, furnished by Orange and Rockland or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Orange and Rockland, be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Orange and Rockland upon completion of such performance. Contractor shall not use Orange and Rockland's name in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Orange and Rockland's prior written permission. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Orange and Rockland, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that Orange and Rockland will be entitled to injunctive relief to enforce the terms of this article, in addition to its

remedies at law.

35. Patents, Etc. If Contractor, in performing this Contract, employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. Contractor shall indemnify and hold Orange and Rockland harmless against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Orange and Rockland, and any liability arising there from, arising out of the use or manufacture of any designs, processes, materials, tools or equipment provided to Orange and Rockland or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against Orange and Rockland. Orange and Rockland shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either: (a) procure for Orange and Rockland the right to continue using it or (b) with the approval of Orange and Rockland, (i) replace it with a non-infringing equivalent or (ii) modify it so it becomes non-infringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and save Orange and Rockland, its directors, officers, employees and agents harmless from all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons, or damage to property, including the property of Orange and Rockland, or statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor, any subcontractor, their agents, servants and employees, and including claims, loss, damage and liability arising from the partial or sole negligence of Orange and Rockland or non-parties to this Contract. The Contractor expressly agrees that Orange and Rockland may pursue claims for contribution and indemnification against the Contractor in connection with claims against Orange and Rockland for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Orange and Rockland against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with at least the monetary limits specified.

The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" determinant of coverage and shall be placed with insurance companies acceptable to Orange and Rockland.

- A. Employment related insurance.
 - (a) Workers' Compensation Insurance as required by law.
 - (b) Employer's Liability Insurance, including accidents (with a limit of \$1,000,000 per accident) and occupation diseases (with a limit of \$1,000,000 per employee).
 - (c) Where applicable, insurance required by the United States Longshoremen's and harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.
- B. Comprehensive (also called Commercial) General Liability Insurance, including Contractual Liability, with limits of \$5,000,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage or a combined single limit of \$5,000,000 per occurrence and, for at least one year after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. There shall be no policy deductibles without Orange and Rockland's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Orange and Rockland as an additional insured. There shall be no exclusion for claims by Contractor employees against Orange and Rockland based on injury to Contractor's employees.
- C. Comprehensive Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor or any subcontractors, with limits of \$1,000,000 per occurrence for bodily injury or death and \$500,000 per occurrence for property damage or a combined single limit of \$1,000,000 per occurrence.
- D. Where the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, with a combined single limit of \$5,000,000 for bodily injury or death and property damage. The insurance policy shall name Orange and Rockland as an additional insured.
- E. For the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Abatement General Liability Insurance and

Lead Abatement Liability Insurance, as applicable, each with a combined single limit of \$5,000,000 for bodily injury or death and property damage. Each insurance policy shall name Orange and Rockland as an additional insured. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name both Contractor and Orange and Rockland as additional insured's and to submit copies of the policies to Orange and Rockland.

Contractor shall cause all insurance carried hereunder to be endorsed by the insurer to require that the insurer furnish Orange and Rockland with at least ten (10) days' written notice prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. All coverage of additional insured's shall be primary coverage as to the additional insured's.

At least three days prior to commencing work at the site, Contractor shall furnish Orange and Rockland with copies of the policies specified in paragraphs B and E above and Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained and will not be canceled or altered without at least ten (10) days' prior written notice to Orange and Rockland. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Orange and Rockland is an additional insured with respect to all coverage's enumerated in paragraphs B, D and E above. Such certificates shall not contain a disclaimer of liability of the insurer for failure to provide Orange and Rockland with notice of cancellation or substantial alteration. Orange and Rockland shall have the right to require the Contractor to furnish Orange and Rockland, upon request, with a copy of the insurance policy or policies required under paragraphs A, C, and D hereunder. The Contractor agrees that this is an insured contract. The insurance required herein is intended to cover Orange and Rockland for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Orange and Rockland arising out of the performance of the Work, including injury caused by the partial or sole negligence of Orange and Rockland and notwithstanding any statutory prohibition or limitation of Contractor's indemnification obligation hereunder.

Certificates of Insurance identifying the Contract shall be sent to:

Orange and Rockland Utilities, Inc.
One Blue Hill Plaza
Pearl River, NY 10965
Attention: Purchasing Department

38. Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47, "Conflicting Contract Documents"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

39. Amendments. No modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of Orange and Rockland.

40. Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Orange and Rockland, and any assignment made without such consent shall be void. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41. Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Orange and Rockland shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof) rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33 ("Termination for Convenience") shall not apply and Orange and Rockland shall have all rights and remedies provided by law and the Contract. In addition, in such event Orange and Rockland shall have the right, at its election and without prejudice to any other remedies, (i) to take possession for the purpose of completing the Work of all materials, tools, equipment and appliances at the construction site and to either complete or employ another to complete the Work and hold Contractor liable for any additional cost occasioned thereby, (ii) to compel Contractor to assign any or all subcontracts with Subcontractors to Orange and Rockland without additional cost or expense to Orange and Rockland, and/or (iii) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Orange and Rockland. Upon Orange and Rockland's request, Contractor shall promptly provide Orange and Rockland with Contractor's sworn statement stating, for each subcontract with each

Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Orange and Rockland may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Orange and Rockland determines is adequate to cover all damage resulting from Contractor's default. In the event that Contractor demonstrates that a cancellation of the Contract for default is erroneous, the cancellation shall, at Orange and Rockland's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents. All documents, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, and computer programs furnished or prepared by Contractor in connection with the Work (hereinafter "Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Orange and Rockland may make of them, shall be the property of Orange and Rockland, and Orange and Rockland shall have the unrestricted right to copy and reproduce the Materials, use them in any way it sees fit, and disclose them to others. Contractor hereby assigns any and all copyrights in the Materials to Orange and Rockland, and, upon the request of Orange and Rockland, the Contractor shall execute any documents that Orange and Rockland deems necessary to effectuate such assignments.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners or joint venturers between the parties, or joint employers of Contractor's employees.

44. No Third Party Rights. Unless specifically provided elsewhere herein, nothing contained in this Contract is intended for the benefit of any third parties.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Orange and Rockland of any of Contractor's duties or obligations nor any failure by Orange and Rockland to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Orange and Rockland may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Orange

and Rockland may be entitled because of such breach. No waiver shall be effective against Orange and Rockland unless in writing and signed by Orange and Rockland's authorized representative, and any such waiver shall be effective only with respect to the particular event to which it specifically refers.

46. Set-Off. Orange and Rockland shall have the right to set off against any sums due Contractor hereunder any claims Orange and Rockland may have against Contractor under the Contract or any other contract between Orange and Rockland and Contractor without prejudice to the rights of the parties in respect of such claims.

47. Conflicting Contract Documents. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with the typewritten provisions of the purchase order form or the Standard Terms and Conditions of which this clause is a part, the typewritten provision of the purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision or any special conditions incorporated therein expressly refers by number and title to the conflicting or inconsistent clause, in which case the typewritten provision shall take precedence and govern. In the event that any terms of Contractor's proposal are expressly referred to in the contract, in any instance where such terms are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary herein said other provisions shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The titles of the articles of this Contract are for convenience only and shall not be construed to limit or qualify the meaning of any article or section thereof.

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery or by depositing the notice in the United States Mail, enclosed in a sealed envelope with first class postage thereon, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 40 ("Amendments") hereof, contains the entire agreement between Orange and Rockland and Contractor. If any article or provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the article and the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. New York Law. The Contract shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of New York.

51. Waiver of Trial by Jury. Contractor hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

52. Submission to Jurisdiction/Choice of Forum.

- A. Contractor hereby irrevocably submits to the jurisdiction of the courts of the State of New York with regard to any controversy arising out of or relating to the Contract. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Orange and Rockland, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.
- B. Contractor consents to the selection of the New York State and United States courts situated within the City of New York or Rockland and Westchester Counties as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or Rockland or Westchester Counties.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Orange and Rockland only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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