

TOWN OF YORKTOWN
PARKS & RECREATION CONTRACTS BID

NOTICE TO BIDDERS

NOTICE IS HERE GIVEN that sealed bids will be received by the Town Clerk, Town of Yorktown, Yorktown, NY until 11:00 A.M. on Thursday, May 1st, 2025 at Town Hall, 363 Underhill Avenue, Yorktown Heights, N.Y. 10598 for the Brian J. Slavin Aquatic Center Pool Renovation Project, at which time and place said bids will be publicly opened and read aloud.

Copies of the Bid Documents will be available in the office of the Town of Yorktown Town Clerk located at 363 Underhill Avenue, Yorktown Heights, NY 10598, on weekdays from 8:00 am to 4:00 pm, as well as the Town's website, www.yorktownny.org, or on BidNet Direct, www.bidnetdirect.com. A completed Bid Proposal and associated documents must be returned to the Town Clerk, 363 Underhill Avenue, Yorktown Heights, NY 10598, marked: "Bid: Brian J. Slavin Aquatic Center Pool Renovation Project."

Bid security in the form of a bid bond, certified check, treasurer's, or cashier's check, payable to the Town, is required in a dollar amount of five percent of the bid amount.

The selected contractor shall furnish a performance bond and a payment bond in amount at least equal to one hundred percent (100%) of the contract price as stipulated in Section 00700, GENERAL CONDITIONS of these specifications.

The scope of work includes but is not limited to the following items:

- A. The project includes selective renovations to the existing pools contained within the Brian J. Slavin Aquatic Center, including pool copings, gutters, finishes, depth marking signage and pool decks.

A non-mandatory Pre-Bid meeting will be held on, Wednesday, April 16th, 2025 at 12:30 PM at the Brian J. Slavin Aquatic Center, located at Shrub Oak Park, 3800 Sunnyside Street, Shrub Oak, NY 10588. The Town reserves the right to waive any informalities or to reject any or all bids.

Diana L. Quast
Master Municipal Clerk
Town of Yorktown

SECTION 00 20 00

INSTRUCTIONS TO BIDDERS

1. Receipt and Opening of Bids
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23. Safety and Health Regulations
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25. OSHA 10 Hour Construction Safety and Health Course Requirements

1. Receipt and Opening of Bids

The Town of Yorktown herein called the TOWN, acting by and through its Parks & Recreation Superintendent will receive sealed Bids for the construction of the Renovation of the Pools at the Brian J. Slavin Aquatic Center at Shub Oak Park.

Such bids addressed to the Town of Yorktown and endorsed "Bid: Brian J. Slavin Aquatic Center Pool Renovation Project" will be received at the Yorktown Clerk's Office at Town Hall, located at 363 Underhill Avenue, Yorktown Heights, NY 10598 until 11:00 AM on Thursday, May 1st, 2025 at which time and place said bids will be publicly opened and read aloud.

If the building at which bids are to be received is closed for any reason on the date and time that bids are due, receipt of bids by the TOWN will be postponed until the next business day at the time originally stated for receipt of bids.

Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified will not be considered. By submission of a bid, the bidder agrees that this bid shall be good and may not be withdrawn for a period of 30 days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids.

2. Location and Work to be Done

The location, general characteristics, and principal details of the Work are indicated on a set of drawings titled " Brian J. Slavin Aquatic Center Pool Renovation Project" and numbered as follows:

Cover Sheet

AQ-001 Site Plan

AQ-100 Depth Marker Plan

AQ-200 Demo and Construction Plans – Base Scope

AQ-201 Demo and Construction Plans – Base Scope

AQ-210 Demo and Construction Details – Base Scope

AQ-300 Demo and Construction Plans – Alternate Scope

AQ-310 Demo and Construction Details – Alternate Scope

AQ-400 Typical Details

AQ-500 Equipotential Bonding Plan and Details

AQ-510 Equipotential Bonding Plan and Details Alternate Scope

Additional drawings showing details in accordance with which the Work is to be done may be furnished by addendum from time to time during the bidding period by the ENGINEER and shall then become a part of the Contract Documents.

The CONTRACTOR shall furnish all labor, services, materials, equipment, plant, machinery, apparatus, appliances, tools, supplies, and all other things necessary to do all work required for the completion of each item of the Work and as herein specified.

The Work to be done and paid for under any item shall not be limited to the exact extent mentioned or described but shall include all incidental work necessary or customarily done for the completion of that item.

3. Cost of Documents

A cost, in the amount as specified in NOTICE TO BIDDERS, will be accepted by the Town Clerk by check, payable to Town of Yorktown, for each set of Contract Documents. Not refundable.

4. Preparation of Bid

Each bid must be submitted on the prescribed form in Section 00410. All blank spaces for bid prices must be filled in, in ink or typewritten, in both words and figures.

Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, his address, and endorsed with the name of the project as specified in Receipt and Opening of Bids, above.

If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in Receipt and Opening of Bids, above.

5. Modification of Bids

Any bidder may modify its bid by written communication at any time prior to the scheduled closing time for receipt of bids. Any telegraphic communication must be received by the TOWN prior to the closing time, and provided further, for any telegraphic communication that modifies a bid the TOWN is satisfied that a written confirmation of the modification over the signature of the bidder was mailed prior to the closing time.

The modification communication shall not reveal the bid price but shall provide the addition or subtraction or other modification so that the final prices or terms will not be known by the TOWN until the sealed bid is opened. If written confirmation is not received within two days from the closing time, no consideration will be given to the facsimile transmission.

6. Obligation of Bidder

At the time of the opening of bids each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the Contract Documents (including all addenda). The failure or omission of any bidder to examine any form, instrument, or document shall in no way relieve any bidder from any obligation in respect of his bid.

7. Information not Guaranteed

All information given in the Contract Documents relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the TOWN. All such information is furnished only for the information and convenience of bidders and is not guaranteed.

It is agreed and understood that the TOWN does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures encountered during construction will be the same as those indicated in the Contract Documents.

It is further agreed and understood that no bidder or CONTRACTOR shall use or be entitled to use any of the information made available to him or obtained in any examination made by him in any manner as a basis of or grounds for any claim or demand against the TOWN or the ENGINEER, arising from or by reason of any variance which may exist between the information made available and the actual subsurface or other conditions, natural phenomena, existing pipes or other structures actually encountered during the construction work, except as may otherwise be expressly provided for in the Contract Documents.

8. Bid Security

Each bid must be accompanied by a certified check, a bid bond, a treasurer's, or cashier's check, payable to the TOWN, in the amount stated in NOTICE TO BIDDERS. Such deposits will be returned to all except the three lowest responsible and eligible bidders within five days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids, and the remaining deposits will be returned promptly after the TOWN and the accepted bidder have executed the Contract, or if no notice of intent to award has been presented to any bidder within 30 days, Saturdays, Sundays and legal holidays excluded, after the date of the opening of bids, upon demand of the bidder at any time thereafter.

9. Time for Completion

The bidder must agree to commence work on or before a date to be specified in the written "Notice to Proceed" from the TOWN and to fully complete the project within the time limit stated in Section 00410, FORM OF GENERAL BID.

10. Addenda and Interpretations

No interpretation of the meaning of the plans, specifications or other prebid documents will be made to any bidder orally, and if provided orally, shall not be relied upon by bidders unless confirmed in a written addendum. All information given to bidders other than by means of the plans, specifications, or by addenda, as described below, is given informally, and shall not be used as the basis of a claim against the TOWN or the ENGINEER.

Every request for such interpretation should be in writing (typed, not handwritten) addressed to Weston & Sampson, PE, LS, LA, Architects, PC, 1 Winners Circle, Suite 130 Albany, New York 12205, and to be given consideration must be received at least ten working days prior to the date fixed for the opening of bids.

Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, when issued will be emailed to all prospective bidders to email addresses furnished by them for such purposes. Bidders picking up sets of bid documents will be given all addenda issued to date and will be required to sign for all documents, acknowledging receipt. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under its bid as submitted. All addenda so issued shall become part of the Contract Documents.

11. Bid Opening Procedure

The following list of requirements shall be met by each filed bid.

Bids shall be filed at the place and before the time specified in Receipt and Opening of Bids, above.

The bid and all accompanying documents so required shall be signed by the Bidder or its authorized representative before submission.

All bidders shall include with their bids written acknowledgment of receipt of all addenda. Refer to acknowledgment form provided in Section 00 40 10, FORM OF GENERAL BID.

12. Comparison of Bids

Bids will be compared on the basis of the quantities and unit and lump sum prices stated in the bid forms.

In the event that there is a discrepancy in Section 00 40 10, FORM OF GENERAL BID between the lump sum or unit prices written in words and figures, the prices written in words will govern.

The TOWN agrees to examine and consider each FORM OF GENERAL BID submitted in accordance with the terms and conditions set forth herein and as set forth in Section 00410, FORM OF GENERAL BID.

13. Right to Reject Bid

The TOWN may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all bids, should the TOWN deem it to be in the public interest to do so.

The TOWN may also reject bids which in its sole judgment are either incomplete, conditional, obscure, or not responsive or which contain additions not called for, erasures not properly initialed, alterations, or similar irregularities, and may reject bids for any other reason permitted by law, or the TOWN may waive such omissions, conditions, or irregularities.

14. Ability and Experience of Bidder

No award will be made to any bidder who cannot satisfy the TOWN that it has sufficient ability and experience in this class of work and sufficient capital and plant to enable it to prosecute and complete the work successfully within the time named. The TOWN's decision or judgment on these matters will be final, conclusive, and binding to the fullest extent permitted by law.

The TOWN may make such investigations as it deems necessary, and the bidder shall furnish to the TOWN, under oath if so required, all such information and data for this purpose as the TOWN may request.

15. Conditions of Work

Each bidder must inform himself fully of the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of his obligation to furnish all material and labor necessary to carry out the provisions of his contract. Insofar as possible the CONTRACTOR, in carrying out his work, must

employ such methods or means as will not cause any interruption of or interference with the work of any other contractor.

16. Security for Faithful Performance

Simultaneously with its delivery of the executed Contract, the CONTRACTOR shall furnish a surety bond or bonds as security for faithful performance of this Contract and for the payment of all persons performing labor and materials under this Contract as specified in Section 00 70 00, GENERAL CONDITIONS included herein each in the amount of 100 percent of its bid. The surety on such bond or bonds shall be a surety company qualified to do business under the laws of the State and satisfactory to the TOWN. The bonds shall remain in force for one year after final acceptance of the work by the TOWN, unless the TOWN, in writing, releases the CONTRACTOR from the obligation sooner.

17. Power of Attorney

Attorneys-in-fact who sign Contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

18. Laws and Regulations

Applicable provisions of the Laws of New York and Regulations and/or the United States Code and Code of Federal Regulations govern this Contract and any provision in violation of the foregoing shall be deemed null, void and of no effect. Where conflict between Code of Federal Regulations and Laws of New York and Regulations exist, the more stringent requirement shall apply.

The bidder's attention is directed to the fact that all applicable State laws, municipal ordinances or bylaws, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout, and they will be deemed to be included in the Contract the same as though herein written out in full.

19. Liquidated Damages for Failure to Enter into Contract

The successful bidder, upon his failure or refusal to execute and deliver the Contract, Bonds and Certificates of Insurance required within 10 days after receipt of notice of the acceptance of the bid, shall except as otherwise provided by applicable law, forfeit to the TOWN, as liquidated damages for such failure or refusal, the security deposited with his/her bid, provided that the amount forfeited shall not exceed the difference between his/her bid price and the bid price of the next lowest responsible and eligible bidder. In case of death, disability, bonafide clerical or mechanical error of a substantial nature, or other similar unforeseen circumstances affecting the bidder, his/her bid deposit will be returned.

20. Indeterminate Items and Estimated Quantities

The work to be done under this Contract has been divided into parts or items, if applicable, to enable each bidder to bid on different portions of the work in accordance with its estimate of their cost and so that the actual quantity of work executed under each item may be paid for

at the price bid for that particular item, even though each bidder may have judged that such quantity may be greater or less than the estimated quantity stated in Section 00 40 10, FORM OF GENERAL BID.

21. Prevailing Wage Rates

Applicable provisions of the New York State Department of Labor and/or the United States Code and Code of Federal Regulations govern this Contract and any provision in violation of the foregoing shall be deemed null, void and of no effect. Where conflict between the Code of Federal Regulations and State Laws and Regulations exist, the more stringent requirement shall apply.

Prevailing Wage Rates as determined by the Commissioner of the New York State Department of Labor apply to this project. It is the responsibility of the contractor, before bid opening, to request from the Bureau of Public Work, if necessary, any additional information on Prevailing Wage Rates for those trades people who may be employed for the proposed work under this contract.

22. NYSDOL Registration

Labor Law Section 220-i(6) prohibits contractors from bidding on public work and subcontractors from commencing work unless the contractor or subcontractor is registered with NYSDOL. Contractors and their Subcontractors are required to provide proof of registration as required by Labor Law Section 220-i as a minimum qualification and that failure to provide proof of registration will disqualify a bidder. Contractors and Subcontractors shall be registered as required by Labor Law Section 220-i before commencing work on a covered project.

23. Guarantee

The Contractor shall guarantee that the Work and Services to be performed under the Contract, and all workmanship, materials and equipment performed, furnished, used or installed in the construction of the same shall be free from defects and flaws, and shall be performed and furnished in strict accordance with the Drawings, Specifications, and other contract documents, that the strength of all parts of all manufactured equipment shall be adequate and as specified and that the performance test requirements of the contract shall be fulfilled. This guarantee shall be for a period of one year from and after the date of completion and acceptance of the Work as stated in the final estimate. If part of the Work is accepted in accordance with that subsection of this AGREEMENT titled "Partial Acceptance", the guarantee for that part of the Work shall be for a period of one year from the date fixed for such acceptance.

If at any time within the said period of guarantee any part of the Work requires repairing, correction or replacement, the TOWN may notify the Contractor in writing to make the required repairs, correction, or replacements. If the Contractor neglects to commence making such repairs, corrections, or replacements to the satisfaction of the TOWN within seven (7) days from the date of receipt of such notice, or having commenced fails to

prosecute such Work with diligence, the TOWN may employ other persons to make said repairs, correction, or replacements, and charge the costs, including compensation for additional professional services, to the Contractor.

23. Safety and Health Regulations

This Project is subject to the Safety and Health Regulations of the U.S. Department of Labor set forth in Title 29 CFR, Part 1926 and to all subsequent amendments, and to the New York State Department of Labor, Division of Safety & Health, Official Compilation of Codes, Rules & Regulations (NYCCR) of the State of New York. Contractors shall be familiar with the requirements of these regulations.

24. Efficiency Guarantee Bond

Whenever it is written that an equipment manufacturer must have a specified period of experience with his product, equipment which does not meet the specified experience period can be considered if the equipment supplier or manufacturer is willing to provide an “Efficiency Guarantee Bond” or cash deposit for the duration of the specified time period which will guarantee replacement of that equipment in the event of failure.

25. OSHA 10 Hour Construction Safety and Health Course Requirements

Under Article 8 of the New York State Labor Law, for any public works project of at least \$250,000 in value, all laborers, workers, and mechanics working on the construction site shall be certified as having successfully completed a minimum of 10 hours of Construction and Health Safety Training, as approved by OSHA. The Contractor, subcontractor, or other person doing or contracting to do the whole or part of the work contemplated by the contract, shall provide proof to the Engineer of certification for successfully completing the course for each employee, prior to performing any work on the project.

END OF SECTION

SECTION 00 40 10

FORM OF GENERAL BID

Proposal of _____(hereinafter called "Bidder")*

☐ a corporation, organized and existing under the laws of the State of _____

☐ a joint venture

☐ a partnership

☐ an individual doing business as _____

To _____ (hereinafter called the Town).

The undersigned Bidder, in compliance with your invitation for bids for the construction of the Brian J. Slavin Aquatic Center Pool Renovation Project having examined the plans and specifications with related documents and the site of the proposed work and being familiar with all of the conditions surrounding the construction of the proposed project including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies and to construct the project in accordance with the contract documents, as prepared by Weston & Sampson PE, LS, LA, Architects, PC, within the time set forth therein and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the contract documents, of which this bid is a part.

The Bidder hereby agrees to commence work under this contract on or before a date to be fixed in the written "Notice to Proceed" given by the Town to the Contractor and to fully complete the project within 240 consecutive days of the start date fixed in the "Notice to Proceed." The Bidder further agrees to pay as liquidated damages the sum of \$1,200 for each consecutive calendar day thereafter during which the work has not been fully completed.

Bidder acknowledges receipt of the following addenda:

No. _____ Dated: _____

No. _____ Dated: _____

No. _____ Dated: _____

No. _____ Dated: _____

TOWN OF YORKTOWN		CONTRACT ITEMS		
BRIAN J. SLAVIN AQUATIC CENTER POOL RENOVATION PROJECT				
PAYMENT ITEM NO.	PAYMENT ITEM DESCRIPTION & UNIT PRICE (IN WORDS)	ESTIMATED QUANTITY (UNIT)	UNIT PRICE (IN FIGURES)	TOTAL AMOUNT (IN FIGURES)
1	BASE SCOPE - MAIN POOL AND DIVING POOL COPING REPLACEMENT OPTION 1 (PTD. CONC.)			
	DOLLARS	LS		
	AND _____ CENTS			
2	BASE SCOPE ALTERNATE 1A - MAIN POOL AND DIVING POOL COPING REPLACEMENT OPTION 2A (PRECAST)			
	DOLLARS	LS		
	AND _____ CENTS			
3	BASE SCOPE ALTERNATE 1B - MAIN POOL AND DIVING POOL COPING REPLACEMENT OPTION 2b (STONE)			
	DOLLARS	LS		
	AND _____ CENTS			
4	BASE SCOPE ALTERNATE 1C - MAIN POOL AND DIVING POOL COPING REPLACEMENT OPTION 3 (STAINLESS)			
	DOLLARS	LS		
	AND _____ CENTS			
5	ALTERNATE SCOPE - WADING POOL AND ACTIVITY POOL FINISH REPLACEMENT OPTION 1 (PTD. CONC.)			
	DOLLARS	LS		
	AND _____ CENTS			
6	ALTERNATE SCOPE ALTERNATE 2A - WADING POOL AND INTERACTIVE POOL FINISH REPLACEMENT OPTION 2A (PRECAST)			
	DOLLARS	LS		
	AND _____ CENTS			
6	ALTERNATE SCOPE ALTERNATE 2B - WADING POOL AND INTERACTIVE POOL FINISH REPLACEMENT OPTION 2B (STONE)			
	DOLLARS	LS		
	AND _____ CENTS			
7	ALTERNATE SCOPE ALTERNATE 2C - WADING POOL AND INTERACTIVE POOL FINISH REPLACEMENT OPTION 3 (STAINLESS)			
	DOLLARS	LS		
	AND _____ CENTS			
	TOTAL			
	DOLLARS			
	AND _____ CENTS			

TOTAL OF BID

The proposed Lump Sum contract price for both project areas, all-inclusive is:
_____ Dollars
and _____ Cents (\$_____).

BIDS SHALL BE EVALUATED BY THE LOWEST TOTAL BID.

(All entries shall be made clearly in ink or typewritten. Amounts are to be shown in both words and figures. In case of discrepancy, the amount shown in words shall govern).

The above lump sum price shall include all labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.

The Bidder will comply with all local, state, and federal statutes, and will comply with the anti-discrimination clauses attached hereto as Schedule C, and made a part hereof, and will adhere to the requirements set forth in the aforesaid advertisement.

The Bidder agrees that it has complied with Section 103-d of the General Municipal Law of the State of New York, and agrees that it will comply with Section 103-a of said law. Copies of such section are attached hereto and made a part of these contract documents, and designated as Schedule D.

The Bidder will comply with section 220-h of Article 8 of the New York State Labor Law, which requires all workers on the construction site of a public works project with a value of at least \$250,000 to have received at least 10 hours of construction safety and health training as approved by OSHA.

The contract will be awarded to the lowest responsible and eligible bidder.

The Bidder understands that the Town reserves the right to reject any or all bids and to waive any informalities in the bidding.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of 30 days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids.

Within 10 days of receipt of the written notice of acceptance of this bid, the Bidder will execute the formal agreement attached in Section 00520 AGREEMENT.

Bid security is attached in the sum of five percent (5%) of the total bid in accordance with the conditions of Section 00200 INSTRUCTIONS TO BIDDERS. The bid security may

become the property of the Town in the event the contract and bond are not executed within the time set forth above.

The selected Contractor shall furnish a performance bond and a payment bond in an amount at least equal to one hundred percent (100%) of the contract prices in accordance with Section 00610 PERFORMANCE BOND, Section 00615 PAYMENT BOND, and as stipulated in Section 12 of Section 00700 GENERAL CONDITIONS of these specifications.

The undersigned offers the following information as evidence of his qualifications to perform the work as bid upon according to all the requirements of the plans and specifications.

1. Have been in business under present name for _____ years.
2. The names and addresses of all persons interested in the bid (if made by a partnership or corporation) as Principals, are as follows:

(Attach supplementary list if necessary)

07/12/2017

00410-5

3. The Bidder shall state below what work of a similar character to that included in the proposed contract he has done, and give references that will enable the Town to judge his experience, skill and business standing (add supplementary page if necessary).

Completion Date	Project Name	Contract Amount	Design Engineer	Reference Name	Telephone No.
a.					
b.					
c.					
d.					
e.					
f.					

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work.

Respectfully submitted:

Date _____

By _____
(Signature)

(Name - Typed or Printed)

(Title)

(SEAL - if bid is by a corporation)

(Business Name)

(Federal ID Number)

(Business Address)

(City and State)

(Telephone Number)

(Fax Number)

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SCHEDULE C

NON-DISCRIMINATION CLAUSE

During the performance of this AGREEMENT, the CONTRACTOR agrees as follows:

1. The CONTRACTOR will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status and will undertake programs of affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference, but not be limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, lay-off, or termination, rates of pay or other forms of compensation, and selection for training or re-training, including apprenticeship and on-the-job training.

2. If the CONTRACTOR is directed to do so by the Town or the Office of State Contract Compliance (hereafter OSCC), the CONTRACTOR shall request each employment agency, labor union or representative will not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the CONTRACTOR'S obligation hereunder and the purposes of Executive Order 45 (1977).

3. The CONTRACTOR will state, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race creed, color, national origin, sex, age, disability or marital status.

4. The CONTRACTOR will comply with all the provisions of Executive Order 45 (1977) and of rules, regulations and orders issued pursuant thereto and will furnish all information and reports required by said Executive Order or such rules, regulations and orders, and will permit access to its books, records and accounts and to its premises by the DEPARTMENT or the OSCC for the purposes of ascertaining compliance with said Executive Order and such rules, regulations and orders.

5. If the CONTRACTOR does not comply with the equal opportunity provisions of this contract, with Executive Order 45 (1977), or with such rules, regulations, this contract or any portion thereof, may be canceled, terminated, or suspended or payments thereon withheld, or the CONTRACTOR may be declared ineligible for future State-assisted contracts, in accordance with procedures authorized in Executive Order 45 (1977), and such other sanctions may be imposed and remedies invoked as are provided in said Executive Order or by rule, regulation or order issued pursuant thereto, or as otherwise provided by law.

SCHEDULE D

SECTION 103-d GENERAL MUNICIPAL LAW OF NEW YORK STATE

Every bid or proposal hereafter made to a political subdivision of the state or any public department, agency, or official thereof where competitive bidding is required by statute, rule regulation or local law, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury: Non-Collusive bidding certification.

a. Submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certified as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

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

b. A bid shall not be considered for award, nor shall any award be made where (a) (1) (2) and (3) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the political subdivision public department, agency, or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published prices lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or 8 has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subparagraph one (a).

2. Any bid hereafter made to any political subdivision of the state or any public department, agency, or official thereof by a corporate bidder for work or service performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule regulation or local law, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

SECTION 00 40 20

BIDDER'S QUALIFICATION FORM

This form should be submitted upon request of Owner by the three lowest Bidders after opening of the bids, in accordance with Paragraph 3.1 of Section 00 20 00 - INSTRUCTIONS TO BIDDERS.

1. Name of Contractor _____
2. How many years experience have you had in construction work of the same general type as this Contract? _____
3. Give information about the construction experience of the principals of your present organization who will be involved in the Contract (Add additional sheets if necessary):

<u>Individual's Name</u>	<u>Present Position in Organization</u>	<u>Years of Construction Experience</u>	<u>Proposed Size and Type of Work</u>	<u>Position for This Contract</u>

4. Give information about your present contract workload, or contracts to which you are committed:

<u>Contract Price</u>	<u>Type of Construction</u>	<u>Location of Work</u>	<u>Percentage Completed</u>	<u>Expected Completion Date</u>	<u>Name and Address of Owner</u>

5. Has your organization or any other partner thereof, failed to complete a construction contract? _____

6. References. Give only engineers, architects or owner's representatives who are directly familiar with your work on similar projects.

<u>Name</u>	<u>Business Address</u>	<u>Telephone</u>	<u>Project</u>

7. Is any litigation pending against your organization? _____

8. Has your organization been denied any construction project where it was the lowest bidder? _____

If yes, give details: _____

9. Give as reference a surety company or companies regarding your organization's financial responsibility and general reliability:

Name of Surety Company: _____

Name of Local Agent (if different): _____

Local Address: _____

Telephone: _____

Person familiar with Bidder's account: _____

10. Attach a financial statement, audited if available, including your organization's latest balance sheet and income statement, prepared in accordance with generally accepted accounting principles. (This statement shall be for the local firm submitting the Bid, unless the local firm is a branch or subsidiary for which separate accounts are not available, in which case the statement shall be for the organization(s) which will contract to be a guarantor of any contract resulting from this Bid. Attach a notarized statement of an officer of that organization describing the relationship to the local firm and stating that the organization will act as guarantor of the local firm's contracts.) Any financial statement shall include:

A. Assets: list

1. Current Assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory and prepaid expenses)
 2. Net Fixed Assets
 3. Other Assets
 4. Total Assets (the sum of A1, A2 and A3)
- B. Liabilities: list
1. Current Liabilities (e.g., accounts payable, notes payable, accrued expenses, provisions for income taxes, advances, accrued salaries and accrued payroll taxes)
 2. Other Liabilities (e.g., capital, capital stock, authorized and outstanding share par values, earned surplus and retained earnings)
 3. Total Liabilities (the sum of B1 and B2)
- C. Net Worth (A minus B)
- D. Billings: State the firm's average annual billings for the five years prior to the date of this Bid and the total billings for the six months prior to the date of this Bid.
- E. State the name and address of the person or firm preparing this financial statement.
- F. State the name and address of the person or firm (if any) auditing this financial statement. If this statement was not audited, state "not audited".

SECTION 00 40 30

NON-COLLUSIVE BIDDING CERTIFICATION

This Non-Collusive Bidding Certificate is made pursuant to Section 103-d of the General Municipal Law of the State of New York.

By submission of this bid, Bidder and each person signing on behalf of Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

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

A bid shall not be considered for award, nor shall any award be made where (1) (2) and (3) above, have not been complied with; provided, however, that if in any case Bidder cannot make the foregoing certification, Bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons, therefore. Where (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

Dated: _____

Bidder: _____
(Legal name of person, firm, or corporation)

By: _____
(Signature)

(Please Print Name)

(Title)

State of New York)

Town of _____)ss.:

On the _____ day of _____ in the year 2025 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(Notary Public)

SECTION 00 50 20

AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2025, by and between The Town of Yorktown hereinafter called "TOWN," acting herein through its Parks & Recreation Superintendent, and _____ doing business as (a corporation) (a limited liability company) (a partnership) (a joint venture) (an individual) * located in the (City) (Town)* of _____, County of _____, and State of _____, hereinafter called "CONTRACTOR."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the TOWN, the CONTRACTOR hereby agrees with the TOWN to commence and complete the project described as follows:

BRIAN J. SLAVIN AQUATIC CENTER POOL RENOVATION PROJECT

hereinafter called the project, for the sum of _____ Dollars and _____ Cents (\$ _____) and all extra work in connection therewith, under the terms as stated in the Contract Documents; and at its own proper cost and expense to furnish superintendence, labor, services, materials, equipment, plant, machinery, apparatus, appliances, tools, supplies, bailing, shoring, removal, and all other things necessary to complete the said project in accordance with the conditions and prices stated in Section 00410, FORM OF GENERAL BID, Section 00700, GENERAL CONDITIONS, the plans, which include all maps, plates, drawings, blue prints, and the specifications and all other contract documents therefor as prepared by Weston & Sampson, PE, LS, LA, Architects, PC, including all bid documents.

The CONTRACTOR hereby agrees to commence work under this contract on or before a date to be fixed in the written Notice to Proceed given by the TOWN to the CONTRACTOR and to fully complete the project within 240 consecutive days of the start date fixed in the Notice to Proceed. The CONTRACTOR further agrees to pay as liquidated damages the sum of **\$1,200** for each consecutive calendar day thereafter during which the work has not been fully completed.

The CONTRACTOR shall not discriminate against or exclude any person from participation herein on grounds of race, color, religious creed, national origin, sex, sexual orientation, ancestry, or age; and that it shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to race, color, religious creed, national origin, sex, sexual orientation, ancestry, age, or handicapped status.

The CONTRACTOR shall not participate in or cooperate with an international boycott, as defined in Section 999 (b)(3) and (4) of the Internal Revenue Code of 1986, as amended, or engage in conduct declared to be unlawful by New York State General Laws.

Applicable provisions of New York General Laws and Regulations and/or the United States Code and Code of Federal Regulations govern this Agreement and any provision in violation of the foregoing shall be deemed null, void and of no effect. Where conflict between Federal and State Laws and Regulations exists, the more stringent requirement shall apply.

The TOWN agrees to pay the CONTRACTOR in current funds for the performance of the Agreement, subject to additions and deductions, as provided in Section 00700, GENERAL CONDITIONS, and to make payments on account thereof as provided in Section 00700, GENERAL CONDITIONS.

The Contractor shall submit and shall require all of its subcontractors required to keep a record of hours and wages paid to laborers employed on the project to submit to the awarding authority within thirty days after issuance of its first payroll, and every thirty days thereafter, a transcript of the original payroll records, subscribed and affirmed to be true.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in six (6) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

AGREED:

_____, New York
Town of Yorktown
(TOWN)

By _____

(Name)

(Title)

(Contractor)

By _____

(Name)

(Title)

(Address)

(City and State)

Approved as to Form:

By _____

(TOWN's Counsel)

(Name)

This is to certify that an appropriation in the amount of this Contract is available therefor and that the Water Superintendent has been authorized to execute the Contract and approve all requisitions and change orders.

By _____

(TOWN's Accountant)

(Name)

CERTIFICATE OF VOTE
(to be filed if Contractor is a Corporation)

I, _____, hereby certify that I am the duly qualified and acting Secretary of
(Secretary of Corporation)
_____ and I further certify that a meeting of the Directors of said
company,

duly called and held on _____, at which all members were present and voting, the
(Date of Meeting)
following vote was unanimously passed:

VOTED: To authorize and empower

Anyone acting singly, to execute Forms of General Bid, Contracts or Bonds on behalf of the Corporation.

I further certify that the above vote is still in effect and has not been changed or modified in any respect.

By: _____
(Secretary of Corporation)

A True Copy:

Attest: _____
(Notary Public)

My Commission Expires: _____
(Date)

Contractor's Certification

A Contractor will not be eligible for award of a contract unless such Contractor has submitted the following certification, which is deemed a part of the resulting contract:

CONTRACTOR'S CERTIFICATION

Name of the General Contractor

certifies that it:

1. Will not discriminate in their employment practices;
2. Intends to use the following listed construction trades in the work under the contract:

and

3. Will make good faith efforts to comply with the minority employee and women employee workforce participation ratio goals and specific affirmative action steps contained herein; and
4. Is in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and
5. Will provide the provisions of the "Supplemental Equal Employment Opportunity, Non-Discrimination and Affirmative Action Program" to each and every subcontractor employed on the Project and will incorporate the terms of this Section into all subcontracts and work orders entered into on the Project.
6. Agrees to comply with all provisions contained herein.

Signature of authorized representative of Contractor

Date

Printed name of authorized representative of Contractor

Subcontractor's Certification

Prior to the award of any subcontract, regardless of tier, the prospective subcontractor must execute and submit to the General Contractor the following certification, which will be deemed a part of the resulting subcontract:

SUBCONTRACTOR'S CERTIFICATION

Name of the Subcontractor

certifies that it:

7. Will not discriminate in their employment practices;
8. Intends to use the following listed construction trades in the work under the contract:

- and
9. Will make good faith efforts to comply with the minority employee and women employee workforce participation ratio goals and specific affirmative action steps contained herein; and
10. Is in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and
11. Will provide the provisions of the "Supplemental Equal Employment Opportunity, Non-Discrimination and Affirmative Action Program" to each and every subcontractor employed on the Project and will incorporate the terms of this Section into all subcontracts and work orders entered into on the Project.
12. Agrees to comply with all provisions contained herein.

Signature of authorized representative of Subcontractor

Date

Printed name of authorized representative of Subcontractor

END OF SECTION

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SECTION 00 60 10

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That we _____
(Name of Contractor)
a _____ hereinafter called "Principal" and
(Corporation, Partnership, Joint Venture, LLC or Individual)
_____ of _____, State of _____
(Surety) (City)
hereinafter called the "Surety" and licensed by the Department of Financial Services to do
business under the laws of New York State are held and firmly bound to the Town of Yorktown,
New York, hereinafter called "Town", in the penal sum of
_____ Dollars and
_____ Cents(\$_____) in lawful money of the
United States, for the payment of which sum well and truly to be made, we bind ourselves, our
heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas the Principal has
entered into a certain contract with the Town (the "Contract"), dated the _____ day of
_____, 20____, which Contract is by reference made a part hereof, for the
construction described as follows:

BRIAN J. SLAVIN AQUATIC CENTER POOL RENOVATION PROJECT

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties,
all the undertakings, covenants, terms, conditions, and agreements of the Contract during the
original term thereof, and any extensions thereof which may be granted by the Town, with or
without notice to the Surety, and if he shall satisfy all claims and demands incurred under the
Contract, and shall fully indemnify and save harmless the Town from all costs and damages
which it may suffer by reason of failure to do so, and shall reimburse and repay the Town all
outlay and expense which the Town may incur in making good any default, then this obligation
shall be void; otherwise, this obligation shall remain in full force and effect.

PROVIDED, FURTHER, that the Surety's obligation under this Bond shall arise after
(1) the Town has declared the Principal in default of the Contract or any provision thereof, or (2)
has declared that the Principal has failed, or is otherwise unable or unwilling, to execute the work
consistent with, and in conformance to, the Contract (collectively referred to as a "Contractor
Default"). The determination of a Contractor Default shall be made solely by the Town. The
Town need not terminate the Contract to declare a Contractor Default or to invoke its rights
under this Bond, and Contractor hereby agrees not to assert any claims against Surety under any
indemnity or similar agreements on the grounds that Surety has interfered with the Contract by
fulfilling its obligations hereunder in the absence of a termination of said Contract.

When the Surety's obligation under this Bond arises, the Surety, at its sole expense and at
the consent and election of the Town, shall promptly take one of following steps: (1) arrange for
the Principal to perform and complete the work of the Contract; (2) arrange for a contractor other
than the Principal to perform and complete the work of the Contract; (3) reimburse the Town, in

a manner and at such time as the Town shall reasonably decide, for all costs and expenses incurred by the Town in performing and completing the work of the Contract. Surety will keep Town reasonably informed of the progress, status, and results of any investigation of any claim of the Town.

If the Surety does not proceed as provided in this Bond with due diligence and all deliberate speed, the Surety shall be deemed to be in default of this Bond, and the Town shall be entitled to enforce any remedy available to the Town.

After the Surety's obligation under this Bond arises, the Surety is obligated, to the limit of the amounts of this Bond, for (1) the correction of defective work and completion of the Contract; (2) additional design, professional services, and legal costs, including attorney's fees, resulting from the Contractor Default or from the default of the Surety under this Bond; (3) any additional work beyond the Contract made necessary by the Contractor Default or default of the Surety under this Bond; (4) indemnification obligations of the Principal, if any, as provided in the Contract; and (5) liquidated damages as provided in the Contract, or if no such damages are specified, actual damages and consequential damages resulting from the Contractor Default or any default of the Surety under this Bond.

Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction in the State of New York.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications.

The Surety providing the Bond shall have a rating of A or better within Best's Key Rating Guide.

IN WITNESS WHEREOF, this instrument is executed in ____ () counterparts, each one of which shall be deemed an original, this the _____ day of _____, 20 ____.

ATTEST:

_____ Principal	_____ Witness as to Principal Signature
By _____ Signature	_____ Name and Title
_____ Name and Title	_____ Address
_____ Address	_____ City and State
_____ City and State	(SEAL)

ATTEST:

_____ Surety	_____ Witness as to Surety Signature
By _____ Attorney-in-Fact Signature	_____ Name and Title
_____ Name and Title	_____ Address
_____ Address	_____ City and State
_____ City and State	(SEAL)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is a Partnership, all partners should execute Bond.

END OF SECTION

SECTION 00 60 15

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That we _____
(Name of Contractor)
a _____ hereinafter called "Principal" and
(Corporation, Partnership, Joint Venture, Limited Liability Company, or Individual)
_____ of _____, State of _____
(Surety) (City) (State)
hereinafter called "Surety" and licensed to do business under the laws of the State of New York
are held and firmly bound to the Town of Yorktown, New York, hereinafter called "Town," in
the penal sum of _____
Dollars and _____ Cents (\$ _____) in
lawful money of the United States, for the payment of which sum well and truly to be made, we
bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly
by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal has
entered into a certain contract with the Town (the "Contract"), dated the _____ day of _____
_____, 20____, which Contract is by reference made a part hereof, for the construction
described as follows:

BRIAN J. SLAVIN AQUATIC CENTER POOL RENOVATION PROJECT

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms,
subcontractors, and corporations furnishing materials for or performing labor in the prosecution
of the work provided for in such contract, and any authorized extension or modification thereof,
including all amounts due for materials, lubricants, oil, gasoline, repairs on machinery,
equipment and tools, consumed or used in connection with the construction of such work, and all
insurance premiums on said work, and for all labor, performed in such work whether by
subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force
and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and
agrees that no change, extension of time, alteration or addition to the terms of the Contract or to
the work to be performed thereunder or the specifications accompanying the same shall in any
way affect its obligation on this bond, and it does hereby waive notice of any such change,
extension of time, alteration or addition to the terms of this Contract or to the work or to the
specifications. The Surety Company providing the bond shall have a rating of A or better within
the Best Key Rating Guide.

PROVIDED, FURTHER, that no final settlement between the Town and the Contractor
shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in ____ () counterparts, each one of which shall be deemed an original, this the _____ day of _____, 20__.

ATTEST:

_____ Principal	_____ Witness as to Principal Signature
By _____ Signature	_____ Name and Title
_____ Name and Title	_____ Address
_____ Address	_____ City and State
_____ City and State	(SEAL)

ATTEST:

_____ Surety	_____ Witness as to Surety Signature
By _____ Attorney-in-Fact Signature	_____ Name and Title
_____ Name and Title	_____ Address
_____ Address	_____ City and State
_____ City and State	(SEAL)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is a Partnership, all partners should execute Bond.

END OF SECTION

SECTION 00 70 00
GENERAL CONDITIONS

<u>Section Numbers</u>	<u>Heading</u>
Section 1.	Bid Proposal Form
Section 2.	Pre-Bid Site Inspection
Section 3.	Quality and Samples
Section 4.	Request for information and/or clarification of the Bid Documents
Section 5.	Non-Collusion
Section 6.	Late Bids
Section 7.	Bid Opening
Section 8.	Acceptance and Rejection
Section 9.	Appeal of Determination of Non-Responsiveness and Non-Responsibility
Section 10.	Award
Section 11.	Notice of Award
Section 12.	Performance And Payment Bond
Section 13.	Assignment Prohibited
Section 14.	Special Requirements
Section 15.	Purchase of Additional Quantities of Bid Items
Section 16.	Contractor's Subcontracts and Material Lists
Section 17.	Representative Always Present
Section 18.	Performance
Section 19.	Insurance Requirements
Section 20.	Indemnification
Section 21.	Delivery Point
Section 22.	Date of Delivery
Section 23.	Damages
Section 24.	Warranty/Guarantee

<u>Section Numbers</u>	<u>Heading</u>
Section 25.	Breach of Contract/Termination
Section 26.	Prevailing Wage Rates and Supplements
Section 27.	Estimates and Payments
Section 28.	Payments to Subcontractors and Materialmen by Contractor
Section 29.	Change in Contract Price
Section 30.	Proper Method of Work and Materials
Section 31.	Utilities and Service Lines
Section 32.	Protection, Existing Structures
Section 33.	Acceleration of the Work
Section 34.	Stopping Work
Section 35.	Change in the Contract Time
Section 36.	Disputed Work – Notice of Claims for Damages

Section 1. Bid Proposal Form

- 1.1** The bidder shall complete the Bid Proposal Form by filling in the unit price and the total price in the appropriate designated spaces. Unit price and total price of each item bid shall be written legibly in ink, or typed. All bids shall be signed in ink. Any erasures or alterations shall be initialed in ink by the signer. The completed Bid Proposal Form shall be submitted, along with any documentation in support of the bid proposal if required by the Bid Documents, in a sealed envelope addressed as required in the Invitation to Bidders on or before the time and at the place so designated. Any Bid Proposal Form which has been materially altered in any way may render the bid nonresponsive and the bid rejected.
- 1.2** In the event of a discrepancy between the unit price and the total price of the Bid Proposal Form, the unit price will prevail. In the event of a discrepancy between the written bid amount and the numerical bid amount, the written amount will take precedence and be controlling as to the amount of the Bid. All items not bid shall be indicated as “not bid” in the total price space. When bids are requested on a lump sum basis, bidder must bid on each item in the lump sum group. Any bidder desiring to bid “no charge” on an item in a group must so indicate.
- 1.3** Failure to comply with the provisions of this section may be grounds for rejection of the bid proposal.
- 1.4** Correction or withdrawal of a bid because of an inadvertent, non-judgmental mistake in the Bid Proposal Form requires careful consideration to protect the integrity of the competitive bidding process, and to ensure fairness. If the mistake is attributable to an error in judgment, the Bid Proposal Form may not be corrected. Bid correction or withdrawal by reason of the non-judgmental mistake is permissible at the sole discretion of the Town Clerk, but only to the extent that it is not contrary to the interests of the Town or the fair treatment of other bidders.
- 1.5** By signing the Bid Proposal Form, the bidder certifies that:
 - i.** the person whose signature appears below is legally empowered to bind the bidder;
 - ii.** the bidder has read the complete Bid Documents and understands and agrees to all terms and conditions set forth in the Bid Documents;
 - iii.** if accepted by the Town, the bid is guaranteed as written and will be implemented as stated;
 - iv.** By submission of the bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the New York State Finance Law.¹

¹ List found at <http://ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

- 1.6 The bidder understands and agrees that quantities shown on the Bid Proposal Form opposite items of the work for which unit prices have been requested are approximate estimated quantities, and that during the progress of the work the Town may find it advisable and shall have the right to omit portions of the work, and to increase or decrease the shown approximate estimated quantities, or the scope of the whole work; and that the Town reserves the right to add to or take from the total amount of the work up to a limit of thirty (30%) percent of the total amount of the contract based upon the executed contract price for all the specified work.
- 1.7 The bidder shall make no claim for anticipated profits or loss of profits, because of any difference between the quantities of the various classes of work actually done, or of the materials actually furnished, and the original specified scope of work and the shown approximate estimated quantities.
- 1.8 All prices bid include a sum sufficient for the preparation and submission of approved final "As-builts", record drawings, guarantees, warranties, and operations and maintenance manuals.
- 1.9 All plans and other like records compiled by the contractor in completing the work under this contract shall become the property of the Town. The Contractor may retain copies of each such plan or record for its own use.
- 1.10 The contractor shall secure and pay for all necessary permits for the proper executing and completion of work.
- 1.11 The Town is exempt from all federal, state and local taxes.

Section 2. Pre-Bid Site Inspection

- 1.1 The bidder shall satisfy itself by personal examination of the location of the proposed work and surroundings thereof, and by such other means as it may prefer, as to the scope of the work and the accuracy of the approximate estimated quantities; and shall not at any time after submission of the bid dispute such approximate estimated quantities or assert that there was any misrepresentation by the Town or any misunderstanding by the bidder in regard to the quantity or kind of materials to be furnished, or work to be done. Failure to do so will not relieve a successful bidder contractor ("contractor") of the obligation to furnish all material and labor necessary to carry out the provisions of the contract documents and to complete the contemplated work for the consideration set forth in its bid.
- 1.2 Unless otherwise stated, the bidder is free and encouraged to examine the work site during normal work hours preceding the submission of the bid. For those bidders requesting further clarification of the conditions, an appointment with the Town's representative, can be requested, by contacting the, Town Clerk.
- 1.3 At the time of the opening of bids each bidder will be presumed to have inspected the sites and to have read and to be thoroughly familiar with the Bid Documents.

Section 3. Quality and Samples

- 3.1** All equipment, material and supplies bid upon must conform to the description and specifications set forth in the in the Bid Documents, or their reasonable equivalent.
- 3.2** References in the Bid Documents to type, style, brand or trade name, and catalog are intended to be descriptive only and not restrictive.

Section 4. Request for information or interpretation and/or clarification of the Bid Documents

- 4.1** The bidder shall have seven (7) business days prior to the bid opening date to notify the Town Clerk in writing of any errors or defects in the Bid Documents which would prevent the bidder from providing a responsive bid.
- 4.2** No interpretation of the Bid Documents will be made to any bidder orally by any representative of the Town.
- 4.3** Any request for information or interpretation and/or clarification of the Bid Documents must be addressed in writing to Diana Quast, Yorktown Town Clerk, 363 Underhill Avenue, Yorktown Height, NY 10598, and be submitted no later than five (5) business days prior to the date fixed for the opening of bids.
- 4.4** Any written response to a request for information or interpretation and/or clarification of the Bid Documents shall be issued by Town Clerk and will be incorporated into and made part of the Bid Documents and will be made available in the same manner and method as the Bid Documents. The Town Clerk's decision shall be final and binding on all parties. The failure of any bidder to receive such Addenda will not relieve the contractor of any obligation to comply with the terms and conditions of the Addenda.
- 4.5** The Bid Documents, including the drawings, Bid Documents, have been prepared with care and are intended to show as clearly as is practicable the work required to be done. The bidder must realize however, that construction details cannot always be accurately anticipated and that in executing the work, field conditions may require reasonable modifications in the details of the plans and quantities of work involved. Work under all items in the contract must be carried out to meet these field conditions to the satisfaction of the Town and in accordance with the Bid Documents. The bidder shall not take advantage of any apparent errors or omission in the Bid Documents. In the event the contractor discovers an error or omission in the Bid Documents, it shall immediately notify the Town. The Town will then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Bid Documents.
- 4.6** A bidder's failure to request a clarification, interpretation, etc. of any portion of the Bid Documents or to point out any inconsistency therein will preclude such bidder from thereafter claiming any ambiguity, inconsistency, or error which should have been discovered by a reasonably prudent bidder and from asserting any claim for damages arising directly or indirectly therefrom.

Section 5. Non-Collusion

- 5.1** The bidder shall certify that it has complied with all of the requirements stated in the

non-collusive bidding certificate by signing the form included in the Bid Documents. Failure by the bidder to complete and sign the non-collusive bidding certificate will constitute grounds for rejection of the bid.

Section 6. Late Bids

- 6.1** All bids received after the deadline date and time stated in the Instructions to Bidders will not be considered and will be returned to the bidder unopened. The bidder assumes the risk of any delay in the mail and the handling of the mail by the employees of the Town. Whether sent by mail or by means of personal delivery, the bidder assumes all responsibility for having the bid delivered on time and to the place specified above.

Section 7. Bid Opening

- 7.1** Sealed bids will be publicly opened on the date and time specified in the Instructions to Bidders. Bids may be read aloud to those persons present when practicable. Any bidder may request to review any submitted Bid Proposal Forms by arranging a mutually convenient time with the Town Clerk.
- 7.2** The prices stated in the Bid Proposal Form are irrevocable until the Notice of Award is issued, unless the bid is withdrawn only after the expiration of sixty (60) days from the bid opening and only in writing received by the Town Clerk and in advance of the issuance of the Notice of Award.

Section 8. Acceptance or Rejection

- 8.1** A responsive bid is one that complies with all material terms and conditions of the Bid Documents.
- 8.2** If the lowest price bid or proposal is found non-responsive, a determination setting in detail and with specificity the reasons for such finding shall be issued by the Town Clerk. A copy of such determination shall be mailed to the non-responsive bidder no later than two (2) business days after the determination is made.
- 8.3** The Town reserves the sole right to waive any informality that is a matter of form rather than substance without prejudice to other bidders and what is in the best interests of the Town. The Town's decision shall be final and binding.
- 8.4** Any corporation not incorporated under the Laws of New York State, must furnish a copy of its certificate of authority, from the New York State Secretary of State, to do business in the State of New York, in accordance with Article 13 of the New York State Business Corporation Law.
- 8.5** The Town will consider the qualifications of all bidders and may conduct such investigation as it deems necessary to assist in the evaluation of any bid. The Town reserves the right to reject any bid if the evidence submitted by, or the investigation of such bidder fails to satisfy the Town, in the Town's sole discretion, that it is properly qualified to carry out the obligations of the contract and to complete the contemplated work. In evaluating a bidder's responsibility, the Town may consider the following factors:

- i. financial resources;
- ii. technical qualifications;
- iii. experience;
- iv. organization, material, equipment, facilities, and personnel resources and expertise (or the ability to obtain them) necessary to carry out the work and to comply with required delivery or performance schedules, taking into consideration other business commitments;
- v. a satisfactory record of performance;
- vi. a satisfactory record of business integrity;
- vii. where the contract includes provisions for reimbursement of contractor costs, the existence of accounting and auditing procedures adequate to control property funds, or other assets, accurately delineate costs, and attribute them to their causes; and
- viii. compliance with requirements for the utilization of small, minority-owned, and women-owned businesses as subcontractors.

8.6 The Town reserves the right to require additional information as it deems appropriate concerning the history of any bidder's performance of prior contracts. The final determination of whether the bidder possesses the requisite experience rests in the sole discretion of the Town. Failure of a bidder to provide relevant information specifically requested by the Town may be grounds for a determination of non-responsive and/or non-responsible.

Section 9. Appeal of Determination of Non-Responsiveness or Non-Responsible

- 9.1** Any determination that a bid is non-responsive or a bidder is non-responsible may be appealed as set forth herein.
- 9.2** Time Limit; A bidder shall have five (5) business days from receipt of the determination of non-responsiveness or non-responsible to file an appeal with the Town Clerk. Receipt of notice by the bidder shall be deemed to be no later than five (5) business days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the Town Clerk. The bidder shall also send a copy of its appeal, for informational purposes, to the Town Attorney.
- 9.3** Form and Content: The appeal shall be in writing and shall briefly state all the facts or other basis upon which the bidder contests the finding of non-responsiveness or non-responsible. Supporting documentation, if any, shall be included.
- 9.4** Stay of Award of Contract Pending. Award of the contract shall be stayed pending the determination of the Town Clerk unless the Town Clerk makes a determination that proceeding with the award without delay is necessary to protect substantial Town's interests. Where such a determination is made, the bidder shall be advised of this action in the determination of non-responsiveness or, if the stay is removed at any time after the bidder has been notified of determination of non-responsiveness or non-responsible, notification shall be provided to the bidder no later than two (2) business days after such determination is made. The Town Clerk shall consider the appeal, and may, in his or her sole discretion, meet with the bidder to discuss the merits of the appeal. The Town Clerk shall make a prompt determination with respect to the merits of the appeal, a copy of which shall be sent to the bidder. The Town Clerk's determination shall be final.

Section 10. Award

- 10.1 Town reserves the right to make an award within sixty (60) days after the date of the bid opening, during which period bids may not be withdrawn.
- 10.2 The Award will be made to the responsible and responsive bidder submitting the lowest bid that fully complies with all the specifications stated in the Bid documents.
- 10.3 Town reserves the right to reject all bids and to purchase any or all items on contracts awarded by agencies or departments of the State of New York or of the Town, if such items can be obtained on substantially the same terms, conditions, specifications, and at a lower price.

Section 11. Notice of Award

- 11.1 If the bid is awarded by Town, a written Notice of Award will be issued by the Town Clerk to the contractor. Such Notice of Award will constitute a binding enforceable contract between the contractor and the Town of Yorktown. These General Terms and Conditions shall be incorporated into the contract as material terms.
- 11.2 The Town may issue a Notice of Award based on either Lowest Responsible Bid or Best Value, in accordance with the 2012 amendments to General Municipal Law § 103, as implemented by Yorktown Town Code Chapter 78 entitled *Procurement for Goods and Services*.
- 11.3 Upon receipt of the Notice of Award the contractor will be required to submit to the Town Clerk a completed W-9 form in addition to any other information or documents required by the Town. Failure to supply a completed W-9 form or such other information or documents required by the Town will invalidate the bid.

Section 12. Performance and Payment Bond

- 12.1 If a Performance and Payment bond is required in accordance with the Instruction to Bidders, the “Bid Bond and Consent of Surety” Form must be executed by the contractor’s Surety Company and submitted to the Town.

Section 13. Assignment Prohibited

- 13.1 The contractor shall not assign, transfer, convey or otherwise dispose of the contract or any part of it or any monies due and payable under the contract, without prior written approval of the Town. If such approvals are granted by the Town, they shall in no way relieve the contractor or from any obligations under the terms of the contract.

Section 14. Special Requirements

- 14.1 Special requirements for any bid may supersede and/or be added to any provision contained in these General Terms and Conditions.

Section 15. Purchase of Additional Quantities of Bid Items

- 15.1** The Town may purchase additional quantities of the bid items at any time during the contract period, for the same price and under the same terms and conditions as set in the Bid Proposal Form.

Section 16. Contractor's Subcontracts and Material Lists

- 16.1** Within fifteen (15) days after execution of the Contract, the contractor shall submit to the Town for approval a list of the subcontractors, materialmen and materials that the contractor plans to use in the performance of the work and statements of the work they are to perform. The format and content of the list shall be in accordance with directives from the Town. No part of the work may be sublet until after the contractor has received the Town's approval. The contractor shall be fully responsible for all acts and omissions of its subcontractors and persons directly or indirectly employed by them, and the Town's approval to sublet parts of the work will in no way relieve the contractor of any of its obligations under the Contract. All dealings of the Town with the subcontractors shall be through the contractor.
- 16.2** The contractor shall insert appropriate clauses in all subcontracts to bind the subcontractors to the contractor by all applicable provisions of the contract documents executed between the contractor and the Town, but this shall not be construed as creating any contractual relationships between subcontractors and the Town. Prior to approval of the subcontractors, the Town has the right to review and recommend changes in the subcontracts. The Town reserves the right to reject any subcontractor proposed by the contractor if in the reasonable opinion of the Town such subcontractor lacks the experience or capability to perform its subcontract work or is otherwise non-responsible.
- 16.3** The contractor shall insert appropriate clauses in each subcontract that require that if the contractor is terminated by the Town either for default or convenience that at the sole option of the Town the subcontract shall automatically at torn to the Town and the subcontractor shall continue without delay or interruption to fully perform all of the obligations required by its subcontract.

Section 17. Representative Always Present

- 17.1** The contractor in case of its absence from the work shall have a competent representative or foreman present, who shall obey without delay, all instructions of the Town in the prosecution and completion of the work in conformity with the contract, and shall have full authority to supply labor and material immediately.
- 17.2** The contractor, or its superintendent, shall attend job meetings with the Town for the purpose of discussing expedition, execution and coordination of the work. Job meetings will be scheduled periodically (the first to be prior to commencement of construction) at a time and place designated by the Town.
- 17.3** The contractor shall not commence any work prior to the first (pre-construction) meeting between the contractor, Town, and other concerned governmental and utility company representatives.

Section 18. Performance

- 18.1** All work performed and all materials furnished shall be in reasonably close conformity with the lines, grades, cross sections, dimensions and materials requirements, including tolerances, shown in the Bid Documents.
- 18.2** Plan dimensions and contract specification values are to be considered as the target value to be strived for and complied with as the design value from which any deviations are allowed. It is the intent of the specifications that the materials and workmanship shall be uniform in character and shall conform as nearly as realistically possible to the prescribed target value or to the middle portion of the tolerance range. The purpose of the tolerance range is to accommodate occasional minor variations from the median zone that are unavoidable for practical reasons. When a maximum or minimum value is specified, the production and processing of the material and the performance of the work shall be so controlled that material or work shall not be preponderantly of borderline quality or dimension.
- 18.3** Figured dimensions on the plans shall be given preference over scaled dimensions, but shall be checked by the contractor before starting construction.
Information and data on the contract documents shall take precedence in the following order (1) Drawing; Details, Sections, Plans, Notes, General Notes, (2) Technical Specifications, (3) General Specifications. Any errors, omissions or discrepancies shall be brought to the attention of the Town whose decision thereon shall be final.
- 18.4** In the event that the Town determines that the materials or the finished product in which the materials used are not within reasonably close conformity with the Bid Documents, but that reasonably acceptable work had been produced, the Town shall then make a determination if the work shall be accepted and remain in place. In this event, the Town will document the basis of acceptance by contract modification, subject to the approval of the Town Board, which will provide for an appropriate adjustment in the contract price for such work or materials as deems necessary.
- 18.5** In the event that the Town determines that the materials or the finished product in which the materials used are not within reasonably close conformity with the Bid Documents and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the contractor.
- 18.6** All traffic control devices (signs, signals, markings, and devices placed by the authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic) shall be in conformity with the latest edition of the New York State Manual of Uniform Traffic Control Devices or other such standard as directed by the Town.
- 18.7** Time being of the essence, the contractor shall take notice that the timely completion of the work called for under the contract is of the greatest importance. The contractor shall commence its work within ten (10) days after "Notice of Award" has been given it by the Town (unless a definite starting date is otherwise stated). Prior to commencing its work, the contractor shall notify the Town, at least forty-eight (48) hours prior to the planned date of its "start".

Section 19. Insurance Requirements

- 19.1** The contractor, upon award of the contract, shall provide at its own cost and expense the following insurance to the Town from insurance companies licensed in the State of New York, carrying a Best's financial rating of "A" or better, which insurance shall be evidenced by certificates and/or policies as determined by the Town.
- 19.2** Each certificate or policy shall require that, thirty (30) days prior to cancellation or material change in the policies, notice thereof shall be given to the Town Clerk by registered mail, return receipt requested, for all of the following stated insurance policies. All such notices shall name the contractor and identify the contract number or description.
- 19.3** All policies and certificates of insurance shall be approved by the Town prior to the inception of any work.
- i.** Workmen's Compensation: The contractor shall evidence compliance with Workers' Compensation Law, or as otherwise directed by the Town.
 - ii.** Commercial General Liability Insurance with minimum limits of liability per occurrence of \$1,000,000 with the Town named as an additional insured.
 - iii.** Automobile Liability Insurance with minimum limits of liability per occurrence of \$1,000,000 with the Town named as an additional insured.
 - iv.** Additional insurance may be required on an individual basis for extra hazardous contracts and specific service agreements. If such additional insurance is required for a specific contract, that requirement will be described in the Special Requirements of the contract specifications.
 - v.** If any of the insurance requirements are not complied with at their renewal dates, payments to the contractor will be withheld until those requirements have been met, or at the option of the Town, the Town may pay the Renewal Premium and withhold such payments from any monies due the contractor.
 - vi.** If at any time any of the foregoing policies shall be or become unsatisfactory to the Town, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Town, the contractor shall upon notice to that effect from the Town, promptly obtain a new policy, submit the same to the Town for approval and submit a certificate thereof as herein above provided. Upon failure of the contractor to furnish, deliver and maintain such insurance as above provided, the contract, at the election of the Town, may be forthwith declared suspended, discontinued or terminated. Failure of the contractor to secure and/or maintain or the taking out and/or maintenance of any required insurance, shall not relieve the contractor from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the contractor concerning indemnification.
 - vii.** In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under the contract, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the contractor until such time as the contractor shall furnish such additional security covering such claims as may be determined by the Town.

Section 20. Indemnification

- 20.1** The contractor hereby agrees to indemnify and save harmless the Town, its officers, employees, elected officials, and agents from and against all liability, loss or damage the Town may suffer, arising directly or indirectly out of the contract between the contractor

and the Town. The Contractor further agrees to provide defense for and defend any claims or causes of action of any kind or character directly or indirectly arising out of this Agreement at its sole expense and agrees to bear all other costs and expenses relating thereto. The foregoing provisions shall not be construed to cause the contractor to indemnify the Town, its officers, elected officials, agents or employees from its or their sole negligence.

- 20.2** Neither the acceptance of the completed work nor payment therefore shall release the Contractor from its obligation under this section.

Section 21. Delivery Point

- 21.1** Shipping of any products shall be FOB Destination. Delivery shall be at the location set forth in the Specifications except on national, state or local holidays when Town buildings are closed. Bidder shall be responsible to verify that the appropriate Town building for delivery is open prior to delivering items. All bid items shall be unloaded and placed within the particular Town building, at points of delivery, and in quantities, as directed by the Town. Any costs incurred by the Town or bidder due to the failure of bidder to comply with this requirement will be the responsibility of bidder. Bidder should be prepared to furnish proof of delivery, if requested by Town. Deliveries shall be made in accordance with the specifications, and shall be made Monday through Friday from 8 a.m. to 2 p.m. unless otherwise stated in the Specific Specifications.
- 21.2** If bidder is shipping bid items to Town using a third-party carrier (US Postal Service, UPS, FedEx), there shall be no additional shipping charge to the Town.
- 21.3** Delivery will not be complete until the good are inspected and accepted by the Town.

Section 22. Date of Delivery

- 22.1** Delivery of all materials included under this bid shall be made not later than the date specified in the Bid Documents or Project Schedule. If contractor cannot meet the delivery date specified in Bid Documents or Project Schedule, contractor shall state on the bid form the proposed date of delivery and such date will be considered when determining responsiveness in awarding the bid.

Section 23. Damages

- 23.1** The contractor shall be fully responsible for shipping and delivery of materials specified in the Bid Documents or Project Schedule in an undamaged condition. Town will not consider the carrier responsible for damaged or delayed deliveries. Any bid item damaged or broken when delivered to Town shall be replaced immediately by contractor at no cost to the Town.

Section 24. Warranty/Guarantee

- 24.1** It is the intent of the Bid Documents to require first-class work and materials and any work not fully covered herein Bid Documents shall be interpreted to require first-class work and materials, and such interpretations shall be binding upon the Contractor. The contractor shall be fully responsible for performance of work in a satisfactory manner

with satisfactory results in the discretion of the Town quality materials.

- 24.2** Contractor is deemed to warrant and guarantee all work performed under this agreement.
- 24.3** Unless otherwise stated in other parts of the specifications, all work performed or goods supplied under the contract shall be guaranteed by the contractor against all defects resulting from the use of inferior materials, equipment or workmanship, for a period of one (1) year from the date of final completion and acceptance of the work, which shall be defined as the date of the Town's approval of the final Certificate for Payment or from the date the Town takes possession and makes full use of the constructed facility.
- 24.4** Any goods furnished must be standard, new, latest model of the regular stock product, as required by the specifications, with parts regularly used for the type of equipment offered.
- 24.5** No attachment or part will be substituted or applied contrary to manufacturer's recommended and standard practice. All regularly manufactured stock electrical items must bear the label of the Underwriters Laboratories, Inc. Any equipment, part or constructed item which is or becomes defective during the guarantee period shall be replaced or redone by the contractor, including all labor at no additional charge to the Town. All replacements shall carry the same guarantee as the original equipment. The contractor shall make any such replacement promptly upon receiving written notice from Town.

Section 25. Breach of Contract/Termination

- 25.1** If contractor fails to deliver as ordered, or within the time specified, or within reasonable time as interpreted by Town, or fails to make replacement of rejected or defective goods, whether so requested immediately or as directed by Town, that shall constitute a breach of the contract, and Town may arrange to have the work performed from other sources to take the place of the work product found defective or not delivered. Without limiting the foregoing, Town reserves the right to terminate the contract upon breach within ten (10) days written notice provided to the contractor.

Section 26. Prevailing Wage Rates and Supplements

- 26.1** Wages to be Paid and Supplements to be Provided
- i. The contractor shall, at its own cost and expense, comply with all provisions of the Labor Law (i.e. prevailing rate of wages and supplements), Lien Law, Workmen's Compensation Law and all other laws and ordinances affecting the contract or order, either Federal, State or local.
- 26.2** Records to be kept on Site
- The contractor, subcontractors at any tier shall certify their payrolls and keep them on site and available, in addition to the following informative records:
- i. Record of hours worked by each workman, laborer and mechanic on each day;
 - ii. Record of days worked each week by each workman, laborer and mechanic;
 - iii. Schedule of occupation or occupations at which each workman, laborer and mechanic on the project is employed during each work day and week;
 - iv. Schedule of hourly wage rates paid to each workman, laborer and mechanic for each occupation.

- v. A statement or declaration signed by each workman, laborer and mechanic attesting that they have been provided with a written notice, informing them of the prevailing wage rates and supplements requirement for the contract.

Section 27. Estimates and Payments

- 27.1 As the work progresses but not more often than once a month and then on such days as the Town shall direct, the contractor will submit a requisition in writing of the amount and value of the work performed and the materials and equipment provided to the date of the requisition, less any amount previously paid to the contractor.
- 27.2 From each requisition, the Town will retain five percent (5%) plus one hundred fifty percent (150%) of the amount necessary to satisfy any claims, liens or judgments against the contractor that have not been suitably discharged. The Town will thereupon cause the balance of the requisition therein to be paid to the contractor.
- 27.3 As a condition to the making of any progress payment as set forth in this paragraph, the Town, in its sole discretion may require the contractor to submit such document as may be reasonably required to establish that the contractor and its subcontractors have timely and properly paid their respective subcontractors and materialmen at any tier.
- 27.4 When the work or major portion thereof, as contemplated by the terms of the contract are substantially completed in the judgment of the Town, the contractor shall submit a requisition for the remainder of the contract balance. An amount equal to two (2) times the value of the remaining items to be completed plus one hundred fifty percent (150%) of the amount that the Town deems necessary to satisfy any claims, liens or judgments against the contractor which have not been suitably discharged shall be deducted from the requisition. As the remaining items of work are satisfactorily completed or corrected, the Town will, upon receipt of a requisition, pay for these items less one hundred fifty percent (150%) of the amount necessary to satisfy any claims, liens or judgments.
- 27.5 All estimates will be made for actual quantities for work performed and materials and equipment incorporated in the work as determined by the measurements of the Town, and this determination shall be accepted as final, conclusive and binding upon the contractor. All estimates will be subject to correction in any succeeding estimate.
- 27.6 Payment will be made only upon the written request of the contractor. Payment requests shall be processed by the Town no more than one (1) time per month. Payment will be made for materials pertinent to the project which have been delivered to the site or off-site by the contractor suitably stored and secured in first-class condition as required by the Town. The contractor must submit certified copies of the manufacturer's or Contractor's invoices or statements establishing the true purchase value of the material or equipment; freight bills, release of liens and certificate of insurance covering all equipment and materials.
- 27.7 The Contractor shall be responsible for safeguarding stored equipment and materials against loss or damage of any nature whatsoever, shall retain title until incorporated into the work and acceptance by the Town and in case of loss or damage, the contractor shall replace such lost or damaged equipment and materials at no cost to the Town. After receipt of payment, the contractor shall not remove from the site equipment and materials for which such payment was made without written authorization from the Town.

- 27.8** Within thirty (30) days after receiving written notice from the Contractor of substantial completion of the work under this Agreement, the Town will cause an inspection to be made of the work done under the contract. If, upon such inspection, the Town determines that the work is substantially complete, a Substantial Completion Payment to the contractor for the work done under the contract, less any and all deductions authorized to be made by the Town under the contract or by law, will be issued.
- 27.9** As a condition precedent to receiving payment therefore, the Contractor must have received Town approval of all Shop Drawing submittals, the Operation and Maintenance Manuals, and As-Built Drawing(s).
- 27.10** Together with its application for substantial completion payment the Contractor shall also deliver to the Town a verified statement certifying that all claims or liabilities arising from the completed work, including all charges for Extra Work, Change Orders, additional time, damages or credits (collectively referred to as “claims”) have been presented to the Town. All such claims shall be described in sufficient detail so as to be easily identified. The contractor’s failure to submit the verified statement shall constitute a full and final waiver of all claims against the Town from the beginning of the project through the date of substantial completion as established by the Town. The presentation of the verified statement to the Town shall not constitute an acknowledgement by the Town that any such claim is valid. The Town expressly reserves its right to assert that any such claim(s) is waived or precluded by reason of other provisions of the contract documents. Only claims particularly identified on the contractor’s verified statement shall be preserved; all other claims whatever nature shall be deemed waived and released. It shall also submit proof of title of the materials and equipment covered by the contract. The contractor shall also, prior to the issuance of said Substantial Completion Payment, supply to the Town affidavits and certificates for labor, material and equipment (where applicable).
- 27.11** Within ten (10) days after receiving written notice from the contractor of completion of all the work, the Town will make a final inspection. If upon inspection the Town determines that no further work is needed, the Town will request that the Town approve the completion of the project and authorize payment of the Final Estimate.

Section 28. Payments to Subcontractors and Materialmen by Contractor

- 28.1** Within fifteen (15) calendar days of the receipt of any payment from the Town, the contractor shall pay each of its subcontractors and materialmen the proceeds from the payment representing the value of the work performed and/or materials furnished by the subcontractor and/or materialmen as reflected in the payment from the Town less an amount necessary to satisfy any claims, liens or judgment against the subcontractor or materialman which have not been suitably discharged and less any retained amount as hereafter described.
- 28.2** Nothing provided herein shall create any obligation on the part of the Town to pay or to see the payment of any moneys to any subcontractor or materialman from any contractor nor shall anything provided herein serve to create any relationship in contract or otherwise, implied or expressed between the subcontractor or materialman and the Town. Notwithstanding anything to the foregoing, the Town may tender payments to the Contractor in the form of joint or dual payee checks.

Section 29. Change in the Contract Price

- 29.1** The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to the contractor for performing the work pursuant to the contract. All duties, responsibilities and obligations assigned to or undertaken by the contractor shall be at its expense without change in the Contract Price.

Section 30. Proper Method of Work and Proper Materials

- 30.1** The Town shall have the power in general to direct the order and sequence of the work, which will be such as to permit the entire work under the contract to be begun and to proceed as rapidly as possible, and such as to bring the several parts of the work to a successful completion at about the same time.
- 30.2** If at any time before the commencement or during the progress of the work the materials and appliances used or to be used appear to the Town as insufficient or improper for securing the quality of work required, or the required rate of progress, he may order the contractor to increase its efficiency or to improve their character, and the contractor shall promptly conform to such order; but the failure of the Town to demand any increase of such efficiency or improvement shall not release the Contractor from its obligation to secure the quality of work or the rate of progress specified.
- 30.3** The Contractor will establish the lines, grades and measurements necessary in his opinion to properly locate the work, by setting suitably marked offset or reference stakes. These stakes are referenced to the control points, coordinates and similar data that may be shown on the contract drawings, but the Town reserves the right to modify that information.
- 30.4** The Contractor shall carefully and properly preserve all stakes, pins and markers required at no additional costs to the Town. All existing property lines and survey monuments which may, of necessity have to be disturbed during the construction work, will be properly tied to fixed points and reset by the Contractor at no cost to the Town.

Section 31. Utilities and Service Lines

- 31.1** The Contractor is hereby warned that a reasonable opportunity is to be given the municipalities and public service corporations to alter and install pipes, conduits or other structures prior to placing to pavement. No guarantee is given that public utility structures and service lines herein shown are correctly located. Locations given are from the best available information.

Section 32. Protection, Existing Structures

- 32.1** The Contractor, at his expense, shall protect adjacent and other property or premises from damage of any kind during the progress of the work and shall erect and maintain guards around his work in such a way as to afford protection to the public. The Contractor shall be held responsible for improper, illegal, or negligent conduct of himself, his subcontractors, employees and agents in and about said work or in the execution of the work covered by this Contract.
- 32.2** The Contractor shall, at his expense, sustain in their places and permanently protect from direct or indirect injury any and all pipelines, subways, pavements, sidewalks, curbs,

railways, buildings, trees, poles, wells, and other property in the vicinity of his work, whether over-or underground, or which appear within the trench or excavations, and he shall assume all costs and expenses for direct or indirect damage which may be occasioned by injury to any of them.

- 32.3** The Contractor's liability shall also include the damage or injury sustained by any structure whatsoever due to settlement of trenches or excavations or to settlement or lateral movement of the sides of such trenches or excavations, whether such movement occurs during or after excavation or backfilling of such trenches or excavations. His liability to so support and protect all such structures from damage or injury shall continue without limitation, throughout the Contract period and during the period of guarantee.
- 32.4** The Contractor shall at all times have on the ground suitable and sufficient material and shall use the same as may be necessary or required for sustaining and supporting any and all such structures which are uncovered, undermined, weakened, endangered, threatened, or otherwise materially affected.
- 32.5** In case injury occurs to any portion of a pipeline or structure, or to the material surrounding or supporting the same, through blasting or similar operations, the Contractor shall immediately notify the Engineer, and, at his expense, shall remove such injured work and shall rebuild the pipeline or structure and shall replace the material surrounding the supporting the same, or shall furnish such material and perform such work of repairs or replacement as the Town may order. Any damage whatsoever shall be promptly, completely and satisfactorily repaired by the Contractor at his expense.

Section 33. Acceleration of the Work

- 33.1** The Town may, at its sole discretion and as circumstances reasonably require, require the contractor to accelerate the schedule of performance by providing overtime, extended day, extra crews, Saturday, Sunday and/or holiday work and/or by having all or any subcontractors designated by the Town provide overtime, extended day, extra crews, Saturday, Sunday or holiday work by the contractor's or his subcontractor's own forces.
- 33.2** The Town, pursuant to a validly issued written change order, may reimburse the contractor for the direct cost to the contractor of the premium time for the labor utilized by the contractor in such overtime, extended day, extra crews, Saturday, Sunday or holiday work (but not for the straight time costs of such labor) together with any social security and state or federal unemployment insurance taxes in connection with such premium time. However, no overhead, supervision costs, commissions, profit or other costs and expenses of any nature whatsoever, including impact costs or costs associated with lost efficiency or productivity, shall be payable in connection therewith.
- 33.3** Anything to the foregoing notwithstanding, in the event that the contractor has fallen behind schedule or in the Town's judgment appears likely to fall behind schedule, Town shall have the absolute right to direct the contractor to accelerate the performance of its work, including that of its subcontractors, and the full costs for such acceleration shall be borne solely by the contractor.

Section 34. Stopping Work

- 34.1** Town May Suspend Work:

- i. The Town may, at any time and without cause, suspend the work or any portion thereof for a period of not more than ninety (90) days by notice in writing to the contractor which shall fix the date on which work shall be resumed. The contractor shall resume the Work on the date so fixed. Subject to the approval of the Town Board, the contractor may be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension.

34.2 The Town May Terminate:

A. Upon the occurrence of any one or more of the following events:

1. If the contractor is adjudged bankrupt or insolvent,
2. If the contractor makes a general assignment for the benefit of creditors,
3. If a trustee or receiver is appointed for the contractor or for any of the contractor's property,
4. If the contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws,
5. If the contractor repeatedly fails to supply sufficient skilled workers or suitable materials or equipment,
6. If the contractor repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment,
7. If the contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction,
8. If the contractor disregards the authority of the Town, or
9. If the contractor otherwise violates in any substantial way any provisions of the Bid Documents or the Contract. The Town may after giving the contractor and its Surety seven (7) days written notice, terminate the services of the contractor, exclude the contractor from the site, incorporate in the Work all materials and equipment stored at the site or for which Town has paid the contractor but which are stored elsewhere, and finish the Work as Town may deem expedient. In such case the contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the work, including compensation for additional professional services, such excess shall be paid to the contractor. If such costs exceed such unpaid balance, the contractor shall pay the difference to the Town.

- B.** Where the contractor's services have been so terminated by the Town, the termination shall not affect any rights of Town against the contractor then existing or which may thereafter accrue. Any retention or payment of moneys due the contractor by Town will not release the contractor from liability.

- C. Upon seven (7) days written notice to the contractor, Town may, without cause and without prejudice to any other right or remedy, elect to abandon the work and terminate the Agreement. In such case, the contractor shall be paid (without duplication of any items):
1. For completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date or termination, including fair and reasonable sum of overhead and profit on such work;
 2. For expenses sustained prior to effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 3. For amounts paid in settlement of terminated contracts with Subcontractors, manufacturers, fabricators, suppliers or distributors and others; and
 4. For reasonable expenses directly attributable to termination. contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss or any consequential damages arising out of such termination.

Section 35. Change in the Contract Time

- 35.1** The contractor agrees that it will make no claim against the Town or any of its representatives for damages for delay, interference or disruption in the performance of its Contract occasioned by any act or omission to act by the Town or any of its representatives, or occasioned by any act or omission of any other contractor and further agrees that any such claim shall be fully compensated for by an extension of time to complete the performance of the work as provided herein.
- 35.2** The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to Town within fifteen (15) days of the occurrence of the event giving rise to the claim. Notice of the extent of the claim with supporting data shall be delivered within twenty (20) days of such occurrence unless the Town allows an additional period of time to ascertain more accurate data. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.
- 35.3** The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of the contractor. Such delays shall include, but not be limited to, acts or neglect by Town, or to fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God. No extension of the Contract Time will be granted where the delay is attributable to a subcontractor, manufacturer, fabricator, supplier or distributor or any other party performing services or furnishing material or equipment on behalf of the contractor unless such party's delay is attributable to one of the above enumerated causes.
- 35.4** The time limits concerning Substantial Completion and final completion as stated in the Contract Documents are of the essence. The provisions of this section shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party, provided, however that the contractor shall not be entitled to

damages for any delay occurring as a consequence of a delay if the performance of said additional work was noted in the Contract Documents and the delay (by others) was not directly caused by the fault of the Town.

Section 36 Disputed Work - Notice of Claims for Damages

- 36.1** If the contractor is of the opinion that any work required, necessitated, or ordered violates or conflicts with or is not required by the terms and provisions of the contract, he must promptly, within five (5) calendar days after being directed to perform such work, notify the Town, in writing, of its contentions with respect thereto and request a final determination thereon. If the Town determines that the work in question is contract and not extra work, or that the order complained of is proper, he will direct the Contractor in writing to proceed and the Contractor shall promptly comply. In order, however, to preserve its right to claim compensation for such work or damages resulting from such compliance, the Contractor must, within seven (7) calendar days after receiving notice of the Town's determination and direction, notify the Town, in writing that the work is being performed or that the determination and direction is being complied with, under protest. Failure of the Contractor to so notify shall be deemed as a waiver of claim for extra compensation or damages therefore.
- 36.2** The contractor is bound by the provisions of all applicable laws, including but not limited to the General Municipal Law and the Town Law, as related to the presentation of claims.
- 36.3** While the contractor is performing disputed work or complying with a determination or order under protest in accordance with this Article, in each such case the contractor shall furnish the Town daily with three copies of written statements signed by the Contractor's representatives at the site showing:
- i.** the name of each workman employed on such work or engaged in complying with such determination or order, the number of hours employed thereon, and the character of the work each is doing; and
 - ii.** the nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work or compliance with such order, and from whom purchased or rented.
- 36.4** The contractor shall carry on the work and maintain the progress schedule during all disputes or disagreements with the Town. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the contractor and Town may otherwise agree in writing.
- 36.5** Before final acceptance of the work by the Town, all matters of dispute must be adjusted to the mutual satisfaction of the parties thereto. Determinations and decisions in case any question shall arise, shall constitute a condition precedent to the right of the Contractor to receive the money therefore, until the matter in question has been adjusted.

SECTION 00 80 30

WAGE DETERMINATION SCHEDULES

STATE OF NEW YORK
DEPARTMENT OF LABOR
BUREAU OF PUBLIC WORK