

RFP 2021-10

**REQUEST FOR PROPOSALS
FOR
CONTRACT NO. 2-FACILITY IMPROVEMENTS,
GENERAL CONSTRUCTION
AT THE
MATERIALS RECOVERY FACILITY
IN
HILLBURN, NEW YORK**

DATED JULY 1, 2021

TO: RECIPIENTS OF THE REQUEST FOR PROPOSALS

**FROM: ROCKLAND COUNTY SOLID WASTE MANAGEMENT AUTHORITY d/b/a
ROCKLAND GREEN**

DATE: JULY 23, 2021

SUBJECT: ADDENDUM NUMBER 5

This Addendum Number 5 shall be part of the Request for Proposals No. 2021-10 for Contract No. 2-Facility Improvements, General Construction at the Materials Recovery Facility in Hillburn, New York issued by the Rockland County Solid Waste Management Authority d/b/a Rockland Green (hereinafter "Rockland Green") on July 1, 2021 (the "RFP").

This Addendum Number 5 provides a copy of the draft Contract for inclusion in the RFP as Appendix N thereto.

I. APPENDIX N – DRAFT CONTRACT

The draft Contract No. 2 – General Construction, Facility Improvements for inclusion in the RFP as Appendix N, is included as Attachment 1 to this Addendum 5 (the "Contract"). The Contract will be the definitive statement of mutual responsibilities and liabilities of Rockland Green and the selected Proposer. In the event of a conflict between the Contract and other sections of the RFP, the provision most favorable to Rockland Green shall govern. The Contract

is being provided in draft form, and as such, Rockland Green reserves the right in its sole discretion to make any and all changes thereto.

In its Proposal, each Proposer is expected to review and provide a markup of the draft Contract. To the extent that any Proposer wishes to modify (or amplify) any such provision, the specific text of the proposed modification must either be clearly marked on the document or appended to the document in clearly typed riders. Each Proposer shall include in its proposal all comments to the draft Contract, as subsequent comments may **NOT** be considered by Rockland Green. Although modifications to the draft Contract are acceptable, the extent of a Proposer's deviation from such terms shall be considered as an evaluation criterion as set forth in the RFP. A Proposer's failure to include in its proposal its clear affirmative acceptance of the draft Contract in its entirety or a complete set of its comments to the draft Contract will also be considered in the evaluation and will not be viewed favorably.

ATTACHMENT 1

APPENDIX N

DRAFT CONTRACT

**CONTRACT
FOR
FACILITY IMPROVEMENTS – GENERAL CONSTRUCTION
AT THE
MATERIALS RECOVERY FACILITY IN HILLBURN, NY**

**BETWEEN
THE ROCKLAND COUNTY SOLID WASTE MANAGEMENT AUTHORITY
d/b/a ROCKLAND GREEN**

and

[]

Dated as of [, 2021]

TABLE OF CONTENTS

ARTICLE I. DEFINITIONS AND INTERPRETATION.....	2
SECTION 1.1 DEFINITIONS.....	2
SECTION 1.2 INTERPRETATION.....	11
ARTICLE II. REPRESENTATIONS AND WARRANTIES.....	14
SECTION 2.1 REPRESENTATIONS AND WARRANTIES OF ROCKLAND GREEN	14
SECTION 2.2 REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR	15
ARTICLE III. THE WORK AND CONTRACTOR’S OBLIGATIONS	17
SECTION 3.1 PERFORMANCE OF THE WORK.....	17
SECTION 3.2 NOTICE TO PROCEED	17
SECTION 3.3 CONTRACT TIME	17
SECTION 3.4 DELAY LIQUIDATED DAMAGES.....	17
SECTION 3.5 PROVISIONS AND PAYMENT OF LABOR, MATERIALS, AND EQUIPMENT.....	18
SECTION 3.6 MAINTENANCE OF RECORDS AND OTHER DOCUMENTS AND DRAWINGS	18
SECTION 3.7 DUTY TO EXAMINE CONTRACT DOCUMENTS	19
SECTION 3.8 QUALIFICATIONS OF PERSONNEL	19
SECTION 3.9 SUBCONTRACTORS	19
SECTION 3.10 EXPANSION AND REDUCTION OF SERVICES	20
SECTION 3.11 COMPLIANCE WITH APPLICABLE LAW	20
SECTION 3.12 PERFORMANCE, INFORMATION, AND SITE CONDITION.....	21
SECTION 3.13 PROTECTION OF PERSONS AND PROPERTY	22
SECTION 3.14 SUPERVISION OF THE WORK.	22
SECTION 3.15 COORDINATION OF OTHER WORK	23
ARTICLE IV. COMPLETION.....	23
SECTION 4.1 SUBSTANTIAL COMPLETION.	23
SECTION 4.2 FINAL COMPLETION	24
ARTICLE V. CONTRACT PAYMENTS.....	24
SECTION 5.1 CONTRACT PRICE.....	24
SECTION 5.2 SCHEDULE OF VALUES.....	24
SECTION 5.3 ENTIRE COMPENSATION	25
SECTION 5.4 COSTS AND COST SUBSTANTIATION.....	25
SECTION 5.5 CONTRACTOR PROJECT SCHEDULE AS A CONDITION OF PAYMENT	25
SECTION 5.6 PAYMENT REQUESTS, PAYMENT AND RETAINAGE	25
SECTION 5.7 PROMPT PAYMENT	27

SECTION 5.8	NO APPROVALS, CONSENTS OR WAIVERS IMPLIED IN PAYMENTS	27
SECTION 5.9	PAYMENT WITHHOLDING.....	27
SECTION 5.10	PAYMENT UPON FINAL COMPLETION.....	28
SECTION 5.11	FINAL PAYMENT	29
ARTICLE VI. CONTRACT ADMINISTRATION		29
SECTION 6.1	CONTRACT ADMINISTRATION	29
SECTION 6.2	SITE VISITS.....	29
SECTION 6.3	FAILURE TO PERFORM.....	29
SECTION 6.4	COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION	29
SECTION 6.5	MEETINGS	29
SECTION 6.6	REVIEW OF SUBMITTALS.....	30
SECTION 6.7	REJECTION OF WORK.....	30
SECTION 6.8	PREPARATION OF CHANGE ORDERS	30
SECTION 6.9	INSPECTIONS	30
ARTICLE VII. TERM.....		30
SECTION 7.1	EFFECTIVE DATE AND TERM	30
ARTICLE VIII. CHANGE ORDERS		31
SECTION 8.1	AUTHORITY TO ISSUE CHANGE ORDERS	31
SECTION 8.2	CHANGE ORDER DEFINED	31
SECTION 8.3	SUBSTANTIATING THE CHANGE ORDERS	31
SECTION 8.4	ITEMIZATION FOR CHANGE ORDERS	31
SECTION 8.5	CALCULATION OF CHANGE ORDER AMOUNTS	31
SECTION 8.6	EXECUTION OF CHANGE ORDER AS WAIVER OF CLAIM	32
SECTION 8.7	NOTIFICATION TO SURETY AS OTHERWISE REQUIRED	32
SECTION 8.8	ADDITIONAL COST FACTORS IN PRICING CHANGE ORDERS OR CONSTRUCTION CHANGE DIRECTIVES	32
ARTICLE IX. CLAIMS BY THE CONTRACTOR.....		33
SECTION 9.1	PROCEDURES FOR CONTRACT CLAIMS	33
SECTION 9.2	CONTRACTOR PROHIBITED FROM WITHHOLDING SERVICES.....	34
SECTION 9.3	CLAIMS RELATED TO SITE CONDITIONS	34
SECTION 9.4	CONDITION PRECEDENT TO LIABILITY	34
SECTION 9.5	LIMITATION OF ROCKLAND GREEN’S OBLIGATIONS FOR CLAIMS	34
ARTICLE X. EVENTS OF DEFAULT AND TERMINATION.....		34
SECTION 10.1	ROCKLAND GREEN’S RIGHT TO TERMINATE FOR CAUSE	34
SECTION 10.2	GROUNDWORK FOR TERMINATION.....	34
SECTION 10.3	NOTICE OF TERMINATION	35
SECTION 10.4	ACTION BY CONTRACTOR AND ROCKLAND GREEN	36

ARTICLE XI. DISPUTE RESOLUTION AND LITIGATION	37
SECTION 11.1 DISPUTED DECISIONS OF ROCKLAND GREEN OR THE ENGINEER.....	37
SECTION 11.2 FORUM SELECTION AND CONSENT TO JURISDICTION, WAIVER OF RIGHT TO REMOVE	37
ARTICLE XII. INSURANCE, SECURITY FOR PERFORMANCE, INDEMNIFICATION, AND UNCONTROLLABLE CIRCUMSTANCES.....	37
SECTION 12.1 REQUIRED INSURANCE	37
SECTION 12.2 SECURITY FOR PERFORMANCE.....	38
SECTION 12.3 INDEMNIFICATION BY THE CONTRACTOR	38
SECTION 12.4 UNCONTROLLABLE CIRCUMSTANCES	39
ARTICLE XIII. WARRANTY.....	40
SECTION 13.1 WARRANTY	40
ARTICLE XIV. MISCELLANEOUS PROVISIONS.....	41
SECTION 14.1 RELATIONSHIP OF THE PARTIES.....	41
SECTION 14.2 CERTAIN OBLIGATIONS TO SURVIVE TERMINATION.....	42
SECTION 14.3 NO WAIVERS.....	42
SECTION 14.4 ACTIONS OF ROCKLAND GREEN IN ITS GOVERNMENTAL CAPACITY.....	42
SECTION 14.5 ASSIGNMENT	42
SECTION 14.6 CHANGE IN OWNERSHIP OF CONTRACTOR OR A PARENT COMPANY.....	43
SECTION 14.7 BINDING EFFECT	43
SECTION 14.8 AMENDMENT AND WAIVER.....	43
SECTION 14.9 NON-DISCRIMINATION	43
SECTION 14.10 SEVERABILITY OF PROVISIONS	43
SECTION 14.11 NO THIRD PARTY RIGHTS CREATED.....	44
SECTION 14.12 NOTICES.....	44
SECTION 14.13 NOTICE OF LITIGATION.....	45
SECTION 14.14 COUNTERPARTS	45
SECTION 14.15 FURTHER ASSURANCES	45

Appendices

1. Contract Drawings
2. Specifications
3. Contract Price
4. Required Insurance
5. Prevailing Wage Schedule
6. Project Schedule
7. Supplemental Conditions
8. Project Coordination Protocol
9. Statement of the Project Work

Transaction Agreement Forms

1. Form of Performance Bond
2. Form of Labor and Materials Payment Bond

**CONTRACT
FOR
FACILITY IMPROVEMENTS – GENERAL CONSTRUCTION
AT THE
MATERIALS RECOVERY FACILITY IN HILLBURN, NY**

This Contract for Facility Improvements – General Construction at the Materials Recovery Facility in Hillburn, NY (also referred to as Contract No. 2), is made and entered into as of [], 2021] between the Rockland County Solid Waste Management Authority d/b/a Rockland Green, a body corporate and politic constituting a public benefit corporation of the State of New York (“Rockland Green”), and [], a [] organized and existing under the laws of the State of [] and duly licensed and registered with the State of New York and in accordance with Applicable Law (the “Contractor”).

R E C I T A L S

WHEREAS, Rockland Green owns the Materials Recovery Facility (“MRF”), located at 420 Torne Valley Road, Hillburn, New York 10391;

WHEREAS, Rockland Green requires facility improvements (the “Facility Improvements”) to the MRF in order to accommodate a new state-of-the-art dual stream recyclables processing system (the “DSR Processing System”), recently procured by Rockland Green under Contract No. 1.

WHEREAS, the Facility Improvements include (i) this Contract No. 2 - for General Construction Work; (ii) Contract No. 3 - Mechanical/HVAC Work; (iii) Contract No. 4 - Plumbing Work; (iv) Contract No. 5 - Electrical Work; and (v) Contract No. 6 - a Fire Protection System;

WHEREAS, Rockland Green issued Request for Proposals No. 2021-10 on July 1, 2021, as modified by addenda (the “RFP”), soliciting proposals from firms qualified to perform the Work covered by this Contract No.2 as requested in the RFP, and will subsequently issue additional requests for proposals and enter into separate contracts for the remaining Facility Improvements;

WHEREAS, Rockland Green held mandatory Site visits and pre-proposal meetings in connection with RFP, and Rockland Green provided potential Proposers with reasonable access to the Site to allow them the opportunity to conduct such inspections and reviews they deemed necessary to become familiar with the Site and to review related documentation prior to submission of the Proposals;

WHEREAS, on [], Rockland Green received [] proposals in response to the RFP; and

WHEREAS, on [], Rockland Green selected the Contractor, as having submitted the most advantageous proposal, to enter into this Contract; and

WHEREAS, the Contractor will be responsible for Work detailed herein in accordance with the terms hereof; and

WHEREAS, Rockland Green desires to receive, and the Contractor desires to provide, the services provided for under the terms of this Contract.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Contract, the Parties hereto, intending to be legally bound, agree as follows:

ARTICLE I. DEFINITIONS AND INTERPRETATION

SECTION 1.1 DEFINITIONS. As used in this Contract the following terms shall have the meanings set forth below:

“Act” means the Rockland County Solid Waste Management Authority Act codified as Title 13-M, Section 2053-a, et seq. of the Public Authorities Law of the State of New York.

“Affiliate” means any person, corporation or other entity directly or indirectly controlling or controlled by another person, corporation or other entity or under direct or indirect common control with such person, corporation or other entity.

“Applicable Law” means those reference codes and standards and regulatory requirements specifically noted in the Specifications, as well as any law, rule, codes, standards, regulation, requirement, policy, consent decree, consent order, consent agreement, permit, guideline, action, determination or order of, or Legal Entitlement issued by, any Governmental Body having jurisdiction, applicable from time to time to any activities associated with the subject matter of this Contract, or any other transaction or matter contemplated hereby (including, but not limited to, any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of prevailing wages).

“Certificate of Final Completion” shall mean a document, issued by Rockland Green, certifying that all requirements of the Contract have been satisfied and all punch list items have been resolved, and that Final Completion has been achieved.

“Change in Law” means any of the following events or conditions which has a material and adverse effect on the performance by the parties of their respective obligations under this Contract (except for payment obligations):

(A) Inclusions: A “Change in Law” shall include:

(1) the enactment, adoption, promulgation, issuance, modification or written change in administrative or judicial interpretation on or after the effective date of this Contract of any federal, State or local law (except as set forth in the exclusions in (B) below), regulation, rule, requirement, guideline, ruling or ordinance, unless such law, regulation, rule, requirement, ruling or ordinance was, on or prior to the effective date of this Contract, proposed and published in the Federal or New York Register or was duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation;

(2) the order or judgment of any federal, State or local court, administrative agency or Governmental Body, on or after the effective date of this Contract, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Contractor or of Rockland Green, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(3) the denial of an application for, delay in the review, issuance or renewal of, or suspension, termination, interruption, imposition of a term, condition or requirement which is more stringent or burdensome in connection with the issuance, renewal or failure of issuance or renewal on or after the effective date of this Contract of any Legal Entitlement to the extent that such denial, delay, suspension, termination, interruption or imposition materially and adversely affects the performance of this Contract, if and to the extent that such denial, delay, suspension, termination, interruption or imposition is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the Contractor or of Rockland Green, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such denial, delay, suspension, termination, interruption or imposition shall not be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

(B) Exclusions: A “Change in Law” shall not include:

(1) a change in Applicable Law pertaining to taxes;

(2) a change in the law of any foreign country;

(3) any Change in Law (including the issuance of any Legal Entitlement, the enactment of any statute, or the promulgation of any regulation) the terms and conditions of which do not impose more stringent or burdensome requirements on the Contractor than those set forth in the obligations contained herein;

(4) any change in interpretation, however stringent, by a Governmental Body of the meaning of the terms and conditions of the Legal Entitlements in force as of the effective date of this Contract;

(5) union work rules, demands or requirements, which modify the number of employees required to be employed and causes an increase in Contractor's projected or actual cost of providing the Contract Services; or

(6) a change in law pertaining to prevailing wages including the Prevailing Wage Law.

"Change Order" means a written order to the Contractor executed by the Parties after execution of this Contract, directing a change in the Work.

"Construction Change Directive" has the meaning set forth under Section 8.2 hereof.

"Construction and Demolition Debris" means wastes which are generated as a result of construction, remodeling or demolition activities and includes, but is not limited to, dirt, tree stumps, tree trunks, rock, brick, concrete, asphalt, drywall, roofing materials, lumber, ceiling tiles, and insulation.

"Construction Work" means that portion of the Work as further set forth in the Specifications that encompasses all of the construction services to be provided by the Contractor under this Contract.

"Contract" means this contract for Facility Improvements – General Construction at the Materials Recovery Facility, also referred to as Contract No. 2, together with all appendices and any Contract Modifications thereto.

"Contract Amendment" means modification of the terms of this Contract as approved by Rockland Green and signed by both Parties.

"Contract Award" means the date upon which this Contract is awarded to the Contractor, as selected pursuant to the RFP.

"Contract Date" means the date this Contract has been executed and delivered by the Parties.

"Contract Documents" means the Contract, Contract Modifications, and the Project Labor Agreement.

"Contract Drawings" means the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams, as set forth in Appendix 1.

“Contract Modification” means a Contract Amendment, Change Order, Contract Change Directive or any other written alteration in provisions of the Contract accomplished by mutual action of the Parties to the Contract.

“Contract Price” means the price to be paid by Rockland Green to the Contractor for the performance of the Contract Services, as set forth in Appendix 3.

“Contract Services” means everything required to be furnished and completed for and relating to the services to be provided by the Contractor pursuant to this Contract, including, but not limited to, the Work and the provision of security for performance.

“Contract Standards” means the standards, terms, conditions, methods, techniques and practices imposed or required by: (i) Applicable Law, (ii) the Specifications, (iii) the Contract Drawings, (iv) Prudent Engineering and Construction Practice, (v) Good Industry Practice, (vi) applicable equipment manufacturers’ specifications, (vii) applicable Insurance Requirements, and (viii) any other standard, term, condition or requirement specifically provided in the Contract to be observed by the Contractor.

“Contract Time” means the time period within with the Contractor must achieve Final Completion of the work.

“Contractor” means []; also referred to herein, including in the appendices hereto, as the Lead Contractor. The Contractor is also one of the Prime Contractors.

“Contractor Fault” means the falsity of any material representation made by the Contractor under this Contract or any breach, failure, non-performance or non-compliance by the Contractor with its obligations hereunder caused by any willful or negligent act, error or omission by the Contractor, its officials, agents, employees, representatives or independent contractors or Subcontractors which materially and adversely affects Rockland Green’s performance or rights or obligations under this Contract.

“County” means the County of Rockland, New York.

“Design-Work” means that portion of the Work as further set forth in the Specifications that encompasses all of the design services to be provided by the Contractor under this Contract.

“Disputed Decision” shall have the meaning set forth in Section 11.1.

“Dual Stream Recyclables Processing System” or “DSR Processing System” means the state of the art dual stream recyclables processing system supplied and installed at the MRF by the Equipment Contractor under Contract No. 1.

“Electrical Work” means that portion of the Facility Improvements to be performed by a Facility Improvement Contractor and subject to a Contract No. 5.

“Engineer” means the engineering firm RRT Engineering, LLC, its employees, officers, members and its affiliate RRT Design & Construction and its subcontractors including Jason T.

Anderson Architect, P.C. dba Anderson Design Group, Martin Rodgers Associates, PC and Sterling Environmental Engineering, PC, contracted with and acting on behalf of Rockland Green in connection with the Project.

“Equipment Contractor” means the contractor Van Dyk Baler Corporation and its subcontractors providing and installing the DSR Processing System under Contract No.1; also referred to herein as a Prime Contractor.

“Facility Improvements” means those improvements to the MRF procured by Rockland Green in order to accommodate the Dual Stream Recyclables Processing System. Facility Improvements include (i) Contract No. 2 - General Construction (covered by this Contract), (ii) Contract No. 3 - Mechanical/HVAC Work, (iii) Contract No. 4 - Plumbing Work, (iv) Contract No. 5 - Electrical Work, and (v) Contract No. 6 - a Fire Protection System.

“Facility Improvements Contract(s)” means those contracts between Rockland Green and the contractors selected through various procurements to perform the Facility Improvements.

“Facility Improvements Contractors” means those contractors selected by Rockland Green to perform the Facility Improvements; also referred to herein, including, in the appendices hereto as Prime Contractors.

“Fees and Costs” means reasonable fees and expenses of attorneys, expert witnesses, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with any Legal Proceeding.

“Final Completion” means the date on which the Work is complete in accordance with the Contract Documents, including, but not limited to, any punch list items, and the submission of all documentation required by the Contract Documents.

“Fire Protection System” means the fire protection system at the MRF.

“Fire Protection System Improvements” means that portion of the Facility Improvements to be performed by a Facility Improvement Contractor and subject to Contract No. 6.

“General Construction” means that portion of the Facility Improvements that is covered by this Contract.

“Good Industry Practice” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally accepted as good in the industry.

“Governmental Body” means any federal, state, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

“Hazardous Waste” means (a) any waste which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time, including but not limited to (1) the Resource Conservation and Recovery Act and the regulations contained in 40 CFR parts 260-281; (2) the Toxic Substance Control Act (15 U.S.C. Section 2601 et seq.) and the regulations contained in 40 CFR Parts 761-766; (3) 6 NYCRR Part 379-373; and (4) future additional or substitute federal, state or local laws pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; and (b) Radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) and the regulations contained in 10 CFR Part 40, except that Hazardous Waste does not include Qualified Household Hazardous Waste.

“Insurance Requirement” means any rule, regulation, code, or requirement issued by any fire insurance rating bureau or any body having similar functions or by any insurance company which has issued an insurance policy as required under this Contract, as in effect during the Term of the Contract, compliance with which is a condition to the effectiveness of such policy.

“Lead Contractor” means the Prime Contractor for this Contract No. 2 (also defined hereunder as the Contractor), who is the entity responsible for coordination the Project, as further set forth in herein and described in Appendix 8.

“Legal Entitlement” means all permits, licenses, registrations, approvals, authorizations, consents, and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Contract Services under this Contract.

“Legal Proceeding” means every action, suit, litigation, administrative proceeding, and other legal or equitable proceeding arising out of the obligations of the parties under this Contract.

“Liquidated Damages” has the meaning set forth in Section 3.4 hereof.

“Loss-and-Expense” means any and all actual losses, liabilities, forfeitures, obligations, damages, fines, penalties, judgments, deposits, costs, expenses, charges, or Taxes, including all Fees and Costs, except as explicitly excluded or limited under any provision of this Contract.

“Materials Recovery Facility” means the Material and Recovery Facility owned by Rockland Green, located at 420 Torne Valley Road, Hillburn, New York.

“Mechanical/HVAC Work” means that portion of the Facility Improvements to be performed by a Facility Improvement Contractor and subject to Contract No. 3.

“Notice of Contract Award” means a notice issued by Rockland Green to the Contractor awarding this Contract to the Contractor, as selected pursuant to the RFP.

“Notice to Proceed” means a notice issued by Rockland Green for the Contractor to commence the Work as set forth in Section 3.2 hereof.

“Owner” means Rockland Green.

“Party” means Rockland Green and/or the Contractor as applicable.

“Payment Bond” means the labor and materials payment bond required under Section 12.2 hereof.

“Payment Request” shall have the meaning set forth in Article V hereof.

“Performance Bond” means a performance bond required under Section 12.2 hereof.

“Plumbing” means that portion of the Facility Improvements to be performed by a Facility Improvement Contractor and subject to a Facility Improvement Contract.

“Prevailing Wage Law” means Articles 8 and 9 of the New York Labor Law, as amended.

“Prime Contractor” means any contractor holding a contract with Rockland Green for completion of the Project. The Contractor is also a Prime Contractor.

“Project” means all of the collective work covered under Contract Nos. 1-6, performed by the Prime Contractors, at the Materials Recovery Facility, to complete the Facility Improvements and install the Dual Stream Recyclables Processing System.

“Project Labor Agreement” means the agreement with Rockland Green, the labor unions representing the various trades performing the Facility Improvements, and the subcontractors hired by the Facility Improvements Contractors to complete the Project, including the Contractor’s Subcontractors under this Contract.

“Project Schedule” means the schedule set forth in Appendix 6.

“Prudent Engineering and Construction Practice” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally accepted as good engineering and construction practices for the engineering and construction industries as followed in the Northeast region of the United States.

“Request for Proposals” or “RFP” means Rockland Green’s Request for Proposals No. 2021-10 issued July 1, 2021 for proposals for Contract No. 2 Facility Improvements – General Construction, including any addenda thereto.

“Required Insurance” has the meaning specified in Appendix 4.

“Rockland Green” means the Rockland County Solid Waste Management Authority.

“Rockland Green Fault” means any breach (including the falsity of any material representation made by Rockland Green under this Contract), failure, non-performance or non-compliance by Rockland Green with its obligations under this Contract to the extent not directly attributable to any Uncontrollable Circumstance or Contractor Fault that materially and adversely affects the Contractor’s performance or rights or obligations under this Contract.

“Rockland Green Indemnatee” has the meaning specified in Section 12.3 hereof.

“Schedule of Values” has the meaning set forth in Section 5.2.

“Scheduled Substantial Completion Date” shall mean the date set for Substantial Completion, in the Project Schedule attached hereto as Appendix 6, and adjusted only as set forth in this Contract.

“Security Instruments” means the Performance Bond and the Payment Bond, as applicable.

“Site” means the real property owned by Rockland Green, as more specifically described in Appendix 1.

“Specifications” means those technical specifications for the Work set forth in Appendix 2.

“State” means the State of New York.

“Subcontract” means an agreement by the Contractor, or a Subcontractor to the Contractor, as applicable.

“Subcontractor” means every person (other than employees of the Contractor) employed or engaged by the Contractor or any person directly or indirectly in privity with the Contractor (including all subcontractors and every sub-subcontractor of whatever tier) for any portion of the Work, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

“Submittals” means sketches, working drawings, shop drawings, studies and analysis, specifications, and calculations as required to adequately perform the Contract Services.

“Substantial Completion” means the date upon which the Work is sufficiently complete in accordance with the Contract Documents.

“Supplemental Conditions” means those additional conditions specific to this Contract that are attached hereto as Appendix 7.

“Tax” or “Taxes” means any tax, fee, levy, duty, impost, charge, surcharge, assessment or withholding, or any payment-in-lieu thereof, and any related interest, penalty or addition to tax.

“Term” means the term of this Contract as set forth in Section 7.1 hereof.

“Uncontrollable Circumstance” means any act, event or condition that is beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under this Contract, and that materially interferes with or materially increases the cost or time required for performing its obligations thereunder (other than payment obligations), to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Contract on the part of such Party.

(A) Inclusions: Subject to the foregoing, Uncontrollable Circumstances shall include the following:

(1) a Change in Law;

(2) naturally occurring events (except weather conditions normal for the northeast region of the United States) such as landslides, underground movement, earthquakes, fires, tornadoes, floods, epidemics, lightning, and other acts of God;

(3) explosion, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, terrorism, blockade or insurrection, riot or civil disturbance;

(4) the failure of any appropriate federal, State, Authority or local public agency or private utility having operational jurisdiction in the area in which the Contract Services are being provided; and

(5) acts of terror of a public enemy.

(B) Exclusions: It is specifically understood that none of the following acts, events or circumstances shall constitute Uncontrollable Circumstances:

(1) any act, event, or circumstance that would not have occurred if the affected Party had complied with its obligations hereunder;

(2) general economic conditions, interest or inflation rates, or currency fluctuation;

(3) with respect to Rockland Green, any changes in the financial condition of Rockland Green and with respect to the Contractor, any changes in the financial condition of the Contractor, or their Affiliates or Subcontractors affecting their ability to perform their respective obligations;

(4) the consequences of error, neglect or omissions by the Contractor or any of its employees, agents, suppliers, Subcontractors or Affiliates in the performance of the Contract Services;

(5) the failure of the Contractor to secure patents or licenses or similar authorizations in connection with any technology or machinery necessary to perform its obligations hereunder;

(6) strikes;

(7) labor disputes involving employees of the Contractor, its Affiliates or Subcontractors;

(8) any increase for any reason in premiums charged by the Contractor's insurers or the insurance markets generally for the Required Insurance;

(9) any impact of prevailing wages, laws or rates on the Contractor's costs with respect to wages and benefits; and

(10) any increase in the tip fee at any disposal facility.

"Warranty" means the warranty provided by the Contractor to Rockland Green that the Work and all materials, equipment, and structures furnished or fabricated, in connection therewith shall: (i) be new, of recent manufacture and of high quality, (ii) conform to the requirements of this Contract, (iii) be free of defects or faults in design, materials, equipment, performance and workmanship, and (iv) meet the Specifications during the Warranty Period, as further detailed in Article XIII.

"Warranty Period" means the period commencing on the date of Final Completion and continuing through one-year unless otherwise extended as provided herein.

"Work" means all of the work to be completed by the Contractor including the Design Work and the Construction Work to complete this Contract No. 2 and its integration with the Project, all as more fully described in this Contract.

SECTION 1.2 INTERPRETATION. In this Contract, unless the context otherwise requires:

A. References Hereto. The terms "hereby," "hereof," "herein," "hereunder" and any similar terms refer to this Contract, and the term "hereafter" means after, and the term "heretofore" means before the Contract Date.

B. Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

C. Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

D. Headings. Any headings preceding the text of the sections and subsections of this Contract shall be solely for convenience of reference and shall not constitute a part of this Contract, nor shall they affect its meaning, construction or effect.

E. Entire Agreement. This Contract contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Contract and nothing in this Contract is intended to confer on any person other than the parties hereto and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Contract. Without limiting the generality of the foregoing, this Contract shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions.

F. Standards of Workmanship and Materials. Any reference in this Contract to materials, equipment, systems or supplies (whether such references are in lists, notes, design requirements, schedules, or otherwise) shall be construed to require the Contractor to furnish the same in accordance with the grades and standards indicated in this Contract. Where this Contract does not specify any explicit quality or standard for materials or workmanship, the Contractor shall use only workmanship and new materials of a quality consistent with that of the requirements for workmanship and materials specified in this Contract.

G. Technical Standards and Codes. References in this Contract, including the Specifications in particular, to all professional and technical standards and codes are to the most recent published professional and technical standards and codes of the institute, organization, association, authority or society specified, all as in effect as of the Contract Date. Unless otherwise specified to the contrary, (1) all such professional and technical standards and codes shall apply as if incorporated herein, and (2) if any material revision occurs, to the Contractor's knowledge, after the Contract Date, the Contractor shall notify Rockland Green.

H. Governing Law. This Contract shall be governed by and construed in accordance with the applicable laws of the State of New York, and disputes between the parties shall be handled in the manner provided herein.

I. Severability. If any clause, provision, subsection, or Section or Article of this Contract shall be ruled invalid by any court of competent jurisdiction, then the parties shall: (1) promptly meet and negotiate a substitute for such clause, provision, subsection, Section or Article (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Contract; and (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Contract as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Contract shall be construed and enforced as if such invalid portion did not exist.

J. Causing Performance. A party shall itself perform, or shall cause to be performed, subject to any limitations specifically imposed hereby with respect to Subcontractors or otherwise, the obligations affirmatively undertaken by such party under this Contract.

K. Party Bearing Cost of Performance. All obligations undertaken by each party hereto shall be performed at the cost of the party undertaking the obligation or responsibility,

unless the other party has explicitly agreed herein to bear all or a portion of the cost either directly, by reimbursement to the other party or through an adjustment to the Contract Price.

L. Cost of Performing Excludes Cost from Legal Proceeding. The “cost of performing” a Party’s obligations hereunder, when used with respect to one Party’s obligation to pay additional costs incurred by the other Party, shall not include any Loss-and-Expense incurred by the Party resulting from any third-party Legal Proceeding. Notwithstanding the foregoing, each Party retains its rights to bring any Legal Proceeding or to implead the other Party as to any matter arising hereunder.

M. Assistance. The obligations of a party to cooperate with, to assist or to provide assistance to the other party hereunder shall be construed as an obligation to use the party’s personnel resources to the extent reasonably available in the context of performance of their normal duties, and not incur material additional overtime or third party expense unless requested and reimbursed by the assisted party.

N. Interpolation. If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

O. Delivery of Documents in Digital Format. The Contractor agrees that all documents required to be delivered under this Contract shall be submitted to Rockland Green both in printed form (in the number of copies indicated) and, at Rockland Green’s request, in digital form.

P. References to Including. All references to “including” herein shall be interpreted as meaning “including without limitation.”

Q. References to Days. All references to days herein are to calendar days, including Saturdays, Sundays and holidays, except as otherwise specifically provided.

R. References to Knowledge. All references to “acknowledge,” “knowing,” “know” or “knew” shall be interpreted as references to a party having actual knowledge.

S. Contract Documents and Conflicts. The Contract Documents, including any subsequent, duly authorized modification of the Contract Documents, comprise the entire and exclusive agreement between the Parties with reference to the Contract Services, and said Contract Documents supersede any and all prior discussions, communications, representations, understandings, negotiations, or agreements. With respect to a conflict, error, or discrepancy within or amongst the Contract Documents, the interpretation most favorable to Rockland Green shall apply.

T. Anything that may be required, implied or reasonably inferred by the Contract Documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Contract Price.

U. Nothing contained in the Contract Documents shall create, nor be interpreted to create, privity or any other relationship whatsoever between Rockland Green and any person except the Contractor.

V. When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted

meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

W. Wherever this Contract calls for “strict” compliance or conformance with the Contract Documents as to matters other than compliance with time limits, providing an updated Project Schedule, and claim and Change Order procedures, the term shall mean within tolerances as described specifically in the Contract Documents, or if not specifically described, within industry standards and tolerances for deviation for the specific item or procedure in question.

X. The listing herein of any items as constituting a material breach of this Contract shall not imply that any other, non-listed item will not constitute a material breach of this Contract.

Y. Each and every provision of law and clauses required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein, and if through mistake, or otherwise, any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion”.

ARTICLE II. REPRESENTATIONS AND WARRANTIES

SECTION 2.1 REPRESENTATIONS AND WARRANTIES OF ROCKLAND GREEN. Rockland Green represents and warrants that:

A. Existence and Powers. Rockland Green is a body politic and corporate constituting a public benefit corporation of the State, with full legal right, power and authority to enter into and perform its obligations under this Contract.

B. Due Authorization and Binding Obligation. Rockland Green has duly authorized the execution and delivery of this Contract. This Contract has been duly executed and delivered by Rockland Green and constitutes a legal, valid and binding obligation of Rockland Green, enforceable against Rockland Green in accordance with its terms except insofar as such enforcement may be limited by bankruptcy, insolvency, or other similar laws affecting creditors’ rights in effect and by equitable principles of general application.

C. No Conflict. The execution, delivery or performance by Rockland Green of this Contract does not conflict with, violate or result in a breach of any law or governmental regulation currently in effect applicable to Rockland Green or any term or condition of any judgment, decree, agreement or instrument to which Rockland Green is a party or by which Rockland Green or any of its properties or assets are bound or constitutes a default under any of the foregoing.

D. No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Contract by Rockland Green or the performance of its payment obligations hereunder except as such have been duly obtained or made.

E. No Legal Prohibition. Rockland Green has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by Rockland Green of this Contract and the transactions contemplated hereby.

F. Information Pertaining to the Site. To the best of its knowledge, Rockland Green has made available to the Contractor significant studies, reports and other information pertaining to the Site which Rockland Green has developed in connection with its planning and preparation work with respect to the RFP and which, in Rockland Green's opinion, may reasonably be material to the performance by the Contractor of the Contract Services. Rockland Green makes no representation, however as to the accuracy or completeness of any such information.

G. Title to the Site. Rockland Green owns, or is expressly authorized to use, all of the assets, improvements and other interests comprising the Site, and has all necessary right, power and authority to provide Contractor access thereto as provided in this Contract for the purpose of performing the Contract Services.

SECTION 2.2 REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR. Contractor hereby represents and warrants that:

A. Qualification. The Contractor is fully qualified to act as the general contractor for the Contract Services and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the general contractor for, and to perform the Work.

B. Site Familiarity. The Contractor has become familiar with the Site and facilities and the local conditions under which the Work is to be constructed and operated.

C. Existence and Powers. The Contractor is duly organized and validly existing as a corporation under the laws of [], with full legal right, power and authority to enter into and perform its obligations under this Contract, and duly licensed and registered with the State of New York and in accordance with Applicable Law.

D. Contract Documents. The Contractor has received, reviewed, and examined all of the documents which make up the Contract Documents, and has found them to the best of its knowledge, to be complete, accurate, adequate, consistent, coordinated and sufficient for the Project and Contractor has based its Contract Price for the Work upon its complete understanding of the requirements of the Contract Documents.

E. Due Authorization and Binding Obligation. The Contractor has duly authorized the execution and delivery of this Contract. This Contract has been duly executed and delivered by the Contractor and constitutes the legal, valid and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

F. No Conflict. The execution, delivery and performance by the Contractor of this Contract does not conflict with, violate or result in a breach of any law or governmental regulation applicable to the Contractor or any term condition of any judgment, decree, agreement (including, without limitation, the Contractor's certificate of incorporation) or instrument to which the Contractor is a party or by which the Contractor or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

G. No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Contract by the Contractor or the performance of its payment or other obligations hereunder except as such have been duly obtained or made.

H. No Litigation. There is no legal proceeding, at law or in equity, before or by any court, pending or, to the Contractor's knowledge, threatened against the Contractor which could reasonably be expected to have a material and adverse effect on the execution or delivery of this Contract or the validity or enforceability of this Contract or on the ability by the Contractor to perform any of its obligations hereunder.

I. No Legal Prohibition. The Contractor has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Contractor of this Contract and the transactions contemplated hereby.

J. Patents and Licenses. The Contractor owns, or is expressly authorized to use under patent rights, licenses, franchises, trademarks or copyrights, the technology necessary for the Contract Services without any known material conflict with the rights of others.

K. Information Supplied by the Contractor. The information supplied and representations and warranties made by the Contractor in all submittals made in response to the RFP and in all post-proposal submittals, if any, with respect to the Contractor (and to the best of its knowledge, all information supplied in such submittals with respect to any Subcontractor) are true, correct and complete in all material respects.

L. Compliance. The Contractor represents and warrants that as of the Contract Date the Contractor is in substantial compliance with all laws, regulations, rules and orders applicable to its respective business, noncompliance with which would have a material and adverse effect upon its business or its ability to perform its respective obligations under this Contract.

M. Notice of Default. The Contractor shall provide to Rockland Green, promptly following the receipt thereof, copies of any notice of default, breach or noncompliance received under or in connection with any Applicable Law, Legal Entitlement, or Subcontract pertaining to this Contract.

N. Familiarity with Applicable Law. The Contractor is familiar with and is satisfied as to all Applicable Law, including federal, state, and local laws and regulations that may affect cost, progress, and performance of the Contract Services.

O. Provision of Conflicts, Errors, Ambiguities and Discrepancies. As further described in Section 3.7 hereof, the Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents comprising the Contract (including drawings and other submittals). The Contractor has given the Engineer written notice of all conflicts, errors, omissions, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by the Engineer is acceptable to Contractor. If Contractor discovers any conflicts, errors, omissions, ambiguities, or discrepancies in the Contract Documents while performing the Contract Services, Contractor warrants that it shall immediately bring such conflict, error, omission, ambiguity or discrepancy to the Engineer's attention in writing. The express or implied approval by the Engineer of any drawings or other submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract.

ARTICLE III.
THE WORK AND CONTRACTOR'S OBLIGATIONS

SECTION 3.1 PERFORMANCE OF THE WORK. The Contractor shall perform all of the Work required, implied or reasonably inferable from the Contract Documents. The Contractor will complete the Work described in the Contract Documents, except as specifically identified therein as the work of other parties, in accordance with the terms herein, all as may be amended by written agreement of the Parties from time to time, for the Contract Price. All Work shall strictly conform to the requirements of the Contract Documents. The Contractor shall be solely responsible for and have control over means, methods, techniques, sequences, and procedures and for coordinating all portions of its Work. As the Lead Contractor, the Contractor shall also be responsible, in accordance with Section 3.13, for developing a Site safety plan, and in accordance with Section 3.15, for coordinating work performed by the other Prime Contractors on the Project, and for updating and maintaining the Project Schedule, all as further set forth in Appendix 8. A statement of the work for the Project is set forth in Appendix 9.

SECTION 3.2 NOTICE TO PROCEED.

A. Conditions Precedent to Notice to Proceed. The Notice to Proceed will be issued on or within five (5) days of the Contract Date by the Engineer, provided that the Contractor has satisfied the following conditions:

- (i) executed the Project Labor Agreement;
- (ii) provided proof of Required Insurance to Rockland Green;
- (iii) provided the Security Instruments to Rockland Green;
- (iv) submitted a Project Schedule for the Engineer's review and comment in accordance with the Specifications; and
- (v) provided any other Submittals required by the Specifications and/or the Supplemental Conditions as a condition to the Notice to Proceed.

SECTION 3.3 CONTRACT TIME. The Contractor shall accomplish Substantial Completion by the Scheduled Substantial Completion Date, and shall achieve Final Completion by the date set forth in the Project Schedule attached hereto as Appendix 6, and as adjusted only in accordance with this Contract. By signing this Contract, the Contractor agrees that the Contract Time is a reasonable time for accomplishing completion of the Work.

SECTION 3.4 DELAY LIQUIDATED DAMAGES. Time is of the essence in the performance and completion of the Work and the Contractor shall achieve Substantial Completion by the Scheduled Substantial Completion Date and Final Completion by the date set forth in the Project Schedule attached hereto as Appendix 6. Except as otherwise excused due to

Uncontrollable Circumstances or Rockland Green Breach, the Contractor shall pay daily Liquidated Damages to Rockland Green commencing on the 45th day after the Scheduled Substantial Completion Date, if Substantial Completion has not been achieved by then. Such Liquidated Damages shall be two thousand dollars (\$2,000) for each day after the Scheduled Substantial Completion Date. Except as otherwise excused due to Uncontrollable Circumstances or Rockland Green Breach, the Contractor shall pay daily Liquidated Damages to Rockland Green commencing on the 45th day after the date set for Final Completion in Appendix 6, if Final Completion has not been achieved by then. Such Liquidated Damages shall be one thousand dollars (\$1000/day) for each day after the date set for Final Completion in Appendix 6. Such Liquidated Damages are subject to a cap of 10% of the Contract Price. The Contractor shall also indemnify Rockland Green in accordance with and subject to the limitations set forth in Section 12.3 hereof against all Loss-and-Expense resulting from any Legal Proceeding originated by any third-party arising from such failure to complete the Work except to the extent such failure is caused by an Uncontrollable Circumstance.

SECTION 3.5 PROVISIONS AND PAYMENT OF LABOR, MATERIALS, AND EQUIPMENT. The Contractor shall provide all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, disposal, power, fuel, heat, light, cooling, or other utilities, required for performance of the Work and shall obtain, at its sole cost, all necessary building permits and other permits or licenses required for the Work and ensure the prompt payment for each of these obligations.

SECTION 3.6 MAINTENANCE OF RECORDS AND OTHER DOCUMENTS AND DRAWINGS.

A. Maintenance of Updated Contract Documents at Site. The Contractor shall keep an updated copy of the Contract Documents at the Site. Additionally, the Contractor shall keep a copy of approved drawings and other Submittals at the Site. All of these items shall be available to the Engineer during all regular business hours. The Contractor shall ensure the creation and maintenance of a detailed and comprehensive copy of the drawings, specifications, addenda, Change Orders and other modifications depicting the Work. Said items shall be submitted to Rockland Green, along with other required Submittals upon Final Completion of the Work, or as otherwise provided in the Contract Documents, and receipt of same by Rockland Green shall be a condition precedent to final payment to the Contractor.

B. Contractor Drawings. The Contractor shall not do any work requiring drawings or other submittals unless such has been approved in writing by the Engineer or as required by the Contract Documents. All work requiring approved drawings or other submittals shall be done in strict compliance with such approved documents or Contract requirements. Approval by Rockland Green's Engineer, however, shall not be evidence that work completed pursuant thereto conforms with the requirements of this Contract, and shall not relieve the Contractor of responsibility for deviations from the Contract Documents unless the Engineer has been specifically informed of the deviation by a writing incorporated in the Submittals, if any, and has approved such deviation in writing.

C. Review and Delivery of Submittals. The Contractor shall have the duty to carefully review, inspect, examine, and physically stamp and sign any and all Submittals before submission of same to the Engineer. The delivery of Submittals shall constitute a representation

by the Contractor that it has verified that such Submittals meet the requirements of the Contract Documents, or will do so, including field measurements, materials, and field construction criteria related thereto.

SECTION 3.7 DUTY TO EXAMINE CONTRACT DOCUMENTS. The Contractor has a continuing duty to, and shall carefully, examine all figures and dimensions on the Contract Drawings and Specifications and shall note all conflicts, errors, omissions, ambiguities or discrepancies. The Contractor will be held responsible for any conflict, error or discrepancy not discovered before the Work is executed, unless the Contractor could not have reasonably known about the conflict, error or discrepancy. The Contractor has given the Engineer written notice of all conflicts, errors, omissions, ambiguities or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by the Engineer is acceptable to Contractor. If the Contractor discovers any conflicts, errors, omissions, ambiguities or discrepancies in the Contract Documents while performing the Contract Services, the Contractor warrants that it shall immediately bring such conflict, error, omission ambiguity or discrepancy to the Engineer's attention in writing. The express or implied approval by the Engineer of any drawings or other Submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Contractor shall not alter Specifications, Contract Drawings or figures, or make any alterations in or additions to the quantity, character or arrangement of the materials or Work, whether same shall involve additional expense or not, unless same shall be agreed upon first, in writing, as a Change Order. This provision, however, shall not abridge in any way the Engineer's rights as to the interpretation of the Specifications, plans and figures thereon. The divisions and sections of the Specifications and the identification of any drawings shall not control the work of the Contractor in dividing the work among Subcontractors or suppliers or delineating the work to be performed by any specific trade. The division of the Specifications are complementary and anything mentioned or shown in a division of the Specifications or in a specific trade drawing shall be of like effect as if shown in all divisions of the Specifications and in all drawings. In all cases figured dimensions shall govern over scaled dimensions, detail drawings shall govern over general drawings, larger scale details take precedence over smaller scale drawings, change order drawings govern contract drawings, and contract drawings govern over standard or shop drawings. Further, in all cases where details in two drawings conflict or where drawings and specifications conflict, the more restrictive or stringent requirement shall be binding upon the Contractor except as otherwise authorized by Rockland Green in writing.

SECTION 3.8 QUALIFICATIONS OF PERSONNEL. The Contractor shall provide experienced and qualified personnel to provide the Contract Services, and all persons engaged by the Contractor, including any Subcontractors, for the Work shall have requisite skills, licensing and training for the tasks assigned. The Contractor shall provide Rockland Green documentation that its employees, and its Subcontractors, are properly trained in performing the Work, including, but not limited to, certificates, and licenses to operate specific classes of vehicles, machinery, equipment, tools and safety protection. The Contractor shall enforce discipline and good order at all times among the Contractor's employees and all Subcontractors.

SECTION 3.9 SUBCONTRACTORS. Contractor and its Subcontractors must execute the Project Labor Agreement and remain subject to the Project Labor Agreement during the Term of this Contract. Rockland Green shall have the right to approve any and all

Subcontractors. Contractor must submit all information regarding Subcontractors as required by Rockland Green and obtain Rockland Green's written approval prior to the Subcontractor performing any portion of the Work. Rockland Green's approval process for Subcontractors shall not constitute a reason for any delay in Contractor's performance of the Work. The Contractor shall require all of its Subcontractors working at the Site to secure and maintain the Required Insurance and other financial sureties required by Applicable Law in connection with their presence at the Site and the performance of their duties. The Contractor shall negotiate and execute any and all Subcontracts with Subcontractors as may be necessary for the Contractor to fulfill its obligations under this Contract and as are approved by Rockland Green in writing. The Contractor shall not enter into a Subcontract with any Subcontractor to whom Rockland Green reasonably objects. If at any time Rockland Green objects to a Subcontractor, the Contractor shall solicit proposals from potential replacements and shall submit the names of the replacement Subcontractor to Rockland Green for approval without an increase in the Contract Price or change in Contract Time. The Contractor shall retain full responsibility to Rockland Green under this Contract for all matters notwithstanding the execution or terms and conditions of any Subcontract. No failure of any Subcontractor used by the Contractor in connection with the provision of the Work shall relieve the Contractor from its obligations hereunder. The Contractor shall pay or cause to be paid to all direct Subcontractors all amounts due in accordance with their respective Subcontracts and Applicable Law. No Subcontractor shall have any right against Rockland Green for labor, services, materials or equipment furnished. The approval or withholding thereof by Rockland Green of any Subcontractor shall not create any liability of Rockland Green to the Contractor, to third parties or otherwise.

SECTION 3.10 EXPANSION AND REDUCTION OF SERVICES. Rockland Green shall have the right to expand or reduce the scope of Contract Services to be performed by the Contractor during the Term of this Contract. Rockland Green may request that the Contractor provide additional services to Rockland Green, which are similar to the Work specified in this Contract. Prior to the commencement of such services, Rockland Green and the Contractor shall mutually agree in writing as to the terms and conditions relating to such additional services. If such additional services are agreed to, this Contract shall be amended by the Parties to provide for such additional services. Rockland Green shall be under no obligation to request that the Contractor provide any such additional services, and any services outside the scope of the Contract Services may be provided by Rockland Green or a third party. If Rockland Green reduces the scope of the Work during the Term of this Contract, then the Parties will mutually agree as to the terms of such reduction and any modification in the Contract Price.

SECTION 3.11 COMPLIANCE WITH APPLICABLE LAW.

A. Compliance with Contract Standards. The Contractor shall perform the Contract Services in accordance with the Contract Standards.

B. Compliance with Conditions in Governmental Approvals. The Contractor shall comply with all conditions and requirements of all Governmental Approvals and Legal Entitlements required to be made, obtained or maintained under Applicable Law in connection with the Contract Services and this Contract.

C. Governmental Approvals Necessary for Contract Services. The Contractor shall, at its sole cost and expense, make all filings, applications and reports necessary to obtain and

maintain all Governmental Approvals and Legal Entitlements required to be made, obtained or maintained under Applicable Law in connection with the performance of the Contract Services. Rockland Green shall cooperate with the Contractor in connection with the foregoing undertaking, and shall provide the Contractor with such relevant data or documents as are within its control, which are reasonably required for such purpose.

D. Prevailing Wage Law. All Work shall be subject to the Project Labor Agreement and performed in accordance the Prevailing Wage Law. The prevailing wage schedule contained in Appendix 5 sets forth the prevailing wage and benefits schedule for the Work as of the Contract Date. It shall be the Contractor's responsibility to ensure that prevailing wages and benefits are paid as required pursuant to the Prevailing Wage Law throughout the Term and to ensure that all Subcontractors comply with the Prevailing Wage Law. Any increase to wages and benefits pursuant to the Prevailing Wage Law which the Contractor is required to pay during the Term shall not affect the Contract Price. Certified payrolls and other relevant information shall be furnished to Rockland Green with each Payment Request in compliance with the Prevailing Wage Law.

E. NYHRL. Contractor shall have in place sexual harassment policies that are compliant with the New York Human Rights Law ("NYHRL"), and shall provide annual training to all of their employees in accordance with the NYHRL.

SECTION 3.12 PERFORMANCE, INFORMATION, AND SITE CONDITION.

A. Practicability of Performance. The Contractor, in the performance of the Contract Services set forth herein, shall have exclusive responsibility for compliance with the Contract Standards. The Contractor assumes the risk of the practicability and possibility of performance of the Contract Services. No impracticability or impossibility of any of the foregoing shall be deemed to constitute an Uncontrollable Circumstance. The Contractor acknowledges that the Contractor's agents and representatives have visited, inspected and are familiar with the Site and that the Contractor is familiar with all local and other conditions which may be material to the Contractor's performance of its obligations under this Contract. The execution of this Contract shall be deemed to constitute the granting of a license to the Contractor to access the Site for the purposes of preparing for any and all obligations hereunder.

B. Rockland Green-Supplied Information. The Contractor shall be responsible for the independent verification and confirmation of all information supplied to it by or on behalf of Rockland Green. No error or omission in any such information shall constitute an Uncontrollable Circumstance or relieve the Contractor from any of its obligations or entitle the Contractor to any increase in compensation or extension of time hereunder. Any information supplied by Rockland Green is only for the Contractor's convenience, and Rockland Green makes no representations as to the accuracy or completeness thereof.

C. Site Conditions. The Contractor has conducted analyses of the Site as necessary to prepare for and perform the Work in accordance with this Contract.

D. Rockland Green Monitoring. Rockland Green shall have the right, but not the obligation, to monitor the Contractor's performance of the Work during the Term of this Contract; provided, however, such monitoring shall not relieve the Contractor of any of its obligations under this Contract.

E. Hours of Work. Hours of work will be set forth in the Project Labor Agreement. No delays resulting from compliance with the Contract Standards, including Applicable Laws or regulations or conditions of permits may form the basis for any claim by the Contractor for delay damages or additional compensation or for any increase in the Contract Time; any delays arising from restrictions related to the use of occupied facilities are non-compensable and any requests for an increase in the Contract Time relating to them must be filed in accordance with Article VIII (Change Orders) or the same will be conclusively deemed to have been waived. In no event shall the Contractor permit Work to be performed at the Project Site without the presence of the Contractor's superintendent and/or persons responsible for the protection of persons and property at the Site and compliance with all Applicable Law and Prudent Engineering and Construction Practice. Notwithstanding any other provisions of this Contract, Rockland Green may order the Contractor to suspend work for any continuing violation of this section.

SECTION 3.13 PROTECTION OF PERSONS AND PROPERTY.

A. Safety Programs and Precautions. It shall be the sole responsibility of the Contractor to develop, initiate, continue and supervise all safety programs and precautions in the performance of the Work under this Contract, and, as the Lead Contractor, the work performed by the other Prime Contractors, at all times. The Contractor, as Lead Contractor, shall also prepare and maintain a Site safety plan in connection with its duties hereunder that shall be applicable to all Prime Contractors and that shall include the safety policies and regulations as set forth and/or referenced in the Specifications set forth in Appendix 2 hereto. The Contractor shall take full, reasonable and necessary precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to its employees, Subcontractors' employees, employees of Rockland Green, the Engineer, the Prime Contractors and their employees, and members of the public, the Work itself, and other property and work at the Project Site or adjacent thereto. As part of the Contractor's obligations hereunder, the Contractor shall erect and maintain reasonable safeguards, barriers, signs, warnings, and any other safety measure required by Applicable Law and in accordance with Prudent Engineering and Construction Practice, Good Industry Practice, and any other Contract Standards.

B. Notice to the Engineer. The Contractor shall promptly remedy loss or damage to the Work or any person or property described herein caused in whole or in part by the acts of the Contractor or any Subcontractor, sub-subcontractor or material man. The Engineer may direct the Contractor to remedy violations of Applicable Law related to safety when and if observed on the Site. However, through exercising this authority the Engineer shall not incur any obligations to monitor, initiate, continue, or supervise safety programs and precautions such to diminish the Contractor's exclusive role in same. The Engineer shall have the right to report suspected safety violations to the Occupational Safety and Health Administration.

SECTION 3.14 SUPERVISION OF THE WORK.

A. Contractor Responsibility. The Contractor shall strictly and constantly supervise the Work and bear full responsibility for any and all acts, errors or omissions of those engaged in the Work on behalf of the Contractor, including, but not limited to, all Subcontractors and their employees. The Contractor shall maintain an on-Site superintendent at all times while any portion of the Work is being performed.

B. Supervisory Personnel. The Contractor shall employ and maintain at the Site only competent, qualified full time supervisory personnel, augmented with part time and offsite supervision, approved by Rockland Green.

C. Contractor Warranty. In addition to any other warranties or assurance provided in the Contract Documents or by Applicable Law, the Contractor hereby warrants that all laborers furnished under this Contract shall be qualified and competent to perform the tasks undertaken, that all materials and equipment provided shall be new (unless otherwise specified) and of the highest quality, that the completed work will be complete and of the highest quality, without defects, and that all Work strictly complies with the requirements of the Contract Documents, including the Contract Standards. Any work not strictly complying with the requirements of this Article shall constitute a breach of this Contractor's warranty.

SECTION 3.15 COORDINATION OF OTHER WORK. The Contractor shall coordinate the work performed on the Site by the other Prime Contractors for the Project, in accordance with the Project Coordination Protocol set forth in Appendix 8, and shall be responsible for updating and maintaining the Project Schedule and Site safety plan. As further detailed in Appendix 8, such coordination includes: (1) updating the Project Schedule on a minimum of a weekly basis; (2) coordinating activities on the Project Site (including parking, movement of traffic, deliveries, and laydown areas); and (3) ensuring Project safety and supervision as set forth in Sections 3.13 and 3.14 above. The Contractor must also cooperate in coordinating its Work with the work of Rockland Green, its operators, other contractors, and any other forces permitted by Rockland Green to perform work at the Site, or enter the Site, without an increase in the Contract Time or the Contract Price. The Contractor must provide written notice to Rockland Green of any conflicts and disputes in the coordination or scheduling of work in accordance with the provisions set forth in Section 6.4 hereof.

ARTICLE IV. COMPLETION

SECTION 4.1 SUBSTANTIAL COMPLETION.

A. Substantial Completion. Substantial Completion shall be achieved when all of the following conditions have been satisfied as determined by the Engineer:

(i) The Engineer confirms in writing that the Contractor has substantially completed its Work in conformance with the Specifications;

(ii) The Contractor has completed the Contract Services to the point where Rockland Green can take beneficial use of the area described in the Contract Documents;

(iii) The Contractor has obtained any required Governmental Approvals and such approvals have not been withdrawn, revoked, superseded, suspended, or materially impaired or amended;

(iv) The Contractor and Rockland Green have developed a written punch list in accordance with the Specifications;

(v) Rockland Green has received and indicated, in writing, that it has no objection to the certification by the Contractor that all Contract Services, excepting the items on the punch list, are complete and in all respects is in compliance with the Contract;

(vi) The Contractor has delivered to Rockland Green a claims statement setting forth in detail all claims of every kind whatsoever of the Contractor connected with, or arising out of, the Contract Services pertaining to the Work, and arising out of or based on events prior to the date when the Contractor provides such statement to Rockland Green, and the Contractor shall certify that all Subcontractors and material suppliers have been paid in full and upon Rockland Green's request will provide any discharge or other proof of satisfaction of liens or wage claims; and

(vii) The Contractor has submitted written certification that all of the foregoing conditions have been satisfied and Rockland Green has received and indicated, in writing, that it has no objection to the Contractor's certification.

B. Alternative Substantial Completion. Alternatively, Substantial Completion shall occur on any date certified by Rockland Green, which shall have discretion to waive any of the foregoing conditions.

SECTION 4.2 FINAL COMPLETION. When all Work is complete and all punch list items have been resolved, the Contractor shall notify the Engineer thereof in writing. Thereupon, the Engineer will perform a final inspection of the Work in accordance with the Specifications. If the Engineer concurs that (i) the Work is complete and in full accordance with the Contract Documents, and (ii) the Contractor has performed all of its obligations to Rockland Green hereunder, the Contractor will furnish a Certificate of Final Completion for approval by Rockland Green. The Engineer will also review for approval the final Payment Request to Rockland Green certifying to Rockland Green that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to the Contract Documents. If the Engineer reasonably determines that final approval for payment should not be issued and is required to repeat the final inspection of the Work, the Contractor shall bear the cost of such repeat inspection(s), which costs may be deducted by Rockland Green from the Contractor's final payment. No claim by the Contractor for an adjustment hereunder shall be allowed if asserted after final payment under this Contract.

ARTICLE V. CONTRACT PAYMENTS

SECTION 5.1 CONTRACT PRICE. Rockland Green will pay the Contractor the Contract Price set forth in Appendix 3 hereto, in exchange for the Contract Services, in accordance with this Contract.

SECTION 5.2 SCHEDULE OF VALUES. Prior to review of the first request for payment ("Payment Request"), the Contractor must submit to Rockland Green and receive Rockland Green's approval for the schedule of values apportioning the entire Contract Price among the different elements of the Work (hereinafter the "Schedule of Values") for purposes of periodic and final payment. The Schedule of Values shall be presented in whatever format, with

such detail including labor and material breakout, and backed-up with whatever supporting information Rockland Green may reasonably request. The Contractor shall not imbalance the Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values will be utilized for the Contractor's Payment Requests but shall only be so utilized after it has been approved in writing by Rockland Green and the Engineer.

SECTION 5.3 ENTIRE COMPENSATION. The Contractor agrees that the Contract Price shall be the Contractor's entire compensation and reimbursement for the performance of the Contract Services.

SECTION 5.4 COSTS AND COST SUBSTANTIATION.

A. Costs. The Contract Price has been negotiated by the Parties and fixed by the terms of this Contract. Any other cost shall only be permitted in the event of a request from Rockland Green pursuant to Section 3.10 hereof or as a result of a Change Order. Any such cost proposed or incurred by the Contractor, which is directly or indirectly chargeable to Rockland Green in whole or in part hereunder, shall be (i) calculated in accordance with Section 8.8 or, if such cost is not calculable in accordance with the provisions of Section 8.8, then (ii) the fair market price for the good or service provided, or, if there is no market, shall be a just and reasonable price agreed upon by the Parties the fair market price for the good or service provided, or, if there is no market, shall be a just and reasonable price agreed upon by the Parties.

B. Cost Substantiation. To substantiate any costs, other than the Contract Price, the Contractor shall supply Rockland Green with a certificate signed by a senior management officer of the Contractor, which (1) shall state the amount of such cost and the provisions of this Contract under which such cost is properly chargeable to Rockland Green, and (2) if not calculable pursuant to Section 8.8 hereof, than Contractor, shall describe the competitive or other process utilized by the Contractor to obtain a fair market price, and shall state that such cost is a fair market price for the service or materials to be supplied (or, if there is no market, that such cost is commercially reasonable) and that such services and materials are reasonably required pursuant to this Contract. The certificate shall be accompanied by copies of such documentation as shall be reasonably required by Rockland Green which shall include reasonably detailed information necessary to substantiate any cost described in this subsection. To the extent reasonably necessary to confirm direct costs required to be cost substantiated, copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, shall be delivered to Rockland Green with the request for reimbursement of such costs.

SECTION 5.5 CONTRACTOR PROJECT SCHEDULE AS A CONDITION OF PAYMENT. The Contractor's Project Schedule shall be updated as required by the Engineer and shall be updated to reflect conditions encountered from time to time. Each such revision shall be furnished to the Engineer in accordance with the Specifications. Strict compliance with the requirements of this Section shall be a condition precedent to payment to the Contractor and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract. No update to the Project Schedule can alter the Contract Time without the express, written approval of Rockland Green.

SECTION 5.6 PAYMENT REQUESTS, PAYMENT AND RETAINAGE.

A. Payment Requests. After commencement of performance, the Contractor may submit a Payment Request in accordance with the Schedule of Values. Said Payment Request shall be in such format and include whatever supporting information as may be reasonably required by Rockland Green or the Engineer. Each Payment Request shall be accompanied by a certificate of an authorized Contractor official certifying: (1) the portion of the Contract Price which is payable to the Contractor, (2) that the Contractor is neither in default under this Contract nor in breach of any material provision of this Contract such that the breach would, with the giving of notice or passage of time, constitute an Event of Default, and (3) that all items applicable to the Schedule of Values entitling the Contractor to request payment have been completed in accordance with this Contract.

Each Payment Request shall include the following supporting documentation to substantiate such Payment Request (in the form and level of detail determined acceptable by Rockland Green and the Engineer), as applicable to the Work performed for which the Contractor is submitting such Payment Request:

- (1) a reasonably detailed description of all Work actually completed to date;
- (2) a revised Project Schedule which shall reflect changes since the date of the last Payment Request;
- (3) notice of any Liens or Encumbrances which have been filed, together with evidence that the Contractor has bonded or discharged such Liens or Encumbrances;
- (4) written acknowledgement from Subcontractors that an agreement has been signed and accepted for the work to be performed by such Subcontractor;
- (5) submittal logs;
- (6) written reports;
- (7) a letter of transmittal corresponding to the submittals associated with such payment;
- (8) a verified statement setting forth the information required under any Applicable Law pertaining to prevailing wages;
- (9) certified payroll reports to the extent required pursuant to the Prevailing Wage Law;
- (10) such additional specific information required for the applicable payment as reasonably required by the Engineer or Rockland Green; and
- (11) any other documents or information relating to the Work or this Contract reasonably requested by Rockland Green or the Engineer as may be required by Applicable Law, this Contract, or generally accepted accounting principles in connection with the financing of the Project.

B. Change Orders and Payment Requests. Amounts reflected in Change Orders may be included in Payment Requests to the extent they are not in dispute and subject to final approval of cost to Rockland Green for such changes in the Work.

C. Certification by Contractor. Each Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of Work has

reached the level for which payment is requested, that the Work has been properly performed in strict compliance with the Contract Documents, that the Contractor knows of no reason why payment should not be made as requested, and the Contractor will promptly pay its Subcontractors, suppliers, vendors and any other party for their portion of the Work covered by the Payment Request.

D. Rockland Green Review. Upon receipt of a properly completed Payment Request, the Engineer shall review the Payment Request and may also review the Work at the Site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Payment Request and is as required by this Contract. Such review of the Payment Request and any related work shall be performed by the Engineer within fourteen (14) days from the date Rockland Green receives such Payment Request. The amount of each such payment shall be the amount approved for payment by the Engineer, less a ten percent (10%) retainage, and such amounts, if any, otherwise owing by the Contractor to Rockland Green or which Rockland Green shall have the right to withhold as authorized by the Contract Documents, subject to approval by Rockland Green. Rockland Green shall make payment of the approved Payment Request within thirty (30) days from the date of such approved Payment Request. Approval of the Contractor's Payment Requests shall not preclude Rockland Green from the exercise of any of its rights, including those related to authorized withholdings, offsets and reclamation, as set forth herein below.

E. Payment Request as Representation and Warranty of Work. The submission by the Contractor of a Payment Request also constitutes an affirmative representation and warranty that all work for which Rockland Green has previously paid is free and clear of any lien, claim, or other encumbrance of any person whatsoever. As a condition precedent to payment, the Contractor shall, as required by Rockland Green, also furnish to the Engineer properly executed waivers of lien or claim, in a form acceptable to Rockland Green, from all Subcontractors, materialmen, suppliers or others having lien or claim rights, wherein said subcontractors, materialmen, suppliers or others having lien or claim rights, shall acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any liens, lien rights or other claims relating to the Work and the Project Site. Furthermore, the Contractor warrants and represents that, upon payment of the Payment Request submitted, title to all Work included in such payment shall be vested in Rockland Green, even though responsibility for the care and maintenance of said Work rests with Contractor until Substantial Completion of the Work has been achieved.

SECTION 5.7 PROMPT PAYMENT. When payment is received from Rockland Green, the Contractor shall promptly pay all Subcontractors, materialmen, laborers and suppliers the amounts they are due for the work covered by such payment.

SECTION 5.8 NO APPROVALS, CONSENTS OR WAIVERS IMPLIED IN PAYMENTS. Neither payment to the Contractor, utilization of the Project Site for any purpose by Rockland Green, nor any other act or omission by Rockland Green shall be interpreted or construed as an acceptance of any Work of the Contractor not strictly in compliance with the Contract Documents.

SECTION 5.9 PAYMENT WITHHOLDING. After written notice to the Contractor and a reasonable opportunity to cure, Rockland Green shall have the right to refuse to make

payment, in whole or in part, and, if necessary, may demand the return of a portion or the entire amount previously paid to the Contractor due to:

- (i) The quality of a portion, or all, of the Contractor's Work not being in compliance with the requirements of the Contract Documents;
- (ii) The quantity of the Contractor's work not being as represented in the Contractor's Payment Request, or otherwise;
- (iii) The Contractor's rate of progress being such that, in the reasonable opinion of the Engineer, Final Completion may be inexcusably delayed;
- (iv) The Contractor's failure to use Contract funds, previously paid the Contractor by Rockland Green to pay Contractor's project-related obligations including, but not limited to, Subcontractors, laborers and material and equipment suppliers;
- (v) Claims made, or claims likely to be made as evidenced by a claimant filing a demand, notice of intent to file a claim, including a duly filed mechanic's lien for labor or materials provided or a notice of intent to file a mechanic's lien, against Rockland Green or its property for which the Contractor or its agents or Subcontractors or others for whom it is responsible are, or reasonably appear to be at fault;
- (vi) Loss caused by the Contractor; or
- (vii) The Contractor's failure or refusal to perform any of its obligations to Rockland Green after written notice and a reasonable opportunity to cure as set forth above.

In the event that Rockland Green makes written demand upon the Contractor for amounts previously paid by Rockland Green as contemplated in this Section, the Contractor shall promptly comply with such demand. Rockland Green's rights hereunder survive the term of this Contract, are not waived by final payment and/or issuance of the Certificate of Final Completion, and are in addition to Contractor's obligations elsewhere in this Contract.

SECTION 5.10 PAYMENT UPON FINAL COMPLETION. Upon Final Completion, Rockland Green shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less any amounts attributable to damages, and less one hundred fifty percent (150%) of the costs, as reasonably determined by Rockland Green for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or threatened claims. Such a calculation by the Engineer of costs for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or threatened claims shall not bar Rockland Green from exercise of its rights elsewhere herein, or otherwise as provided by law for any incomplete, defective or nonconforming work or claims which are discovered by Rockland Green after the date of making such calculation or after the date of any partial or final payment, whether or not such incomplete, defective or nonconforming work or claims were obvious or should have been discovered earlier. Final payment shall be made only upon completion of the final inspection and issuance of a Certificate of Final Completion in accordance with Section 4.2 and the delivery and approval of information, as required herein.

SECTION 5.11 FINAL PAYMENT. Rockland Green shall endeavor to make final payment of all sums due the Contractor within thirty (30) days of the final Payment Request, with the exception of items disputed in good faith or concerning which the Engineer has reasonably exercised any of his rights to investigate.

ARTICLE VI. CONTRACT ADMINISTRATION

SECTION 6.1 CONTRACT ADMINISTRATION. The Engineer will provide administration of the Contract as described in the Contract Documents, and will be Rockland Green's representative during the Term. The Engineer will have authority to act on behalf of Rockland Green to the extent provided in the Contract Documents.

SECTION 6.2 SITE VISITS. The Engineer will visit the Site at intervals appropriate to the stage of the Contractor's Work (1) to become generally familiar with and to keep Rockland Green informed about the progress and quality of the portion of the Work completed, (2) to guard Rockland Green against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Engineer will neither have control over or charge of, nor be responsible for, the means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as otherwise provided.

SECTION 6.3 FAILURE TO PERFORM. The Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Engineer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractor, or their agents or employees or any other persons or entities performing portions of the Work.

SECTION 6.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION. As the Lead Contractor for the Project, the Contractor shall communicate with each of the other Prime Contractors and with Rockland Green and the Engineer about matters arising out of or relating to this Contract, as well as the Project. Communications by and with Subcontractors and material suppliers shall be through the Contractor. The Contractor is responsible for updating the Project Schedule, and shall report immediately in writing to the Engineer any and all conflicts or disputes among any of the Prime Contractors that it encounters or becomes aware of during the Project that have the potential to delay any aspect of the Project. The Contractor shall provide the report on any such conflict or dispute in writing immediately to the Engineer or at the weekly meeting with the Engineer. The failure to report such a conflict or dispute in writing to the Engineer as set forth herein shall constitute a waiver by the Contractor of any potential relief provided for hereunder in connection with such conflict or dispute.

SECTION 6.5 MEETINGS. The Contractor shall conduct meetings in accordance with the Specifications or as reasonably requested by Rockland Green or the Engineer.

SECTION 6.6 REVIEW OF SUBMITTALS. The Engineer will take appropriate action upon the Contractor's Submittals, but only for the limited purpose of checking for conformance with information given and the Work expressed in the Contract Documents. The Engineer's review will be in accordance with the Specifications, while allowing sufficient time in the Engineer's professional judgment to permit adequate review. Review of such documents is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions or quantities or for substantiating instructions for equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Engineer, of any means, methods, techniques, sequences, or procedures.

SECTION 6.7 REJECTION OF WORK. The Engineer will have authority to reject Work that does not conform to the Contract Documents. Whenever the Engineer considers it necessary or advisable, the Engineer will have authority to require inspection or testing of the Work. However, neither this authority of the Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

SECTION 6.8 PREPARATION OF CHANGE ORDERS AND CONSTRUCTION CHANGE DIRECTIVES. The Engineer will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work in accordance with Article VIII hereof.

SECTION 6.9 INSPECTIONS. The Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to Rockland Green, for Rockland Green's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and will issue a final certificate for payment upon compliance with the requirements of the Contract Documents. Observation or inspection of the Work by Rockland Green or the Engineer shall not relieve the Contractor of its responsibility to complete the Work in accordance with the Contract Documents. Work performed without direct observation by Rockland Green or by the Engineer shall not relieve the Contractor of full responsibility for completing the Work in accordance with the Contract Documents.

ARTICLE VII. TERM

SECTION 7.1 EFFECTIVE DATE AND TERM. This Contract shall become effective on the Contract Date and shall continue in effect until all Contract Services have been completed, or this Contract is earlier terminated, as applicable (the "Term"). All rights, obligations and liabilities of the Parties hereto shall commence on the Contract Date, subject to the terms and conditions hereto.

ARTICLE VIII. CHANGE ORDERS

SECTION 8.1 AUTHORITY TO ISSUE CHANGE ORDERS. One or more changes to the Work within the general scope of this Contract may be ordered by Change Order. Rockland Green may also issue written directions for minor changes in the Work and may issue Construction Change Directives, as set forth below. The Contractor shall proceed with any such Change Orders or Construction Change Directives without delay and in a diligent manner, and same shall be accomplished in strict accordance with the following terms and conditions.

SECTION 8.2 CHANGE ORDER DEFINED. “Change Order” shall mean a written order to the Contractor executed by the Parties after execution of this Contract, directing a change in the Work. A Change Order may include a change in the Contract Price (other than a change attributable to damages caused by the Contractor for delay) or the time for the Contractor’s performance, or any combination thereof. Where there is a lack of total agreement on the terms of a Change Order or insufficient time to execute a bilateral change, Rockland Green may also direct a change in the Work in the form of a “Construction Change Directive”, which will set forth the change in the Work and the change, if any, in the Contract Price or time for performance, for subsequent inclusion in a Change Order. Construction Change Directives shall include a not-to-exceed preliminary price, against which the Contractor may begin billing (subject to the requirements for pay applications elsewhere herein) as the work is performed.

SECTION 8.3 SUBSTANTIATING THE CHANGE ORDERS. The cost of any change in the Work shall be determined in accordance with the requirements of this Article and consistent with the Contract Documents.

SECTION 8.4 ITEMIZATION FOR CHANGE ORDERS. The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Engineer, with any proposal for a Change Order.

A. The price breakdown:

(i) Must include sufficient detail to permit an analysis of all costs for material, labor, equipment, and Subcontracts; and

(ii) Must cover all work involved in the modification, whether the work was deleted, added or changed.

B. Subcontract price breakdowns. The Contractor shall provide similar price breakdowns to support any amounts claimed for Subcontracts.

C. Justification. The Contractor’s proposal shall include a complete justification for any time extension proposed in conjunction with the Change Order request.

SECTION 8.5 CALCULATION OF CHANGE ORDER AMOUNTS. Any change in the Contract Price resulting from a Change Order shall be determined as follows:

A. Mutual agreement. By mutual agreement between Rockland Green and the Contractor as evidenced by a written Change Order executed by the Parties of the Change Order.

B. No mutual agreement. If no mutual agreement occurs between Rockland Green and the Contractor, the change in the Contract Price, if any, shall be derived by determining the reasonable actual costs incurred or savings achieved, resulting from revisions in the Work. Such reasonable actual costs or savings shall include a component for direct job site overhead and profit but shall not include home-office overhead or other indirect costs or components. The calculation of actual costs shall conform to the markup schedule otherwise provided in Section 8.8, below. Any such costs or savings shall be documented in the format and with such content and detail as Rockland Green requires.

C. Documentation. The Contractor shall promptly submit such documentation and other backup as Rockland Green may require in evaluating the actual costs incurred.

SECTION 8.6 EXECUTION OF CHANGE ORDER AS WAIVER OF CLAIM. The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against Rockland Green for additional time or compensation for matters relating to, arising out of or resulting from the Work included within or affected by the executed Change Order of which the Contractor knew or should have known.

SECTION 8.7 NOTIFICATION TO SURETY AS OTHERWISE REQUIRED. The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders and Construction Change Directives if such notice, consent or approval are required by Rockland Green, the Contractor's surety or by law. The Contractor's execution of the Change Order or Construction Change Directive shall constitute the Contractor's warranty to Rockland Green that the surety has been notified of, and consents to, such Change Order or Construction Change Directive and the surety shall be conclusively deemed to have been notified of such Change Order or Construction Change Directive and to have expressly consented thereto.

SECTION 8.8 ADDITIONAL COST FACTORS IN PRICING CHANGE ORDERS OR CONSTRUCTION CHANGE DIRECTIVES. For the purpose of Change Orders or Construction Change Directives, the following additional definitions and requirements apply:

A. Materials. Contractor's or Subcontractor's materials shall include the cost of materials, sales tax (if any), and the cost of all transport. The cost of items listed shall be directly related to the Change Order or Construction Change Directive. Indirect costs not specifically related to the Change Order or Construction Change Directive shall not be considered.

B. Direct Labor Cost. Contractor's or Subcontractor's direct labor cost shall be limited to the hourly rate of directly involved workers, employer contributions towards Contractor standard benefits, pensions, unemployment or social security (if any), and employer costs for paid sick and annual leave.

C. Overhead. Contractor's or Subcontractor's overhead shall include license fees, bond premiums, supervision, wages of timekeepers and clerks, incidentals, home and field office expense, and vehicle expense directly related to the Work, and all other direct Work expenses not included in the Contractor's materials, direct labor, and equipment costs.

D. Overhead and Profit Fee. The fee for overhead and profit shall be limited to the following schedule:

(i) For the Contractor, for any work performed by the Contractor's own forces, 15% of the subtotal of costs to the Contractor.

(ii) For the Contractor, for any work performed by his Subcontractor, 6% of the amount due the Subcontractor.

(iii) For each Subcontractor or sub-subcontractor involved, for any work performed by their own forces, 15% of their materials and direct labor costs.

(iv) For each Subcontractor, for work performed by his sub-subcontractor(s), 6% of the amount due the sub-subcontractor.

E. Total Cost or Credit. For Change Orders or Construction Change Directives the total cost or credit to Rockland Green shall be based on the following schedule:

- (i) Contractor's materials cost;
- (ii) Contractor's direct labor costs;
- (iii) Contractor's equipment costs (includes owned/rental equipment);
- (iv) Applicable Subcontractor costs;
- (v) Subtotal of costs to the Contractor;
- (vi) Contractor's overhead and profit; and
- (vii) Total cost or credit to Rockland Green.

Nothing contained in this Article shall be deemed to contradict or limit the terms of Section 3.9 herein.

ARTICLE IX. CLAIMS BY THE CONTRACTOR

SECTION 9.1 PROCEDURES FOR CONTRACT CLAIMS. All Contractor claims against Rockland Green shall be initiated by a written claim submitted to Rockland Green. Notice of such claim shall be received by Rockland Green no later than either ten (10) days after the event, or ten (10) days after the first appearance of the circumstances causing the claim, whichever is sooner, and same shall set forth in detail all known facts and circumstances supporting the claim; final costs associated with any claim upon which notice has been filed must be submitted in writing to Rockland Green within thirty (30) days after notice has been received. ANY CLAIM NOT FILED WITH ROCKLAND GREEN WITHIN SUCH TIME AND IN COMPLIANCE WITH THE PRECEDING PROVISIONS SHALL BE DEEMED CONCLUSIVELY TO HAVE BEEN WAIVED AND SHALL BE DISMISSED.

SECTION 9.2 CONTRACTOR PROHIBITED FROM WITHHOLDING SERVICES. The Contractor shall continue to perform the Contract Services regardless of the existence of any claims submitted by the Contractor or any Disputed Decision, including claims set forth in Section 11.1 hereof. Contractor shall not withhold services for failure of the parties to agree upon a Change Order, but Contractor shall proceed in accordance with any Construction Change Directive and may at its option file a claim under this Article.

SECTION 9.3 CLAIMS RELATED TO SITE CONDITIONS. In the event the Contractor discovers previously concealed, hidden, and/or subsurface Site conditions which materially vary from those typically and ordinarily encountered in the general geographical location of the Project Site and the Contract Documents, the Contract Price may, with the approval of Rockland Green, be modified, either upward or downward, upon the written notice of claim made by either party within ten (10) days after the first appearance to such party of the circumstances. Final costs must be submitted within thirty (30) days after such notice is received by Rockland Green, unless extended by written agreement of the Parties. As a condition precedent to Rockland Green having any liability to the Contractor due to concealed and unknown conditions, the Contractor must give the Engineer written notice of, and an opportunity to observe, such condition prior to disturbing the condition. The failure by the Contractor to give the written notice and make the claim as provided by this section shall constitute a waiver by the Contractor of any rights arising out of or relating to such concealed and unknown condition.

SECTION 9.4 CONDITION PRECEDENT TO LIABILITY. In the event the Contractor seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of Rockland Green therefor, unless emergency conditions exist, the Contractor shall strictly comply with the requirements of Section 9.1 and such claim shall be made by the Contractor before proceeding to execute any work for which a claim is made. Failure to comply with this condition precedent shall constitute a waiver by the Contractor of any claim for additional compensation.

SECTION 9.5 LIMITATION OF ROCKLAND GREEN'S OBLIGATIONS FOR CLAIMS. In a claim by the Contractor against Rockland Green for compensation in excess of the Contract Price, any liability of Rockland Green to the Contractor shall be strictly limited and computed in accordance with the Contract Documents and shall in no event include indirect costs (such as a home office overhead) or consequential damages of the Contractor or any estimated costs or damages.

ARTICLE X. EVENTS OF DEFAULT AND TERMINATION

SECTION 10.1 ROCKLAND GREEN'S RIGHT TO TERMINATE FOR CAUSE. Rockland Green may terminate the Contract for cause for any of the reasons set forth in this Article, or for any other material breach of this Contract, whether or not the act, omission, or conduct resulting in the Contractor's material breach is enumerated in this Article.

SECTION 10.2 GROUND FOR TERMINATION. Rockland Green has the right to terminate the Contract for cause if the Contractor:

- A. Fails to supply adequate properly skilled workers or proper materials;

- B. Fails to make payment to Subcontractors or suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- C. Fails to comply with Applicable Law;
- D. Fails to perform the Work in accordance with the Contract Documents or otherwise breaches any provision of the Contract Documents;
- E. Is insolvent as determined under the United States Bankruptcy Code;
- F. Pursuant to the issuance of an order of a court of competent jurisdiction, a receiver, liquidator, custodian or trustee of the Contractor is appointed or of a major part of the Contractor's property, respectively, or the filing against the Contractor of a petition to reorganize the Contractor pursuant to the United States Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within ninety (90) days after such issuance or filing, respectively;
- G. Fails to provide adequate assurances after notice of an anticipatory breach or repudiation of this Contract;
- H. Fails to make satisfactory progress in the prosecution of this Contract;
- I. Endangers the performance of this Contract;
- J. Fails, after notice, to implement Construction Change Directive or Change Order;
- K. Ceases performance of the Work in violation of the Contract Standards;
- L. Fails to obtain and maintain the Performance Bond, Payment Bond, or Required Insurance as required herein;
- M. Intentionally misrepresents information and facts relating to the Contractor's performance of its obligations hereunder;
- N. Assigns this Contract or any funds due hereunder without prior written approval by Rockland Green;
- O. Experiences a changes in ownership in violation of Section 14.6;
- P. Makes a false representation or warranty in any material respect when made, and the legality of this Contract or the ability of the Contractor to carry out its obligations hereunder is adversely affected; or
- Q. Fails to supply complete and accurate information, records or accounts as provided herein.
- R. Fails to achieve Final Completion by the date set therefore in accordance with Section 4.2 hereof, except for excuse by Uncontrollable Circumstances.

SECTION 10.3 NOTICE OF TERMINATION. If Rockland Green determines pursuant to Section 10.2 that it has cause to terminate this Contract, Rockland Green will provide the Contractor with a written notice of an opportunity to cure the default. If the default is not cured within seven (7) days of the Contractor's receipt of the notice, the termination for default is effective on the date specified in Rockland Green's written notice. If, however, Rockland Green determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the Executive Director may terminate this Contract immediately upon issuing oral or written notice to the Contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or this Contract, the Contractor must compensate Rockland Green for additional costs that foreseeably would be incurred by Rockland Green, whether the costs are actually incurred or not, to obtain substitute performance.

SECTION 10.4 ACTION BY CONTRACTOR AND ROCKLAND GREEN.

A. Action by Contractor upon Notice of Termination. Upon receipt of written notice from Rockland Green of termination pursuant to this Article, the Contractor shall:

(i) Cease operations as directed by Rockland Green in the notice and, if required by Rockland Green, participate in an inspection of the Work with Rockland Green and the Engineer to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are required and authorized to remain at the Project Site pending completion of the Work.

(ii) Following such initial inspection of the Work with Rockland Green and the Engineer the Contractor shall:

(a) Complete or correct the items directed by Rockland Green, and take actions necessary, or that Rockland Green may direct, for the protection and preservation of any stored materials and equipment and completed Work;

(b) Unless otherwise directed by Rockland Green pursuant to Section 10.5 (B)(i) below, remove its tools, equipment and construction machinery from the Site, and

(c) Except as directed by Rockland Green in Section 10.5 (B)(ii) below, terminate all existing Subcontracts and purchase orders related to the Work and enter into no further Subcontracts or purchase orders therefor.

B. Action by Rockland Green Following Notice. Following written notice from Rockland Green of termination, Rockland Green may:

(i) Take possession of the Site and of all materials and equipment thereon;

(ii) Accept assignment of Subcontracts and purchase orders as provided in this Contract, and

(iii) Complete the Work by whatever reasonable method Rockland Green may deem expedient.

(iv) Exercise any rights under the Contractor's Performance Bond, Payment Bond, and any other applicable security instrument of the Contractor.

C. Cost of Terminating Subcontracts. The Contractor will not be compensated for the cost of terminating Subcontracts which must be terminable at no cost to Rockland Green if the Contract is terminated.

ARTICLE XI.
DISPUTE RESOLUTION AND LITIGATION

SECTION 11.1 DISPUTED DECISIONS OF ROCKLAND GREEN OR THE ENGINEER. If the Contractor disputes or objects to any requirement, direction, instruction, interpretation, determination, or decision of Rockland Green or the Engineer (“Disputed Decision”), the Contractor may, immediately upon receiving any such Disputed Decision, notify the Engineer in writing, with a copy to Rockland Green, of its dispute or objection and of the amount of any equitable adjustment to the Contract Price or Contract Time to which Contractor claims it will be entitled as a result thereof (“Notice of Dispute”); provided, however, that Contractor shall, nevertheless proceed without delay to perform the Work as required, directed, instructed, interpreted, determined, or decided by Rockland Green or the Engineer without regard to such dispute or objection and such Notice of Dispute. To the extent that a Disputed Decision also gives rise to a claim within the meaning of Section 9.1, Contractor shall also comply with the provisions of that Section and Article. Unless the Contractor so notifies the Engineer not later than two (2) business days after receipt of such Disputed Decision, and, whenever feasible, prior to taking any action based upon such Disputed Decision, the Contractor shall be conclusively deemed (1) to have agreed to and accepted such Disputed Decision as being fair, reasonable, and finally determinative of the Contractor’s obligations and rights under this Contract; (2) to have waived all grounds for dispute of or objection to such Disputed Decision; and (3) to have waived all claims for damages and equitable adjustments to the Contract Price and Contract Time based on such Disputed Decision. In the event the parties fail to resolve such dispute on their own, the parties may agree to mediate the Disputed Decision in accordance with the American Arbitration Association's (“AAA”) Construction Industry Rules. Each party shall bear its own costs of such mediation.

SECTION 11.2 FORUM SELECTION AND CONSENT TO JURISDICTION, WAIVER OF RIGHT TO REMOVE. All Legal Proceedings related to this Contract or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in the New York State Supreme Court located in Rockland County, New York. The Contractor and Rockland Green each expressly and irrevocably waive any right otherwise provided by any Applicable Law to remove the matter to any other state or federal venue, consents to the jurisdiction of such courts in any such Legal Proceeding, waive any objection it may have to the laying of the jurisdiction of any such Legal Proceeding, and waive its right to a trial by jury. Each party shall bear its own costs of such litigation, except as otherwise provided herein or by law. Neither party shall be compelled to participate in any form of arbitration, whether commenced by the other party or by a third party such as a Subcontractor, supplier or consultant.

ARTICLE XII.
INSURANCE, SECURITY FOR PERFORMANCE, INDEMNIFICATION, AND
UNCONTROLLABLE CIRCUMSTANCES

SECTION 12.1 REQUIRED INSURANCE. At all times during the Term, the Contractor shall obtain and maintain the Required Insurance in accordance with Appendix 4 hereto and shall pay all premiums and deductibles with respect thereto as the same become due and payable. The Contractor shall also require all of its Subcontractors working at the Site to secure

and maintain the Required Insurance and other financial sureties required by Applicable Law in connection with their presence at the Site and the performance of their duties. The failure of the Contractor to obtain and maintain any Required Insurance shall not relieve the Contractor of its liability for any losses intended to be insured thereby. Should any failure to provide continuous insurance coverage occur, the Contractor shall indemnify and hold harmless Rockland Green in the manner provided in Section 12.3 hereof, from and against any Loss-and-Expense arising out of such failure.

SECTION 12.2 SECURITY FOR PERFORMANCE.

A. Performance and Payment Bonds. The Contractor shall provide financial security for the performance of its obligations and prompt payment of moneys that are due to all persons furnishing labor and materials hereunder through a Performance Bond and a Payment Bond each issued by a surety company: (1) approved by Rockland Green having a rating of “A” in the latest revision of the A.M. Best Company’s Insurance Report; (2) listed in the United States Treasury Department’s Circular 570, “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies”; and (3) properly registered and licensed to conduct business in the State of New York. The Performance Bond and the Payment Bond shall each be issued in the amount of the Contract Price. The Performance Bond and the Payment Bond shall be substantially in the applicable form prescribed by Rockland Green and contained as Transaction Agreement Forms 1 and 2 to this Contract. A copy of the Performance Bond and the Payment Bond shall be kept by Rockland Green and shall be open to public inspection. The Penal sum of each bond required under this Section shall be in the full amount of the Contract Price.

B. Costs of Providing Security for Performance. The cost and expense of obtaining and maintaining the Security Instruments required under this Section as security for the performance of the Contractor’s obligations hereunder shall be borne by the Contractor without reimbursement from Rockland Green.

SECTION 12.3 INDEMNIFICATION BY THE CONTRACTOR. The Contractor shall indemnify, defend and hold harmless Rockland Green, and its directors, employees, representatives, agents, contractors, and the Engineer and its sub-consultants, (each, a “Rockland Green Indemnatee”), from and against (and pay the full amount of) any and all Loss-and-Expense incurred by a Rockland Green Indemnatee to third-parties arising from or in connection with (or alleged to arise from or in connection with): (1) any failure by the Contractor to perform its obligations under this Contract; or (2) the negligent acts, errors or omissions or willful misconduct of the Contractor or any of its Affiliates, officers, directors, employees, agents, representatives or Subcontractors in connection with this Contract. The Contractor shall also indemnify Rockland Green and the Engineer as and to the extent provided elsewhere in this Contract. The Contractor’s indemnity obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by the Contractor which is intended to respond to such events. The Contractor shall not, however, be required to reimburse or indemnify any Rockland Green Indemnatee for any Loss-and-Expense to the extent resulting from (a) the gross negligence or willful misconduct of any Rockland Green Indemnatee or to the extent attributable to any Uncontrollable Circumstance, and (b) any act or omission of any Rockland Green Indemnatee judicially determined to be solely responsible for or contributing to the Loss-and-Expense, and a Rockland Green Indemnatee whose negligence or other wrongful conduct, act or

omission is adjudged to have solely caused such Loss-and-Expense. A Rockland Green Indemnatee shall promptly notify the Contractor of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and the Contractor shall have the right to assume the defense of the claim in any Legal Proceeding. These indemnification provisions are for the protection of Rockland Green and any Rockland Green Indemnatee only and shall not establish, of themselves, any liability to third parties. This indemnification obligation shall include, but is not limited to, all claims against Rockland Green by an employee or former employee of the Contractor or any Subcontractor, and the Contractor expressly waives all immunity and limitation on liability under any industrial insurance act, other workers' compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such a claim. The provisions of this Section shall survive termination of this Contract.

SECTION 12.4 UNCONTROLLABLE CIRCUMSTANCES. Except as otherwise provided herein, neither party shall be liable to the other for any failure or delay in the performance of any obligation under this Contract to the extent such failure or delay is resulting from the occurrence of an Uncontrollable Circumstance.

A. Notice and Mitigation. The party that asserts the occurrence of an Uncontrollable Circumstance shall notify the other party immediately by electronic mail upon first knowledge of the occurrence of the Uncontrollable Circumstance, followed within three (3) days by a complete written description of: (1) the Uncontrollable Circumstance and the cause thereto (to the extent known); and (2) the date the Uncontrollable Circumstance began, its estimated duration, the estimated time during which the performance of such party's obligations hereunder will be delayed, or otherwise affected. As soon as practicable after the occurrence of an Uncontrollable Circumstance, the affected party shall also provide the other party with a description of: (1) the amount, if any, by which the Project Schedule is proposed to be adjusted as a result of such Uncontrollable Circumstance; (2) its estimated impact on the other obligations of such party under this Contract and on the obligations of the other Prime Contractors; and (3) potential mitigating actions which might be taken by the Contractor or Rockland Green. The affected party shall also provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as practicable, use all reasonable efforts to eliminate the cause therefor, reduce costs and resume performance under this Contract. While the Uncontrollable Circumstance continues, the affected party shall give notice to the other party, before the first day of each succeeding week, updating the information previously submitted. The party claiming to be adversely affected by an Uncontrollable Circumstance shall bear the burden of proof, and shall furnish promptly any additional documents or other information relating to the Uncontrollable Circumstance reasonably requested by the other party.

B. Conditions to Schedule Relief. In the event that the Contractor believes it is entitled to any schedule relief on account of any Uncontrollable Circumstance, it shall furnish Rockland Green written notice of the specific schedule relief requested and detailing the event giving rise to the claim within fifteen (15) days after the giving of notice of the first knowledge of the Uncontrollable Circumstance, or if the specific schedule relief cannot reasonably be ascertained and such event detailed, with such fifteen (15) day period, then within such longer period with which it is reasonably possible to detail the event and ascertain such relief. Within

thirty (30) days after receipt of such a timely submission from the Contractor, Rockland Green shall issue a written determination as to the extent, if any, it concurs with the Contractor's claim for performance or schedule relief, and the reasons therefor. The Contractor acknowledges that its failure to give reasonable and timely notice pertaining to an Uncontrollable Circumstance as required under this Section may increase the cost of the Uncontrollable Circumstance to Rockland Green. To the extent the Contractor's failure to give reasonable and timely notice to Rockland Green causes Rockland Green to incur additional costs related to the Uncontrollable Circumstance, the Contractor shall be responsible for such additional cost. The Contractor shall have the affirmative burden of refuting Rockland Green's assertion. Absent such refutation, Rockland Green's additional costs shall immediately become due from the Contractor.

D. Acceptance of Relief Constitutes Release. The Contractor's acceptance of any performance or schedule relief under this Section shall be construed as a release of Rockland Green by the Contractor (and all persons claiming by, through, or under the Contractor) of any and all Loss-and-Expense resulting from, or otherwise attributable to, the event giving rise to the relief claimed.

ARTICLE XIII. WARRANTY

SECTION 13.1 WARRANTY. The Contractor warrants to Rockland Green that the Work, and all materials, equipment, and structures furnished or fabricated, shall (i) be new, of recent manufacture and of high quality, (ii) conform to the requirements of this Contract, (iii) be free of defects in materials, equipment, and workmanship, and (iv) meet the Specifications during the Warranty Period (the "Warranty").

A. Call-Back Obligations. If, at any time during the Warranty Period, any of the Work is found to be malfunctioning, defective or otherwise not in accordance with the requirements of this Contract, the Contractor shall correct it promptly after receipt of written notice from Rockland Green to do so. Rockland Green shall give such notice promptly after discovery of the condition. The Contractor shall respond to service calls from Rockland Green within three (3) business days. Such response shall require that a competent representative or representatives of the Contractor, inspect the Project Site and, while on Site, either correct the problem or initiate a course of action that will fully correct the problem within a reasonable period of time in accordance with Good Engineering and Construction Practice and the specific requirements of this Article. The time period for correction shall not exceed ten (10) days; provided, however, that if such time periods are not practicable in accordance with Good Engineering and Construction Practice, then the time period for correction shall be the minimum amount of time required in accordance with Good Engineering and Construction Practice. Before any necessary correction, repair or replacement of facilities is initiated by the Contractor, a plan indicating the scope and schedule for such work shall be approved by Rockland Green. In the event of a latent, hidden, or not readily observable defect in the design, materials or workmanship or deviation from this Contract, the Warranty shall extend for an additional one (1) year from the date of discovery of such defect, deviation or condition.

B. Right of Rockland Green to Proceed with Corrective Action; Contractor Liability. If the Contractor fails to commence and complete the steps set forth in subsection (A)

of this Section within the required time frames, in addition to any other remedies provided under this Contract, the Security Instruments or Applicable Law, Rockland Green may commence and complete the correction of such nonconforming Work with its own forces or with third party contractors.

C. No Period of Limitation on Other Obligations. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations that the Contractor has under this Contract or under Applicable Law with respect to the Work. The Warranty Period relates only to the specific obligations of the Contractor to respond to notices from Rockland Green under this Article, and has no relationship to the time within which the obligation of the Contractor to comply with this Contract may be enforced, nor the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations under this Contract.

D. Extension of Warranty. The "call-back" obligations set forth in this Section shall apply to all Work re-done or corrected pursuant to this Contract. The "call-back" obligations for re-done or corrected elements of the Work shall extend beyond the Warranty Period, if necessary, to provide a one (1) year period following acceptance by Rockland Green of such re-done or corrected Work.

E. Contractor Reliance on Manufacturers' Warranties During Call-Back Period. During the period in which the call-back obligations set forth in this Section are in effect, the Contractor (or Rockland Green) shall be permitted to enforce all warranties provided by manufacturers, suppliers and other third parties, if any. Notwithstanding the applicability or effectiveness of such warranties, the Contractor shall be required to comply with all the requirements set forth in this Section.

F. Compensation. The Contractor acknowledges that the Contract Price contains the entire compensation due the Contractor for any and all warranty work to be performed by the Contractor or its Subcontractors or agents pursuant to this Article including overhead and profit, except as otherwise provided. In the event any amounts are required to be paid to third-parties to perform warranty work pursuant to this Article, payment of such amounts shall be the responsibility of the Contractor.

G. Warranty not Exclusive. The warranty set forth in this Article is in addition to, and not in limitation of, any other warranties, rights and remedies available under this Contract or Applicable Law, and shall not limit the Contractor's liability or responsibility imposed by this Contract or Applicable Law with respect to the Work, including liability for design defects, latent construction defects, strict liability, negligence or fraud. The provisions of this Article shall survive the termination of this Contract.

H. No Limitation of Third Party Warranties. Nothing in this Contract is intended to limit any third party warranty that provides Rockland Green with greater warranty rights than those provided under this Article.

ARTICLE XIV. MISCELLANEOUS PROVISIONS

SECTION 14.1 RELATIONSHIP OF THE PARTIES. The Contractor is an independent contractor of Rockland Green and the relationship between the Parties shall be limited

to performance of this Contract in accordance with its terms. Neither Party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other Party. Rockland Green and the Engineer have no responsibility for performing any of the Contract Services and have no responsibility for means, methods or approaches used in connection with performance of any of the Contract Services by the Contractor or others. Rockland Green and Engineer have no responsibility for any construction safety plans or safety inspections, including the enforcement of safety precautions associated with the Contractor's Work. Nothing in this Contract shall be deemed to constitute either Party a partner, agent or legal representative of the other Party. No liability or benefits, such as workers' compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship, shall arise or accrue to any Party's agent or employee as a result of this Contract or the performance thereto.

SECTION 14.2 CERTAIN OBLIGATIONS TO SURVIVE TERMINATION. Warranties, representations, indemnification obligations and other continuing obligations explicitly stated herein, survive acceptance of the Work under this Contract and termination of this Contract; and do not relieve the Contractor of the Contractor's obligations hereunder.

SECTION 14.3 NO WAIVERS. No action of Rockland Green or Contractor pursuant to this Contract (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Contract. No course of dealing or delay by Rockland Green or Contractor in exercising any right, power or remedy under this Contract shall operate as a waiver thereto or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of Rockland Green or the Contractor under this Contract shall preclude any other or further exercise thereto or the exercise of any other right, power or remedy. The above notwithstanding, any of the terms, covenants, and conditions of this Contract may be waived at any time by the party entitled to the benefit of such term, covenant or condition if such waiver is in writing and executed by the party against whom such waiver is asserted.

SECTION 14.4 ACTIONS OF ROCKLAND GREEN IN ITS GOVERNMENTAL CAPACITY. Nothing in this Contract shall be interpreted as limiting the rights and obligations of Rockland Green in its governmental or regulatory capacity.

SECTION 14.5 ASSIGNMENT. The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this Contract, or of the Contractor's right, title, or interest herein, (including without limitation through a sale of assets or ownership interest, merger, consolidation or other change of control) to any third party, or assign all or any of the portion of compensation that may be due or become due under the terms hereof to any other person or corporation, without the previous consent in writing of Rockland Green. If the Contractor violates this Section, Rockland Green shall have the right, in its sole discretion, to terminate this Contract without prior notice and without a cure period, and in the event of such termination, the Contractor shall forfeit all monies earned hereunder. Rockland Green may, without the consent of the Contractor, make assignments, create such security interests in its rights hereunder and pledge such monies receivable hereunder as may be required in connection with the issuance of bonds.

SECTION 14.6 CHANGE IN OWNERSHIP OF CONTRACTOR OR A PARENT COMPANY. The Contractor shall provide Rockland Green with five (5) days' prior written notice of any change of any nature in the ownership (which includes the ownership structure) of the Contractor or any parent, subsidiary or Affiliate thereof, including without limitation any transfers of shares of stock, membership or other ownership units of the Contractor, parent subsidiary or Affiliate. In addition, if the Contractor is a privately held company, the Contractor shall provide Rockland Green with five (5) days' prior written notice of any changes in the officers, principals or directors of the Contractor. Subsequent to any such notices, the Contractor shall provide upon request of Rockland Green any reasonable information requested by Rockland Green related to such change in ownership (which includes the ownership structure), officers, principals or directors. At any time within five (5) days following Rockland Green's receipt of such supporting information, Rockland Green shall have the right to terminate this Contract upon thirty (30) days' notice to the Contractor. In the event of a violation of this Section by the Contractor, Rockland Green shall have the right in its sole discretion to terminate this Contract without prior notice or cure period, and in the event of such termination, the Contractor shall forfeit all monies earned hereunder.

SECTION 14.7 BINDING EFFECT. This Contract shall inure to the benefit of and shall be binding upon Rockland Green and the Contractor and any assignee acquiring an interest hereunder consistent with Section 14.5 hereof.

SECTION 14.8 AMENDMENT AND WAIVER. This Contract may not be amended except by a written agreement signed by the Parties. Any of the terms, covenants, and conditions of this Contract may be waived at any time by the Party entitled to the benefit of such term, covenant or condition if such waiver is in writing and executed by the Party against whom such waiver is asserted.

SECTION 14.9 NON-DISCRIMINATION. The Contractor, a Subcontractor or a supplier, shall not discriminate nor permit discrimination by any of their respective officers, employees, agents and representatives against any person because of age, race, color, religion, gender, national origin, sexual orientation, or, with respect to otherwise qualified individuals, handicap. The Contractor will take all actions reasonably necessary to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their age, race, color, gender, religion, sexual orientation, national origin or, with respect to otherwise qualified individuals, handicap. Such action shall include, without limitation, recruitment and recruitment advertising; layoff or termination; upgrading, demotion, transfer, rates of pay or other form of compensation; and selection for training, including apprenticeship. The Contractor shall impose the non-discrimination provisions of this Section by contract on all Subcontractors hired to perform work related to the Contract Services and shall take all reasonable actions necessary to enforce such provisions. The Contractor will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

SECTION 14.10 SEVERABILITY OF PROVISIONS. If any one or more of the provisions contained in the Contract Documents should be deemed invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions

contained herein are not to be affected or impaired thereby; provided the same does not materially alter the rights or obligations of the parties.

SECTION 14.11 NO THIRD PARTY RIGHTS CREATED. The Contract Documents are not to be construed to create a contractual relationship of any kind other than between Rockland Green and the Contractor. No third-party rights are intended, created, or provided, either expressly or by implication by the terms and conditions of this Contract. The terms and conditions of this Contract are expressly limited to benefit the parties hereto.

SECTION 14.12 NOTICES.

A. Procedure. All notices, consents, approvals or written communications given pursuant to the terms of this Contract shall be: (1) in writing and delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or (3) given by email transmission, if a signed original is deposited in the United States Mail within two (2) days after transmission. Notices shall be deemed given only when actually received at the address first given below with respect to each Party. Either Party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

B. Contractor Notice Address. Notices required to be given to the Contractor shall be addressed as follows:

With a copy to:

C. Rockland Green Notice Address. Notices required to be given to Rockland Green shall be addressed as follows:

Executive Director
Rockland County Solid Waste Management
Authority d/b/a Rockland Green
172 Main Street
Nanuet, New York 10954

With a copies to:

General Counsel
Rockland County Solid Waste Management
Authority d/b/a Rockland Green

172 Main Street
Nanuet, New York 10954

RRT Engineering, LLC
One Huntington Quadrangle
Suite 3S01
Melville, New York 11747
Attn: President

West Group Law PLLC
81 Main Street, Suite 510
White Plains, NY 10601
Attn: Stephanie Kosmos, Esq.

SECTION 14.13 NOTICE OF LITIGATION. In the event the Contractor or Rockland Green receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Project, the Party receiving such notice or undertaking such prosecution shall give the other Party timely notice of such proceedings and shall inform the other Party in advance of all hearings regarding such proceedings.

SECTION 14.14 COUNTERPARTS. This Contract may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same agreement.

SECTION 14.15 FURTHER ASSURANCES. Rockland Green and Contractor each agree to execute and deliver such further instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Contract. Rockland Green and the Contractor, in order to carry out this Contract, each shall use all commercially reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Contract and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for this Contract. Specifically, upon reasonable request of Rockland Green, the Contractor shall supply an affidavit that the Work and/or Site is free of all liens and encumbrances, including liens for any taxes which are due and required to be paid by the Contractor (other than liens required or contemplated by this Contract).

IN WITNESS WHERETO, the Parties have caused this Contract to be executed by their duly authorized representatives as of the day and year first above written.

[signature page follows]

ROCKLAND COUNTY SOLID
WASTE MANAGEMENT AUTHORITY d/b/a
ROCKLAND GREEN

By: _____
Gerard M. Damiani, Jr.
Executive Director

[CONTRACTOR]

By: _____
Name:
Title:

APPENDIX 1

CONTRACT DRAWINGS

[to be inserted from RFP]

APPENDIX 2
SPECIFICATIONS

[to be inserted from RFP]

APPENDIX 3

CONTRACT PRICE

[to be developed based on selected Proposal]

APPENDIX 4

REQUIRED INSURANCE

Prior to the Contract commencement and throughout the Term of the Contract, the Contractor shall maintain insurance issued by an insurance carrier satisfactory to Rockland Green to protect the parties hereto from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every kind and nature which may arise or result, directly or indirectly, from or by reason of such loss, injury, including injury to the applicable Contractor's employees or employees of such Contractor's Subcontractors, or damage. Such insurance shall be maintained at the Contractor's sole expense.

The Contractor shall obtain and maintain throughout the term of the Contract the following types and minimum amounts, not including deductible, of insurance:

- Commercial general liability and property damage insurance with broad form blanket contractual liability and products and completed operations coverage, shall be not less than \$4,000,000 per occurrence;
 - Insurance must apply on a Per-Project or Per Location basis; and
 - No Labor Law or Third Party Action Over Exclusions;
- Commercial comprehensive automobile liability endorsed for any automobile (owned and non-owned) with minimum limits for combined property damage and bodily injury of \$4,000,000 per occurrence;
- Worker's compensation coverage in the statutory amounts required by New York State Law;
- Employer's liability insurance required by New York State law covering all of the employees of the Contractor at Rockland Green 's facility;
- Excess liability above the commercial general liability and automobile liability shall not be less than \$5,000,000; and
- Pollution liability, if applicable, shall not be less than \$1,000,000.

1. The commercial general liability, excess liability and pollution liability shall be kept in force for a period of one (1) year following the end of the contract period.

2. Additional Insureds. The Contractor will name Rockland Green, the County, the Engineer and their officers, agents, employees, and consultants as additional named insureds on a primary, non-contributory basis (the “Additional Insureds”) for Ongoing and Completed Operations on all insurance policies required herein, other than workers’ compensation and employer liability coverage. Such coverage must be provided using the 07/04 versions of ISO Form CG 20 10 and CG 20 37 or equivalent. The Contractor will waive the subrogation rights of its various insurance carriers in favor of Rockland Green via CG 20 04.

3. Insurance Certificates and Policies. Insurance and any renewals thereof will be evidenced by certificates of insurance (the “Certificates”) and copies of all insurance policies and endorsements issued or countersigned by a duly authorized representative of the issuer and delivered to Rockland Green for its approval thirty (30) days prior to the Contract commencement. The Certificates will require thirty (30) days written notice to Rockland Green, of cancellation, intent not to renew, or reduction in its coverage by the insurance company for all policies.

4. Non-Recourse Provision. All insurance policies will provide that the insurers will have no recourse against the Additional Insureds for payment of any premium or assessment and will contain a severability of interest provision in regard to mutual coverage liability policies. The coverages will be the primary source of any restitution or other recovery for any injuries to, or death of persons, or loss or damage to property incurred as a result of an action or inaction of the Contractor or its Subcontractors, of their respective suppliers, employees, agents, representatives, or invitees, that fall within these coverages and also within the coverages of any liability insurance or self-insurance program maintained by Rockland Green.

5. Deductibles. Deductibles shall not exceed \$50,000.

6. Subcontractors. The Contractor will be responsible for ensuring that all Subcontractors which are working at the Site secure and maintain all insurance coverages hereunder and other financial sureties required by Applicable Law in connection with their presence at the Site and the performance of their duties. The Contractors will furnish Rockland Green with Subcontractors’ Certificates and policies for review and approval prior to beginning.

7. Specific Provisions for Comprehensive General Liability Insurance. Comprehensive General Liability insurance, as required hereunder, will include premises-operations, blanket contractual, products and completed operations, personal injury, host liquor

liability, explosion, collapse, underground hazards, and broad form property damage, including completed operations and independent contractor's coverages.

8. Specific Provisions for Worker's Compensation Coverage. Worker's Compensation insurance must be in accordance with the requirements of New York law, as amended from time to time. The required worker's compensation insurance will include other State's coverage, voluntary compensation coverage, and federal longshoreman and harbor worker's coverage.

9. Changes in Insurance Coverage. The insurance listed herein are the minimum coverages permitted, except that Rockland Green may decrease or omit the coverages specified at any time in its sole discretion. If Rockland Green decreases such coverage, any cost savings will be credited to the benefit of Rockland Green.

10. Qualifications of Insurers. The Contractor is required to obtain the insurance set forth in this Appendix with insurance companies that carry a Best's "A" or equivalent rating. In addition, insurance must be obtained and maintained with insurers authorized to do business in the State of New York.

APPENDIX 5
PREVAILING WAGE SCHEDULE

[to be inserted from RFP]

APPENDIX 6
PROJECT SCHEDULE

[to be developed]

APPENDIX 7
SUPPLEMENTAL CONDITIONS

[to be inserted from RFP]

APPENDIX 8
PROJECT COORDINATION PROTOCOL

[to be provided by Addendum]

APPENDIX 9
STATEMENT OF WORK

[to be inserted from RFP]

TRANSACTION AGREEMENT FORMS

TRANSACTION AGREEMENT FORM 1
FORM OF
PERFORMANCE BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENT, that we, [_____] with a place of business at _____ as principal (the “Principal”), and [_____], a [_____] qualified to do business in the State of New York, with a place of business at [_____] as Surety (the “Surety”), are held and firmly bound unto the Rockland County Solid Waste Management Authority d/b/a Rockland Green as Obligee (the “Obligee”), in the sum of [_____] dollars (\$ _____) lawful money of the United States of America, to be paid to the Obligee, for which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these present.

WHEREAS, the Principal has assumed and made a contract with the Obligee, bearing the date of [_____], and entitled the Contract for Facility Improvements – General Construction at the Materials Recovery Facility in Hillburn, NY (the “Contract”).

NOW THE CONDITIONS of this obligation are such that if the Principal and all Subcontractors or suppliers under said Contract shall well and truly keep and perform all the undertakings, covenants, agreement, terms, and conditions of said Contract on their part to be kept and performed during the original term of said Contract and any extensions thereof that may be granted by the Obligee, with or without notice to the Surety, and shall also well and truly keep and perform all the undertakings, covenants, agreements, terms and conditions of any and all duly authorized modifications, alterations, changes or additions to said Contract, (notice to the Surety of such modifications, alterations, changes or additions being hereby waived), the obligations of the Surety set forth herein shall become null and void only if such completion of the Contract is expressly acknowledged in writing by the Obligee; otherwise such obligations shall remain in full force and virtue.

WHENEVER the Principal shall be declared by the Obligee to be in default under the Contract, the Obligee having performed the Obligee’s material obligations thereunder, the Surety may promptly remedy the default whatever it may be or shall promptly perform the Contract in accordance with all of its terms and conditions. To the extent that the Surety elects to not remedy the default nor promptly perform the Contract, the Surety shall make payment to the Obligee up to the Penal Sum of this instrument.

IN THE EVENT the Contract is abandoned by the Principal, or is terminated by the Obligee under the applicable provisions of the Contract, the Surety hereby further agrees that the Surety shall, if requested in writing by the Obligee promptly take all such actions as is necessary to complete said Contract in accordance with its terms and conditions or make payment as required hereunder.

IN WITNESS WHEREOF, the Principal and Surety have hereto set their hands and seals this _____ day of _____, 2021.

PRINCIPAL

[Name and Seal]

[Title]

[Address]

[Phone]

Attest: _____

SURETY

[Name and Seal]

[Title]

[Address]

[Phone]

Attest: _____

The rate of the Bond is _____% of the first \$_____ and _____% for the next \$_____. The total premium for this Bond is \$_____.

TRANSACTION AGREEMENT FORM 2
FORM OF
LABOR AND MATERIALS PAYMENT BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENT, that we [] with a place of business at [] as principal (the “Principal”), and [] a [] qualified to do business in the State of New York, with a place of business at [] as Surety (the “Surety”), are held and firmly bound unto Rockland County Solid Waste Management Authority d/b/a Rockland Green as Obligee (the “Obligee”), in the sum of [] Dollars (\$) lawful money of the United States of America, to be paid to the Obligee, for which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these present.

WHEREAS, the Principal has assumed and made a contract with the Obligee, bearing the date of [], and entitled the Contract for Facility Improvements – General Construction at the Materials Recovery Facility in Hillburn, NY (the “Contract”).

NOW, THE CONDITIONS of this obligation are such that if the Principal and all Subcontractors under said Contract shall promptly pay for all labor performed or furnished and for all materials used or employed in said Contract and in any and all duly authorized modifications, alterations, extensions of time, changes or additions to said Contract that may hereafter be made, notice to the Surety of such modifications, alterations, extensions of time, changes or additions being hereby waived, then this obligation shall become null and void; otherwise, it shall remain in full force and virtue.

The Surety’s obligation to the Obligee under this Bond shall arise after the Obligee provides notice to the Principal and Surety of claims, demands, liens or suits against the Obligee or the Obligee’s property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Contract.

The Surety shall promptly and at the Surety’s expense defend, indemnify and hold harmless the Obligee against any duly tendered claim, demand, lien or suit against the Obligee or the Obligee’s property.

IN WITNESS WHEREFORE, the Principal and Surety have hereto set their hands and seals this _____ day of _____, 2021.

PRINCIPAL

[Name and Seal]

[Title]

[Address]

[Phone]

Attest: _____

SURETY

[Name and Seal]

[Title]

[Address]

[Phone]

Attest: _____

The rate of the Bond is _____% of the first \$_____ and _____% for the next \$_____. The total premium for this Bond is \$_____.