

# **CITY OF NEWBURGH WASHINGTON LAKE FILTRATION PLANT GAC CONTACTOR EQUIPMENT PURCHASE**

**Newburgh, New York  
Site Number 336022**

**August 2016**

## **ADDENDUM No. 1**

**TO CONTRACT OP10261**



**Prepared by:**

**Arcadis CE, Inc.  
855 Route 146, Suite 210  
Clifton Park, NY 12065**

**ADDENDUM No. 1  
AUGUST 2016 CONTRACT DOCUMENTS  
CITY OF NEWBURGH WASHINGTON LAKE FILTRATION PLANT  
GAC CONTACTOR EQUIPMENT PURCHASE CONTRACT  
NEWBURGH, NEW YORK  
CONTRACT NO. OP10261  
AUGUST 2016**

**TO ALL HOLDERS OF THE CONTRACT DOCUMENTS:**

Your attention is directed to the following changes and additions to the August 2016 Contract Documents for the City of Newburgh Washington Lake Filtration Plant GAC Contactor Equipment Purchase. This addendum has been prepared in accordance with the provisions of the Contract Documents.

## **PART A. Changes to Contract Documents**

The following changes are to be made to the Contract Documents:

1. **Bidding Requirements - Invitation for Bids, Page 1**; The first line of the Bid Due Date is revised to now read as follows, "September 8, 2016 at 1:00 PM EDT".

3. **Bidding Requirements – Issuance of Bidding Documents, Page 2**; Paragraph has been replaced with:

***“Each prospective Bidder whose equipment is named in the Specifications or that requests a copy of the Bidding Documents from the NYSDEC will be allowed to access and download an electronic copy (as portable document format (PDF) files) of the Bidding Documents via the File Transfer Protocol (FTP) link available from Benjamin Rung, P.E., NYSDEC Primary Contact: 625 Broadway, 12th Floor, Albany NY 12233-7017, Phone: (518) 402-9813, Email: [benjamin.rung@dec.ny.gov](mailto:benjamin.rung@dec.ny.gov). Printing the Bidding Documents is the responsibility of the Bidder. Bidding Documents will be issued only by the NYSDEC. Partial sets of Bidding Documents will not be available from the NYSDEC. NYSDEC will not be responsible for full or partial sets of Bidding Documents, including Addenda (if any), obtained from sources other than the NYSDEC.”***

3. **Bidding Requirements – General Information, Page 3**; Notices to Bidders, Number 2 Bid Submission, Paragraph 1 has been replaced with:

***“Bidders assume all risks for timely, properly submitted deliveries. Bidders are strongly encouraged to arrange for delivery of Bids to NYSDEC prior to the date and time of the Bid opening. LATE BIDS will be rejected. E-mail Bid submissions are not acceptable and will not be considered.”***

4. **Bidding Requirements – General Information, Page 3**; Notices to Bidders, Number 2. Bid Submission, Paragraph 4 has been replaced with:

***“Bidders are strongly advised that Bids submitted with conditions, other exception(s) to the terms and conditions of the Bidding Documents, or alterations to the Bid Forms will be rejected. NYSDEC reserves the right to waive any and all informalities in Bids in its determination regarding award of the Contract.”***

5. **Bidding Requirements – General Information, Page 7**; Debriefing, Number 2. Bid Submission, Paragraph has been replaced with:

***“Bidders will be accorded fair and equal treatment with respect to their opportunity for debriefing following opening and review of the Bids. Disclosure of the content of competing Bids other than statistical tabulations of Bids received in response to an IFB, is prohibited prior to Contract award. Prior to Contract award, NYSDEC will, upon request, provide a debriefing which would be limited to review of that Bidder's own Bid. After Contract award, NYSDEC will upon request, provide a debriefing to any Bidder that submitted a Bid, regarding the reason that the Bid submitted by the unsuccessful Bidder was not selected for Contract award. The post award debriefing should be requested by the Bidder within 15 days of the Contract award.”***

6. **Attachment IV – Procurement Lobbying Law**; Procurement Lobby Law Bidder/Proposer Disclosure of Prior Non-Responsibility Determinations, Delete two-page Questionnaire and Certification. Declaration of compliance with Procurement Lobby Law is included in Attachment III - MacBride Fair Employment Principles/Non-Collusion Requirements/State Ethics Law Provision/Procurement Lobby Law Affirmation form.

7. **Contracting Requirements – Specification 00 52 63, Agreement**; This specification has been replaced in its entirety. See **ATTACHMENT A** for revised Specification 00 52 63, Agreement.

8. **Specifications – Water and Wastewater Equipment – Specification 46 61 21**; Replace Article 1.6, Paragraph A.1 to read as follows:

***“Warranty Period for Equipment: SELLER’s standard, but not less than two years from the date on which the Goods are ready for their intended use.”***

9. **Specifications – Water and Wastewater Equipment – Specification 46 61 21**; Replace Part 3 to read as follows:

**“PART 3 - EXECUTION**

**3.1 EQUIPMENT INSTALLATION**

- A. Installing construction contractor will install the Goods in accordance with SELLER’s recommendations and the associated construction contract documents. Each pressure contactor shall be provided with an equipment pad for each of the four leg supports.

### 3.2 CLEANING, PRESSURE TESTING, AND DISINFECTION

- A. Cleaning: Installing construction contractor will clean the interior of each GAC pressure contactor by removing all visible dirt and debris that may have entered the GAC pressure vessel during construction/installation and also flush all piping and valves appurtenant to the GAC pressure contactors with potable water.
- B. Hydrostatic Pressure Testing: After cleaning, SELLER and installing construction contractor shall pressure test the GAC pressure vessels and appurtenant piping as a system. Test pressure shall be 125 psig for a minimum of two hours and test shall be conducted in the presence of ENGINEER. All leaks, failures, and malfunctions detected during the testing shall be immediately repaired. Testing shall be repeated until the treatment system can maintain the required pressure for the specified duration without any leakage, failures, or malfunctions. SELLER and installing construction contractor shall provide written certification of hydrostatic testing and results to ENGINEER within 24 hours of satisfactory completion of testing.
- C. Disinfection: After completion of hydrostatic pressure testing, installing construction contractor shall disinfect GAC pressure vessels and appurtenant piping in accordance with the associated construction contract documents.

### 3.3 START-UP AND FIELD TESTING

- A. Once installation is complete, and prior to GAC media installation, SELLER shall inspect the installation and provide certification on manufacturer's letterhead that the GAC pressure contactors and appurtenances have been properly installed in accordance with the SELLER's approved Shop Drawings and recommendations and that the system is ready to be tested and placed into operation.
- B. SELLER shall develop field testing plan describing in detail coordinated, sequential testing proposed for GAC treatment system including backwash supply and GAC feed pumps as they relate to field testing SELLER's Goods. Field testing plan shall identify by specific equipment or tag number each device or control station to be manipulated or observed during performance testing and specific results to be observed or obtained. Field testing plan shall also be specific regarding support systems required to complete the testing, temporary devices and systems required (if any) during testing, Subcontractors and manufacturer's representatives to be present during testing, and planned testing duration. Field testing plan shall include.
  - 1. Summary of start-up, check-out, and quality control testing required for each process or equipment item prior to starting testing.
  - 2. Calibration of all field instruments and control devices.
  - 3. Description of and information on temporary systems, equipment, and devices proposed for testing, including calibration data for temporary instrumentation and controls.
  - 4. Plan and procedures for implementing testing of systems and equipment. Tests shall duplicate the operating conditions described in the Contract Documents.

5. Description of data reduction required, if any, and proposed time between collection of data and submittal of results to ENGINEER.
  6. Summary of criteria for acceptance of test results. Summary shall include performance tolerances (if any) included in the Contract Documents. Where performance tolerances are not included in the Contract Documents, testing plan shall include proposed performance tolerances.
- C. Prior to GAC media installation, functional testing of the overall GAC treatment system shall be completed by SELLER and installing construction contractor, including the GAC feed pumps, piping, valves, and appurtenances, to ensure the entire system is functioning properly before media is installed. Functional testing proposed shall be defined in the field testing plan, but shall at minimum include testing all Systems at peak and partial flow with various combinations Systems active.
- D. If Goods do not comply with the Contract Documents or do not pass the tests, SELLER shall adjust, modify, and retest the Goods as often as necessary until tests are successfully passed.

### 3.4 SPECIAL SERVICES

- A. As required by the Agreement and Division 01 Specifications, SELLER shall furnish services of a qualified, factory-trained service representative thoroughly familiar with the Goods furnished for the following services at the Point of Destination and the location where the Goods will be installed:
1. Supervise unloading of Goods from SELLER's delivery vehicles for each separate delivery to the Point of Destination. Train installing construction contractor's personnel in handling of the Goods. Verify that installing construction contractor's method of hoisting and handling the equipment is acceptable to SELLER and will not damage the Goods or void associated warranties.
  2. Check the installed Goods prior to installation of GAC media (furnished by others). Check each individual pressure contactor and submit documentation of checkout in accordance with Section 01 75 11, Checkout and Startup Procedures.
  3. Assist installing construction contractor with performing field quality control tests on the installed Goods.
  4. Instruct City's operations and maintenance personnel in operating and maintaining the Goods.
- B. Instruct City's operation and maintenance personnel in accordance with Section 01 79 23, Instruction of Operations and Maintenance Personnel.
- C. Revisit the location where the Goods are installed as often as necessary until the Goods are acceptable. All costs, including travel, lodging, meals, and incidentals are SELLER's responsibility. Should any of SELLER's services beyond the scope of this Contract be necessitated by the action or inaction of the installing construction contractor(s), such installing construction contractor will separately retain services of SELLER and directly reimburse SELLER for SELLER's added costs."

This ADDENDUM No. 1, including Attachment A, becomes part of the Contract Documents.



Daniel J. Loewenstein, P.E., BCEE

Dated: August 19, 2016

# **ATTACHMENT A**

## ***ADDENDUM No. 1***

**City of Newburgh Washington Lake Filtration Plant  
GAC Contactor Equipment Purchase Contract  
Site No. 336022  
CONTRACT NO. OP10261**

**Agreement (Specification 00 52 63)**

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION –  
DIVISION OF ENVIRONMENTAL REMEDIATION  
GAC CONTACTOR EQUIPMENT PURCHASE  
FOR WASHINGTON LAKE FILTRATION PLANT, NEWBURGH, NEW YORK  
NYSDEC CONTRACT NO. OP10261**

**AGREEMENT**

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**AGREEMENT**

THIS AGREEMENT is by and between New York State Department of Environmental Conservation (acting through its Division of Environmental Remediation), 625 Broadway, Albany, NY 12233 (the initial “Buyer”, also referred to as “Project owner”, “Department”, and “NYSDEC”) and \_\_\_\_\_ [*insert legal/contractual name and address*] (“Seller”, also referred to as “Vendor” and “Contractor”).

Buyer and Seller hereby agree as follows:



## ARTICLE 1 – GOODS AND SPECIAL SERVICES

- 1.01 Seller shall furnish the Goods and Special Services as specified or indicated in the Contract Documents.

## ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Goods and Special Services may be the whole or only a part, is identified as follows: **Washington Lake Filtration Plant GAC Contactor System.**

## ARTICLE 3 – ENGINEER

- 3.01 The Contract Documents for the Goods and Special Services have been prepared by Arcadis CE, Inc., 855 Route 146, Suite 210, Clifton Park, NY 12065 ("Engineer"), which is to act as Buyer's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with Seller's furnishing of Goods and Special Services.

## ARTICLE 4 – POINT OF DESTINATION

- 4.01 The Point of Destination is designated as: City of Newburgh Washington Lake Filtration Plant (als known as the "City of Newburgh Water Treatment Plant"), 493 Little Britain Road, Newburgh, NY 12550.

## ARTICLE 5 – CONTRACT TIMES

### 5.01 *Time of the Essence*

- A. All time limits for Milestones, if any, including the submittal of Shop Drawings and Samples, the delivery of Goods, and the furnishing of Special Services as stated in the Contract Documents, are of the essence of the Contract.

### 5.02 *Milestones*

- A. *Days for Submittal of Shop Drawings and Samples:* Seller shall submit all Shop Drawings, including product data and informational submittals to be furnished prior to fabrication, and Samples required by the Contract Documents, to Engineer for review and approval or acceptance (as applicable) within 30 days after the date when the Contract Times commence to run as provided in Paragraph 2.04 of the General Conditions. It is the intent of the parties that (1) Engineer will perform such review and issue its approval or acceptance (as applicable), or a denial accompanied by substantive comments regarding information needed to gain approval or acceptance (as applicable), within 21 days of Engineer's receipt of Seller's initial submittal of such Shop Drawings, Samples, and other submittals required prior to fabrication of the Goods; and (2) resubmittals be limited whenever possible. If more than one resubmittal is necessary for reasons not the fault and beyond the control of Seller, then Seller shall be entitled to seek appropriate relief under Paragraph 7.02.B of the General Conditions.

B. *Days to Achieve Delivery of Goods:* The Goods are to be delivered to the Point of Destination and ready for Buyer's receipt of delivery not later than the following:

1. Coordinate with Buyer and installing construction contractor the schedule for delivering the Goods to the Point of Destination within the time frames indicated below; actual required times and dates for delivering the Goods will be determined by installing construction contractor's progress within the times indicated below. The following Contract Times "windows" apply to the delivery of the Goods:

	<b>Milestone</b>	<b>Contract Times <sup>(1)</sup></b>
a.	Delivery of Pressure Contactor Nos. 1 through 6	March 13, 2017 <sup>(1)(2)</sup>
b.	Delivery of Pressure Contactor Nos. 7 through 12	April 3, 2017 <sup>(1)(3)</sup>
c.	Delivery of Pressure Contactor Nos. 13 through 18	April 24, 2017 <sup>(1)(4)</sup>

**Notes:**

- (1) Each shipment will consist of multiple trucks which may be scheduled by installing construction contractor to arrive on up to two consecutive days per delivery.
- (2) Delivery of pressure contactor shipments may be delayed, at option of Buyer or installing construction contractor (to suit progress of the construction) by up to 135 days beyond the dates indicated for pressure contactor nos. 1 through 6. Such storage shall be at Seller's cost. Storage beyond the times indicated will entitled Seller to change in Contract Price and Contract Times.
- (3) Delivery of pressure contactor shipments may be delayed, at option of Buyer or installing construction contractor (to suit progress of the construction) by up to 114 days beyond the dates indicated for pressure contactor nos. 7 through 12. Such storage shall be at Seller's cost. Storage beyond the times indicated will entitled Seller to change in Contract Price and Contract Times.
- (4) Delivery of pressure contactor shipments may be delayed, at option of Buyer or installing construction contractor (to suit progress of the construction) by up to 93 days beyond the dates indicated for pressure contactor nos. 13 through 18. Such storage shall be at Seller's cost. Storage beyond the times indicated will entitled Seller to change in Contract Price and Contract Times.

2. For the Milestones indicated in Paragraph 5.02.B of this Agreement, do not deliver the Goods earlier than 14 days prior to the date associated with each associated Milestone, unless mutually acceptable to Buyer and Seller.

C. *Days for Furnishing Special Services:*

1. Certain Special Services shall be performed by Seller at the Point of Destination concurrent with delivery of the Goods, including assisting installing construction contractor and Engineer with inspecting all of the Goods (including required spare parts and extra materials) upon delivery and instructing installing construction contractor in handling, storing, and installing the Goods.
2. Furnishing of the balance of Special Services, Seller shall furnish Special Services for each delivery of the Goods on or around the times indicated below:

	<b>Milestone</b>	<b>Start Special Services <sup>(2)</sup></b>	<b>Finish Special Services <sup>(3)</sup></b>
a.	Special Services for Pressure Contactor Nos. 1 through 6 <sup>(1)</sup>	21 <sup>(2)</sup>	25 <sup>(3)</sup>
b.	Special Services for Pressure Contactor Nos. 7 through 12 <sup>(1)</sup>	21 <sup>(2)</sup>	25 <sup>(3)</sup>
c.	Special Services for Pressure Contactor Nos. 13 through 18 <sup>(1)</sup>	21 <sup>(2)</sup>	25 <sup>(3)</sup>
d.	Special Services for startup, initial operation, training of operations and maintenance personnel	28 <sup>(3)</sup>	42 <sup>(3)</sup>
Notes:			
<p>(1) Services include checkout of installed pressure contactors prior to installation of GAC media (media to be furnished and installed under a separate contract between installing construction contractor and NYSDEC).</p> <p>(2) Number of days after completion of delivery of the associated Goods.</p> <p>(3) Number of days after completion of delivery of final shipment of GAC media (furnished and installed under a separate contract between installing construction contractor .</p> <p>(4) Start dates of each required element of Special Services is subject to change based on progress of installing construction contractor and NYSDEC), without change in Contract Price.</p>			

### 5.03 *Buyer's Final Inspection*

A. *Days to Achieve Final Inspection:* The Goods and Special Services shall be ready for final inspection pursuant to Paragraph 8.01.C of the General Conditions not later than the earlier of: (1) 21 days after the Goods have been placed into continuous operation in accordance with the Contract Documents, or (2) Seller's completion of furnishing Special Services.

### 5.04 *Liquidated Damages*

A. Buyer and Seller recognize that Buyer will suffer financial loss if the Goods are not delivered at the Point of Destination and ready for receipt of delivery by Buyer within the times specified in Paragraph 5.02 above, plus any extensions thereof allowed in accordance with Article 7 of the General Conditions. The parties also recognize that the timely performance of services by others involved in the Project is materially dependent upon Seller's specific compliance with the requirements of Paragraph 5.02. Further, they recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Buyer if complete acceptable Goods are not delivered on time. Accordingly, instead of requiring such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty) Seller shall pay Buyer:

1. \$5,000 for each day that expires after the respective times indicated in Paragraph 5.02.B.1 of this Agreement for delivery of acceptable Goods. In the event of multiple deliveries of the Goods, Seller is liable for liquidated damages for each late delivery, but liquidated damages for more than one late delivery will not be cumulative (e.g., maximum daily rate of liquidated damages is the specific amount per day indicated in this paragraph).
2. \$1,000 for each day that expires after the times indicated in Paragraph 5.02.B.2 of this Agreement for Seller's furnishing of the Special Services, unless such time is changed by mutual agreement between Buyer and Seller.
3. \$1,000 for each day that expires after the time specified in Paragraph 5.03 of this Agreement for Seller's readiness for final inspection, unless such Contract Time is changed by the parties in accordance with the Contract Documents.

#### 5.05 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Seller shall pay Buyer the actual costs reasonably incurred by Buyer for engineering and inspection forces employed by Project owner, Buyer, or both relative to the Goods and Special Services for each day that expires after the number of days specified in Paragraph 5.02.B.3 of this Agreement for delivery of the final GAC contactor and its other associated Goods at the Point of Destination (adjusted for changes thereof, if any, made in accordance with Article 7 of the General Conditions) until the Goods are delivered to the Point of Destination in accordance with the Contract Documents.
- B. After delivery of the Goods to the Point of Destination in accordance with the Contract Documents, if Seller neglects, refuses or fails to complete the Special Services and achieve readiness for final inspection within the Contract Times or proper extension thereof, if any, granted by Buyer, Seller shall pay Buyer the actual costs reasonably incurred by Buyer and Project owner for engineering and inspection forces employed by Buyer and Project owner relative to the Goods and Special Services for each day that expires after the time specified in Paragraph 5.02.C for completion of the Special Services (adjusted for extensions thereof, if any, made in accordance with Article 7 of the General Conditions) until the Goods and Special Services are complete in accordance with the Contract Documents.

#### 5.06 *Deduction of Liquidated and Special Damages from Payments*

- A. Buyer may deduct liquidated damages and special damages as determined by the provisions of this Article 5 from payments due Seller under this Contract.

### **ARTICLE 6 – CONTRACT PRICE**

- 6.01 Buyer shall pay Seller for furnishing the Goods and Special Services in accordance with the Contract Documents as follows:
  - A. A lump sum of \$\_\_\_\_\_, in current United States funds.

## ARTICLE 7 – PAYMENT PROCEDURES

### 7.01 *Submittal and Processing of Payment*

- A. Seller shall submit Applications for Payment in accordance with Article 10 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### 7.02 *Progress Payments; Retainage*

- A. Buyer shall make progress payments on account of the Contract Price on the basis of Seller's Applications for Payment as follows:
  - 1. Upon receipt of the first Application for Payment submitted in accordance with Paragraph 10.01.A.1 of the General Conditions and accompanied by Engineer's recommendation of payment in accordance with Paragraph 10.02.A of the General Conditions, an amount equal to 10 percent of the Contract Price, less such amounts as Engineer may determine in accordance with Paragraph 10.02.A.3 of the General Conditions.
  - 2. Upon receipt of the second such Application for Payment accompanied by Engineer's recommendation of payment in accordance with Paragraph 10.01.A.2 of the General Conditions, an amount sufficient to increase total payments to Seller to 90 percent of the Contract Price, less such amounts as Engineer may determine in accordance with Paragraph 10.02.A.3 of the General Conditions. This Application for Payment may be comprised of multiple, separate Applications for Payment based on deliveries of the Goods, in accordance with the Contract Times and installing construction contractor's progress schedule; in such event, amount of individual Applications for Payment under this provision will be determined based on the Goods furnished in accordance with the Contract Documents and the Schedule of Values required of Seller in accordance with Specifications Section 01 29 73, Schedule of Values. Submit not more than one Application for Payment per calendar month.

### 7.03 *Final Payment*

- A. Upon receipt of the final Application for Payment accompanied by Engineer's recommendation of payment, Buyer shall pay Seller the amount recommended by Engineer, less any sum Buyer is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, special damages, and performance damages.

### 7.04 *Set-Offs*

- A. In addition to Buyer's rights under Paragraph 5.06 of this Agreement, Buyer may deduct from payments due Seller other set-offs to which Buyer is entitled in accordance with the Contract Documents.

B. *Engineer may Recommend Reductions in Payment:* Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Buyer from loss because:

1. the Goods or Special Services are non-conforming or defective, requiring correction or replacement;
2. the Contract Price has been reduced by Change Orders;
3. Buyer has been required to correct non-conforming Goods or Special Services, or has accepted non-conforming or defective Goods or Special Services;
4. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Seller and therefore justify cancellation or termination for cause under the Contract Documents.

C. *Reductions in Payment by Buyer:*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Buyer is entitled to impose a set-off against payment based on any of the following:
  - a. claims have been made against Buyer on account of Seller's conduct in the furnishing of the Goods and Special Services, or Buyer has incurred costs, losses, or damages on account of Seller's conduct in furnishing the Goods and Special Services, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
  - b. In performing its Special Services, Seller has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the location where the Goods are installed;
  - c. Seller has failed to provide and maintain required bonds or insurance;
  - d. Buyer has incurred extra charges or engineering costs related to submittal reviews, tests and inspections, or return visits to manufacturing or assembly facilities;
  - e. the Goods, Special Services, or both are non-conforming or defective, requiring correction or replacement;
  - f. Buyer has been required to correct non-conforming or defective Goods, Special Services, or both, or has accepted non-conforming or defective Goods or Special Services;
  - g. the Contract Price has been reduced by Change Orders;
  - h. an event that would constitute a default by Contractor and therefore justify cancellation or termination for cause has occurred;

- i. liquidated damages, special damages, or both have accrued as a result of Seller's failure to achieve comply with the Contract Times;
  - j. Liens have been filed in connection with the Goods or Special Services, except where Seller has delivered a specific bond satisfactory to Buyer to secure the satisfaction and discharge of such Liens;
  - k. there are other items entitling Buyer to a set off against the amount recommended.
2. If Buyer imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Buyer will give Seller immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Seller any amount remaining after deduction of the amount so withheld. Buyer shall promptly pay Seller the amount so withheld, or any adjustment thereto agreed to by Buyer and Seller, if Seller remedies the reasons for such action. The reduction imposed shall be binding on Seller unless it duly submits a Change Proposal contesting the reduction.
  3. Upon a subsequent determination that Buyer's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due in accordance with the Contract Documents and subject to interest as provided in Article 8 of this Agreement.

## **ARTICLE 8 – INTEREST**

- 8.01 Refer to Appendix A, Standard Clauses for New York State Contracts, provision entitled, "Late Payment", for provisions on interest due on late payments.

## **ARTICLE 9 – SELLER'S REPRESENTATIONS**

- 9.01 To induce Buyer to enter into this Agreement, Seller makes the following representations:
  - A. Seller has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents, as applicable to Seller's obligations identified in Article 1 above.
  - B. If required by the Bidding Documents to visit the Point of Destination and site where the Goods are to be installed or Special Services will be provided, or if, in Seller's judgment, any local condition may affect cost, progress, or the furnishing of the Goods and Special Services, Seller has visited the Point of Destination and site where the Goods are to be installed or Special Services will be provided and become familiar with and is satisfied as to the observable local conditions that may affect cost, progress, and the furnishing of the Goods and Special Services.
  - C. Seller is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and the furnishing of the Goods and Special Services.

- D. Seller has carefully studied, considered, and correlated the information known to Seller; information commonly known to sellers of similar goods doing business in the locality of the Point of Destination and the site where the Goods will be installed or where Special Services will be provided; information and observations obtained from Seller's visits, if any, to the Point of Destination and site where the Goods are to be installed or Services will be provided; and any reports and drawings identified in the Bidding Documents regarding the Point of Destination and the site where the Goods will be installed or where Special Services will be provided, with respect to the effect of such information, observations, and documents on the cost, progress, and performance of Seller's obligations under the Contract Documents.
- E. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Seller.
- F. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Goods and Special Services.

## **ARTICLE 10 – CONTRACT DOCUMENTS**

### *10.01 Contents*

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 1 to 14, inclusive);
  - 2. Performance Bond (pages 1 to    , inclusive);
  - 3. Payment Bond (pages   1   to    , inclusive);
  - 4. Bidding Requirements, as follows:
    - 1. General Information (nine pages)
  - 5. Appendix A, Standard Clauses for New York State Contracts (comprised of five pages plus a title page);
  - 6. Appendix B, Standard Clauses for New York State Department of Environmental Conservation Contracts (comprised of nine pages plus a title page);
  - 7. Appendix C, comprised of:
    - 1. General Conditions (pages   i   to  31 , inclusive);
    - 2. Supplementary Conditions (pages   1   to  12 , inclusive);
  - 8. Specifications as listed in table of contents of the Project Manual;
  - 9. Addenda Nos.     through    ;



10. Exhibits to this Agreement (enumerated as follows):

a. \_\_\_\_\_.

11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

a. Notice to Proceed;

b. Change Order(s);

c. Work Change Directive(s).

d. Field Order(s).

B. The documents listed in Paragraph 10.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 10.

D. The Contract Documents may only be amended, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## **ARTICLE 11 – MISCELLANEOUS**

### *11.01 Terms*

A. Terms used in this Agreement will have the meanings indicated in the General Conditions and the Supplementary Conditions.

### *11.02 Assignment of Contract*

A. Refer to Appendix A, Standard Clauses for New York State Contracts, provision entitled, “Non-Assignment Clause”.

### *11.03 Successors and Assigns*

A. Buyer and Seller each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### *11.04 Severability*

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Buyer and Seller. The Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

11.05 *Seller's Certifications*

- A. Seller certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 11.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Buyer, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Buyer, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

11.06 *Other Provisions*

- A. Change Orders will not be made under this Commodity Procurement Contract. Any and all references to, the processing thereof, or provisions for Change Order shall be void.

IN WITNESS WHEREOF, Buyer and Seller have signed this Agreement. Counterparts have been delivered to Buyer and Seller. All portions of the Contract Documents have been signed or identified by Buyer and Seller or on their behalf. The signatory for the Buyer provides the following Agency Certification: **"In addition to the acceptance of this Contract, I also certify that original copies of this signature page will be attached to all other exact copies of this Contract."**

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Agreement) – *date upon filing in New York State Comptroller's Office as indicated below.*

FOR BUYER (DEPARTMENT):

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

FOR SELLER:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

For Attorney General

Date: \_\_\_\_\_

APPROVED:

Thomas P. DiNapoli  
State Comptroller

By: \_\_\_\_\_

Date: \_\_\_\_\_

This Contract is not effective until it is approved by the New York State Comptroller and filed in the Comptroller's office (Section 112, State Finance Law).

**(CORPORATE ACKNOWLEDGMENT WITH SEAL)**

State of )  
County of ) s.s.:

On the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, before me personally came \_\_\_\_\_ to me known, who being duly sworn, did depose and say that (s)he resides in \_\_\_\_\_, New York; that (s)he is \_\_\_\_\_ (*title*) of \_\_\_\_\_ (*firm*) the corporation described in and which executed the above instrument; that (s)he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that (s)he signed his(her) name thereto by like order.

**Seal**

\_\_\_\_\_  
**Notary Public**

**(CORPORATE ACKNOWLEDGMENT WITHOUT SEAL)**

State of )  
County of ) s.s.:

On the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, before me personally came \_\_\_\_\_, to me known, who being duly sworn, did depose and say that (s)he resides in \_\_\_\_\_, New York; that (s)he is an officer of \_\_\_\_\_ (*firm*) ; namely, the \_\_\_\_\_ (*title*) of \_\_\_\_\_ (*firm*); that (s)he is authorized by the governing body of said corporation to sign contracts; and that (s)he did sign the foregoing instrument on behalf of, and with authority to bind said corporation.

\_\_\_\_\_  
**Notary Public**

**(CO-PARTNERSHIP ACKNOWLEDGMENT)**

State of )  
County of ) s.s.:

On the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, before me personally came \_\_\_\_\_ to me known and known to me to be a member of \_\_\_\_\_, the firm described in and which executed the foregoing instrument, and (s)he acknowledged to me that (s)he subscribed the name of said firm thereto on behalf of said firm for the purpose therein mentioned.

**Seal**

\_\_\_\_\_  
**Notary Public**

**(INDIVIDUAL ACKNOWLEDGMENT)**

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) s.s.:

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_ to me personally known, and known to me to be the individual described in, and who executed the foregoing instrument, and (s)he duly acknowledged to me that (s)he executed the same.

Seal

\_\_\_\_\_  
**Notary Public**

**(DESIGNATED REPRESENTATIVES PER ARTICLE 2.05 OF GENERAL CONDITIONS )**

Designated Representative:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: NYSDEC Div of Environ Remediation  
625 Broadway, Albany, NY 12233  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Designated Representative:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_