

CONTRACT DOCUMENTS
CITY OF ITHACA
DEPARTMENT OF PUBLIC WORKS
ITHACA COMMONS REPAIR & UPGRADE

CONTRACT FOR:

- ☐ GENERAL CONSTRUCTION
☐ ELECTRICAL CONSTRUCTION

BIDS DUE:

January 23, 2014



CITY OF ITHACA
DEPARTMENT OF PUBLIC WORKS

108 EAST GREEN ST
ITHACA, NEW YORK 14850
TELEPHONE 607-274-6530

MAYOR
SVANTE MYRICK
SUPERINTENDENT OF
PUBLIC WORKS
MICHAEL THORNE, P.E.
CORPORATE COUNSEL
AARON LAVINE
ARCHITECT
SASAKI ASSOCIATES

CONTRACTOR: _____
CAPITAL PROJECT #: 124
EFFECTIVE DATE OF AGREEMENT: _____
RECORD RETENTION PERIOD:
____ SIX YEARS
☒ PERMANENT
____ OTHER, EXPLAIN:

DATE OF DESTRUCTION: _____

PAGE INTENTIONALLY LEFT BLANK

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00002
TABLE OF CONTENTS**

INTRODUCTORY INFORMATION

SECTION-DESCRIPTION

00002 - TABLE OF CONTENTS

00003 - LIST OF CONTRACT DOCUMENTS

BIDDING REQUIREMENTS

SECTION-DESCRIPTION

00100-ADVERTISEMENT FOR BIDS.....
00200-INSTRUCTIONS TO BIDDERS.....
00400-BID FORM
00405-UNIT PRICE BID LIST.....
00410-SUPPLEMENT A – BID PROPOSAL.....
00420-SUPPLEMENT B – BID BOND.....
00430-SUPPLEMENT C – STATEMENT OF BIDDER’S QUALIFICATIONS.....
00440-SUPPLEMENT D – NON-COLLUSIVE CERTIFICATION.....
00450-SUPPLEMENT E – LIST OF SUBCONTRACTORS.....
00460-SUPPLEMENT F – INDEMNIFICATION AGREEMENT.....
00470-SUPPLEMENT G – NON-BIDDER’S RESPONSE.....
00480-SUPPLEMENT H – DISCLOSURE OF LOBBYING ACTIVITIES.....
00490-SUPPLEMENT I – DISADVANTAGED BUSINESS ENTERPRISE.....
00495-SUPPLEMENT J – IRANIAN ENERGY DIVESTMENT
00500-SUPPLEMENT K – BUY AMERICA CERTIFICATION.
00510-SUPPLEMENT L – FEDERAL TRANSIT ADMINISTRATION
CERTIFICATIONS AND ASSURANCES.....

PAGE NO.

AB-1 TO AB-2
AB-3 TO AB-12
AB-13 TO AB-14
BF-1 TO BF-14
AB-15 TO AB-20
AB-21 TO AB-22
AB-23 TO AB-28
AB-29 TO AB-30
AB-31 TO AB-32
AB-33 TO AB-34
AB-35 TO AB-36
AB-37 TO AB-40
AB-41 TO AB-42
AB-43 TO AB-44
AB-45 TO AB-46

AB-47 TO AB-48

CONTRACT FORMS

SECTION-DESCRIPTION

00600-AGREEMENT.....
00610-NOTICE OF AWARD.....
00620-NOTICE TO PROCEED.....

PAGE NO.

A-1 TO A-12
NA-1 TO NA-2
NP-1 TO NP-2

CONDITIONS OF THE CONTRACT

SECTION-DESCRIPTION

00700-GENERAL CONDITIONS INDEX.....
 GENERAL CONDITIONS.....
00800-SUPPLEMENTARY CONDITIONS.....
00810-PREVAILING WAGE SCHEDULE.....
00820- FEDERALLY REQUIRED AND OTHER MODEL CLAUSES.....
00830- PARTICIPATION BY M/WBE.....
00840- INSURANCE REQUIREMENTS.....
00850- PROMPT PAYMENT AFFIDAVIT.....

PAGE NO.

GC-1 TO GC-5
GC-6 TO GC-66
SC-1 TO SC-14
PW-200
FC-1 TO FC-22
GDA-1 TO GDA-16
IR-1 TO IR-4
PP-1 TO PP-2

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

SPECIFICATIONS

SECTION-DESCRIPTION

10000-GENERAL PROVISIONS.....
TECHNICAL SPECIFICATIONS (SEE 000110-1 TO 000110-2 FOR TABLE OF
CONTENTS BY SASAKI ASSOCIATES.....

PAGE NO.

GN-1 TO GN-12
000110-1 TO
000110-2

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00003
LIST OF CONTRACT DOCUMENTS**

The contract documents for this project consist of the following items:

1. The Agreement;
2. Performance, Payment, Maintenance and other Bonds and Insurances, as required;
3. General Conditions;
4. Supplementary Conditions;
5. Construction and Material Specifications:

The documents and specifications for the ITHACA COMMONS REPAIR & UPGRADE – CONTRACT #3 SURFACE IMPROVEMENTS, dated DECEMBER 12, 2013, as listed in the Table of Contents.

New York State Department of Transportation Standard Specifications (US Customary Units) dated May 1, 2008 with addenda and modifications current as of the date of advertisement for the project. Where reference is made to New York State, State Department of Transportation, Commissioner, Deputy Chief Engineer of the Technical Services Department (D.C.E.T.S.), Deputy Chief Engineer (Structures) (D.C.E.S.), Geotechnical Engineering Bureau (G.E.B.), etc., the appropriate OWNER or OWNER'S DESIGNATED REPRESENTATIVE shall be substituted. In any instance where the provisions of the NYS Department of Transportation Standard Specifications are in conflict with the provisions contained within this document, the stricter provision shall govern. The OWNER or its representative shall make the final interpretations of any irregularities, ambiguities or questions arising out of the Specifications and the New York State Department of Transportation Specifications used on this project. Copies of the New York State Department of Transportation Specifications can be obtained directly from the New York State Department of Transportation.

6. Contract Drawings:

Engineering drawings entitled, "ITHACA COMMONS REPAIR & UPGRADE – CONTRACT #3 SURFACE IMPROVEMENTS," dated DECEMBER 12, 2013, and consisting of the following drawings:

SHEET No.	DESCRIPTION	DRAWING No.
GI002	KEY PLAN & DRAWING INDEX	

7. Addenda (if any) issued for this contract;
8. Contractor's Bid, including Bid Form and Unit Price Proposal;

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

9. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:
- a. Notice to Proceed
 - b. Work Change Directives
 - c. Change Orders
 - d. All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to Paragraphs 3.04 of the General Conditions.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00100
ADVERTISEMENT FOR BIDS**

**City of Ithaca – Department of Public Works
108 East Green Street
Ithaca New York 14850
PH: (607) 274-6530**

Sealed Bids for the “ITHACA COMMONS REPAIR & UPGRADE PROJECT, CONTRACT #3 – SURFACE IMPROVEMENTS” project located in the City of Ithaca, New York will be received by the office of the City Controller at 108 East Green Street, Ithaca, NY until **THURSDAY, JANUARY 23, 2014 at 2:00 PM**. The bids will then be publicly opened and read aloud.

This project will be constructed using two prime contracts. Prime Contract #3A covers General Construction; Prime Contract #3B covers certain unit price Electrical work. Each prime contract will be performed concurrently, and closely coordinated, with construction activities performed on the project under the other prime contract.

The proposed project is to construct a new streetscape design for the Commons, a three-block pedestrian plaza in Ithaca, NY. The work will include both below-grade and surface improvements. The below-grade work includes: sanitary sewer laterals, storm sewer laterals, catch basins and drains, domestic water and fire services, telecommunications mains and services, electrical infrastructure for street lighting and receptacles, demolition of existing utilities, backfill, grading, subsoil preparation and soils amendment. Surface improvements include: installation of new finish pavers, trees and landscaping, furniture, artwork, street lighting, pavilion structure and canopy, gateway structures, water feature and other site amenities. The General Construction Contract is a lump sum contract with some unit price items and several alternates; all of the Work not expressly assigned to the Electrical Contract is included in the General Construction Contract. The Electrical Contract is a unit price contract.

A Pre-Bid Conference will be held at City Hall, 108 East Green Street, Room #202, Ithaca, NY 14850 on **MONDAY, JANUARY 6, 2014 at 10:00 AM**. Attending the pre-bid conference is optional.

BIDS SHALL BE SUBMITTED IN A SEALED ENVELOPE, ENTITLED: ITHACA COMMONS REPAIR & UPGRADE, CONTRACT #3 - SURFACE IMPROVEMENTS (“GENERAL CONSTRUCTION” or “ELECTRICAL”) BID.

Each bid shall be accompanied by a deposit in the amount of: **Five Percent (5%) of the Total Gross Sum Bid in the form of a Certified Check, Bank Draft, or Bid Bond**. Cash will not be acceptable as a deposit. Bid deposits of all unsuccessful bidders shall be returned promptly upon execution of the contract with the successful bidder.

Copies of the contract documents, listed in the Table of Contents and the List of Contract Documents, may be downloaded and printed from the City’s website at:

www.cityofithaca.org/bids

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

Documents may be examined from the website, as well as at the following locations:

City of Ithaca, Office of Engineering, 108 East Green Street, Ithaca, NY 14850

This is a Davis-Bacon and prevailing wage rate project. Please refer to the federal clauses included with the contract documents herein and the NYSDOL website to verify the latest Prevailing Wage Rates Schedule:

<http://wpp.labor.state.ny.us/wpp/publicViewPWChanges.do>

This project has a Disadvantaged Business Enterprise utilization goal of 4.8% and a Minority/Women Business Enterprise utilization goal of 3.2%.

Amendments can only be accomplished by means of Addenda issued by the City of Ithaca or their designee. Written questions should be addressed to MICHAEL R. KUO, PROJECT MANAGER, CITY OF ITHACA via regular mail (215 E. State St, Ithaca, NY 14850) or email (mkuo@cityofithaca.org). Questions must be received by **FRIDAY, JANUARY 10, 2014 at 5:00 PM.**

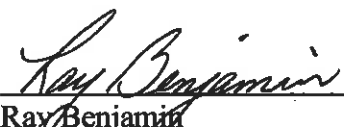
Because bids and offers can at time be ambiguous, in its solicitation documents, the City reserves the right to request additional information before making an award. The City also reserves the right to seek clarification from any bidder or offeror about any statement in its bid or proposal that the City finds ambiguous.

The City (hereinafter referred to as the "Owner") reserves the right to reject any or all bids and to waive any informality or technicality in any bid in the interest of the Owner. Attention of Bidders is particularly called to the requirements for ensuring that employees, applicants for employment, and contractors are not discriminated against; refer to the Contract Documents for additional information. There is a DBE participation goal required for this contract.

Advertised in:

Ithaca Journal

New York State Contract Reporter


Ray Benjamin 12/18/13
Acting Supt. of Public Works Date

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00200
INSTRUCTIONS TO BIDDERS**

1. DEFINED TERMS

Terms used in these Instructions to Bidders which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8; 1990 ed.) have the meanings assigned to them in the General Conditions. The term “Bidder” means one who submits a Bid directly to Owner, as distinct from a sub-Bidder, who submits a bid to a Bidder. The term “Successful Bidder” means the lowest, qualified, responsible and responsive Bidder to whom Owner (on the basis of Owner’s evaluation as hereinafter provided) makes an award. The term “Bidding Documents” includes the Advertisement for Bids, Instructions to Bidders, the Bid Form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids). For the purposes of this contract, the term “Owner” shall refer to the City of Ithaca.

2. COPIES OF BIDDING DOCUMENTS

Complete sets of the Bidding Documents may be downloaded and/or printed from the City of Ithaca website at www.cityofithaca.org/bids. Copies are available for review in the Office of the City Engineer.

Complete sets of Bidding Documents must be used in preparing Bids; the Owner does not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents. Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

3. QUALIFICATIONS OF BIDDERS

To demonstrate qualifications to perform the work, each Bidder shall submit written evidence as requested on the ‘Statement of Bidder’s Qualifications Proof of Competency’ form located in Supplement C, pages AB23-AB28. Also refer to Supplementary Conditions section 6.06. Bidder is advised to carefully review those portions of the Bid Form requiring Bidder’s representations and certifications.

4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

It is the responsibility of each Bidder before submitting a Bid, to (a) examine the Contract Documents thoroughly, (b) visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work, (c) consider federal, state and local Laws and Regulations that may affect cost, progress performance or furnishing of the Work, (d) study and carefully correlate Bidder’s observations with the Contract Documents, (e) notify Owner of all conflicts, errors or discrepancies in the Contract Documents and (f) be familiar with all Public Utility Requirements.

Written notification shall be made to MICHAEL KUO, PROJECT MANAGER, CITY OF ITHACA, 215 EAST STATE STREET, ITHACA, NY 14850 or emailed to mkuo@cityofithaca.org.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

Information and data reflected in the Contract Documents with respect to Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner by owners of such Underground Facilities or others, the Owner does not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.

Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders on subsurface conditions, Underground Facilities and other physical conditions, and possible changes in the Contract Documents due to differing conditions, appear in Paragraphs 4.02, 4.03, and 4.04 of the General Conditions.

Before submitting a Bid, each Bidder will, at Bidder's own expense, make or obtain any additional examinations, investigations, explorations, tests and studies and obtain any additional information and data which pertain to the physical conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

On request in advance, Owner will provide each Bidder access to the site to conduct such explorations and tests as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes, clean up and restore the site to its former condition upon completion of such exploration.

The lands upon which the Work is to be performed, right-of-way and easements for access thereto and other lands designated for use by contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by Contractor. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Contract Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Contract Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the work.

Because bids and offers can at times be ambiguous, in its solicitation documents, the City reserves the right to request additional information before making an award. The City also reserves the right to seek clarification from any bidder or offeror about any statement in its bid or proposal that the City finds ambiguous.

5. INTERPRETATIONS AND ADDENDA

All questions about the meaning or intent of the Contract Documents are to be directed to Engineer in writing. Written notification shall also be made to MICHAEL KUO, PROJECT MANAGER, CITY OF ITHACA, 215 EAST STATE STREET, ITHACA, NY 14850 or emailed to mkuo@cityofithaca.org.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda and will be posted to the website noted in Section 2 not less than 3 business days before the Bid due date. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. **It is the Bidder's responsibility to check the website before submitting the Bid to see if any Addenda have been posted.**

Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner and Engineer.

6. BID SECURITY

Each bid must be accompanied by a Bid security made payable to Owner in the amount of five percent (5%) of the Bidder's maximum bid price and in the form of a certified or bank check or a bid bond (on form attached) issued by a surety meeting the requirements of Paragraph 5.01 of the General Conditions.

The bid security of the successful Bidder will be retained until such Bidder has executed the agreement and has furnished the required contract security, whereupon the bid security will be returned. If the successful Bidder fails to execute and deliver the agreement and furnish the required contract security within fifteen days after the Notice of Award, the Owner may annul the Notice of Award and the bid security of that Bidder will be forfeited. The bid security of other Bidders whom the Owner believes to have a reasonable chance of receiving the award may be retained by the Owner until the earlier of the seventh day after the effective date of the agreement or the forty-sixth day after the bid opening, whereupon the bid security furnished by such Bidders will be returned. Bid security with bids which are not competitive will be returned within seven days after the bid opening.

7. CONTRACT TIME

Time is of the essence. The work under this contract shall be substantially complete within 270 consecutive calendar days of the date fixed in the Notice To Proceed. The work shall be completed and ready for final payment in accordance with Article 14 of the General Conditions within 330 consecutive calendar days of the date fixed in the Notice To Proceed.

8. LIQUIDATED DAMAGES

Provisions for liquidated damages are set forth in the Agreement. Liquidated damages will be assessed against the Contractor for **\$1,000.00 (ONE THOUSAND DOLLARS AND ZERO CENTS)** per day for each working day that expires after the time fixed for substantial completion until the Work is substantially complete. Liquidated damages in this amount will also be assessed for each working day that expires after the time fixed for final completion until the Work is complete and ready for final payment in accordance with Article 14 of the General Conditions.

9. SUBSTITUTE OF "OR-EQUAL" ITEMS

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitution of an "or-equal" item of material or equipment. Application for acceptance of a substitute "or-equal" may be furnished to the Engineer for consideration after the Effective Date of the Agreement. The procedure for

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

submission of any such application by Contractor and consideration by Engineer is set forth in Paragraph 6.05 of the General Conditions and Supplementary General Conditions.

10. SUBCONTRACTORS, SUPPLIERS AND OTHERS

10.1 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers and other persons and organizations (including those who are to furnish the principal items of material and equipment) to be submitted to Owner in advance of the specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within seven days after the Bid opening submit to Owner a list of all such Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, person or organization if requested by Owner. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, other person or organization, either may before the Notice of Award is given request the apparent Successful Bidder to submit an acceptable substitute without an increase in Bid price.

If apparent Successful Bidder declines to make any such substitution, Owner may award the contract to the next lowest Bidder that proposes to use acceptable Subcontractor, Supplier, and other persons and organizations. Declining to make requested substitutions will not constitute grounds for sacrificing the Bid security of any Bidder. Any Subcontractor, Supplier, other person or organization listed and to whom Owner does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions.

10.2 No Contractor shall be required to employ any Subcontractor, Supplier, other person or organization against whom Contractor has reasonable objection.

11. BID FORM

11.1 The Bid Form is included with the Contract Documents; additional copies may be obtained from Engineer or Owner.

11.2 All blanks on the Bid Form must be completed in ink or by typewriter and must be signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each section, Bid item, alternative, adjustment unit price item, and unit price item listed therein. In the case of optional alternatives, the words, "No Bid," "No Change," or "Not Applicable" may be entered.

11.3 Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

11.4 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature, accompanied by evidence of authority to sign. The official address of the partnership must be shown below the signature.

11.5 All names must be typed or printed below the signature.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

11.6 The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).

11.7 The name, postal address, telephone number and email address of a person responsible for communications regarding the Bid must be shown.

11.8 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder's state contractor license number, if any, shall also be shown on the Bid Form.

12. SUBMISSION OF BIDS

Bids shall be submitted at the time and place indicated in the Advertisement for Bids and shall be enclosed in an opaque sealed envelope, marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted) and name and address of the Bidder and accompanied by the Bid security and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

13. BASIS OF BID; COMPARISON OF BIDS; ALTERNATES

13.1 Portions of the Work are being awarded on a lump sum basis; other portions are being awarded on a unit price basis. For the unit price items, Bidders shall submit a Bid on a unit price basis for each item of Work in the Bid schedule. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price for Unit Price Work will be determined in accordance with Paragraph 11.04 of the General Conditions. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. The Base Bid for the entire Work shall be the sum of the lump-sum Work, if any, and the Unit Price Work, if any, as calculated above.

13.2 This project includes alternates. Owner has the right to accept alternates in any order or combination, and compare Bids on the basis of the sum of the Base Bid for lump sum work, unit price work, and any alternates accepted.

14. MODIFICATION AND WITHDRAWAL OF BIDS

14.1 Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

14.2 If, within twenty-four hours after Bids are opened, any Bidder files a duly signed, written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid and the Bid security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

15. OPENING OF BIDS

Bids will be opened and (unless obviously non-responsive) read aloud publicly. An abstract of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after the opening of Bids.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

16. BIDS TO REMAIN SUBJECT TO ACCEPTANCE

All bids will remain subject to acceptance for forty-five days after the day of the Bid opening, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to that date.

17. AWARD OF CONTRACT

17.1 Owner reserves the right to reject any and all Bids without limitation, to waive any and all informalities not involving price, time or changes in the work and to negotiate contract terms with the Successful Bidder, and the right to disregard all nonconforming, non-responsive, unbalanced or conditional Bids. Also, Owner reserves the right to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Because bids and offers can at times be ambiguous, in its solicitation documents, the City reserves the right to request additional information before making an award. The City also reserves the right to seek clarification from any bidder or offeror about any statement in its bid or proposal that the City finds ambiguous.

17.2 In evaluating Bids, Owner will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

17.3 Owner may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in the Supplementary Conditions. Owner also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

17.4 Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

17.5 If the contract is to be awarded, it will be awarded to the lowest responsible Bidder whose evaluation by Owner indicates to Owner that the award will be in the best interests of the Project.

17.6 If the contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within forty-five days after the day of the Bid opening.

17.7 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

18. CONTRACT SECURITY AND INSURANCE

Article 5 of the General Conditions and the Supplementary Conditions set forth Owner's requirements as to performance, payment, and maintenance Bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by the required performance and payment Bonds and insurance certificates.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

19. SIGNING OF AGREEMENT

When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the agreement with all other written Contract Documents attached. Within ten (10) calendar days thereafter Contractor shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner with the required Bonds. Within fifteen (15) days thereafter Owner shall deliver one fully signed counterpart to the Contractor. Each counterpart is to be accompanied by a complete set of the Drawings with appropriate identification.

20. SALES AND USE TAXES

The City of Ithaca is exempt from Federal, State and local taxes. A tax exempt form will be issued by the Owner upon execution of the contract.

21. RETAINAGE

Five Percent (5%) retainage will be required for this contract.

22. EQUAL OPPORTUNITY CLAUSE

In accordance with the laws of the State of New York and ordinances of the CITY OF ITHACA, the Contractor shall not discriminate against any employee, applicant for employment, sub-contractor, supplier of materials or services, or program participant because of actual or perceived: age, creed, color, disability, ethnicity, familial status, gender, height, immigration or citizenship status, marital status, national origin, race, religion, sexual orientation, socio-economic status, or weight.

Contractors working in a capital project shall give a hiring preference to veterans, to the extent practicable.

In accordance with the Title VI of the Civil Rights Act, as amended, and other applicable Federal laws and regulations, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations.

23. NON-COLLUSIVE CERTIFICATION AND ELIGIBILITY CERTIFICATIONS

Bids shall be accompanied by the Non-Collusive and Eligibility Certifications.

24. PREVAILING WAGES

24.1 This is a prevailing wage contract. Bidder attention is directed to the Supplementary Conditions. A certified payroll is required in this contract.

24.2 This is a Davis-Bacon contract. Bidder attention is directed to Section 0820 "Federally Required and Other Model Clauses" included in the contract documents.

25. RESPONSIBILITY DETERMINATIONS

25.1 GUIDELINES

In deliberating upon the responsibility of the Bidder or a subcontractor, the Owner shall give due consideration to any credible evidence or reliable information that the past or current record of a Bidder or proposed contractor includes any of the following:

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

25.1.1 Lack of adequate expertise, prior experience with comparable projects or financial resources.

25.1.2 Criminal conduct in connection with government contract or the conduct of business activities involving the infliction, injury or intentional property damage, in connection with involvement in a pattern of racketeering, labor racketeering, extortion, obstruction of justice or other comparable crimes; bribery, fraud, bid-rigging, embezzlement or other comparable crimes; or serious moral turpitude, fundamental lack of integrity or knowing disregard for the law. Evidence of such conduct may include a judgment of conviction, pending criminal indictment or formal grant of immunity in connection with a criminal prosecution of the Bidder or proposed subcontractor, and director or officer, or any holder of five percent (5%) or more of the shares or equity of the Bidder or proposed subcontractor, or any affiliate of the Bidder or proposed subcontractor.

25.1.3 Grave disregard for the personal safety of employees, City personnel or members of the public. Due consideration shall be given to whether available evidence concerning the training of employees, equipment actually in use at the work site and company practices for identifying and addressing deficiencies and securing employee compliance demonstrates a genuine commitment to safety or lack of the same.

25.1.4 Any other significant Labor law violation, including but not limited to child labor law violations, failure to pay wages or unemployment insurance tax delinquencies.

25.1.5 Any significant violation of the Workers' Compensation Law, including but not limited to the failure of a Bidder or proposed subcontractor to provide proof of workers' compensation or disability benefits coverage.

25.1.6 Any criminal conduct involving violations of the Environmental Conservation Law or other federal, state or city environment statutes or repeated or significant civil violations of federal, state or city environmental statutes or regulations.

25.1.7 The failure of a Bidder or contractor to demonstrate good-faith efforts to comply with applicable federal, state or city statutes and regulations requiring efforts to solicit and utilize minority-owned and women-owned business enterprises and disadvantaged business enterprises as potential subcontractors, in connection with a pending bid for the performance of a federal-aid or state- or city-funded or assisted project subject to such statutory and regulatory requirements.

25.1.8 The failure of a Bidder, contractor or proposed subcontractor to comply with federal, state or city statutes or regulations requiring the hiring, training and employment of persons presumed to be disadvantaged in accordance with federal, state, or city definitions to meet federal, state and city equal employment opportunity requirements.

25.1.9 Submission of a bid that is mathematically or materially unbalanced.

25.1.10 The submission of a bid which is so much lower than the Owner's engineers' estimate for the cost of, or anticipated bids for, the contract that it appears unlikely that the Bidder will be able to perform the contract satisfactorily at the price bid.

25.1.11 Any other cause of so serious or compelling a nature that it raises questions about the present responsibility of a contractor or subcontractor, including but not limited to, submission to a contracting agency of a false or misleading statement on a uniform questionnaire, or in some other form, in connection with a bid for or award of a contract or a request for approval of a subcontractor.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

25.1.12 The failure to offer for purchase, provide, or otherwise use products and services that have lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose, or that are not in compliance with the City of Ithaca Environmentally Preferable Purchasing policy guidelines.

25.1.13 In addition to the factors specified above, the Owner may also give due consideration to any other factors consideration by the contracting agencies to bear upon responsibility, including but not limited to any mitigating factor brought to the Owners' attention by the Bidder or proposed subcontractor.

25.2 DEFINITIONS

As used in this Article, the following terms shall have the meanings indicated:

25.2.1 BIDDER, CONSTRUCTOR AND SUBCONTRACTOR

a. Any person or business entity submitting a competitive bid for, receiving the award of or submitted for approval as a subcontractor on a contract by any one (1) of the contracting agencies.

b. A corporation, partnership or proprietorship shall be considered to be an affiliate of the Bidder or proposed subcontractor if one owns, controls or has the ability to control the other, or if a third person, corporation, partnership or proprietorship owns, controls or has the ability to control both.

25.2.2 CONTRACT – Any construction or service contract that is required by statute to be let by competitive bid to the lowest reasonable Bidder.

25.2.3 CONTRACTING AGENCIES- Any agency or department of the city letting a contract through competitive bidding.

26. REQUIRED BONDS

Bidders' attention is directed to the Bond Requirements in the General Conditions section 5.01 and Supplementary Conditions section 2.01. Performance, labor & material payment, and maintenance bonds are required under this contract.

27. ESTIMATED QUANTITIES

The Bidder agrees that the estimated quantities given in the bid are only for the purpose of comparing bids and that the Bidder is satisfied with and will at no time dispute the estimates as a means of comparing the aforesaid bids, that the Bidder will make no claim for loss of profits or anticipated profits because of any difference between the estimated quantities and the quantities of the various classes of work actually furnished or performed, that the Owner not be held responsible if any of the estimated quantities should be found to not even approximate those actually measured during performance of the work, and the Owner may direct an increase, decrease or omission of the quantities of any class or part of the work as may be deemed necessary or desirable.

In the event of an overrun and/or underrun in the estimated unit price quantities contained in the bid, the unit price of that respective item will be used for payment.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

BID ITEM DESCRIPTION

A. Lump Sum Price

General Construction prime contract Bids only. Provide a Lump Sum price for all work reflected in the Contract Drawings and Specifications that is not included in the Unit Price work for either prime contract, including, but not limited to, providing all labor, materials and equipment to perform the work.

B. Unit Prices

For all Bids. Provide Unit prices for work on the prime contract for which you are bidding as shown on the drawings and work determined in the field and authorized by the Owner's Representative. The Unit Prices include overhead, profit, all applicable taxes, labor, material, equipment, and all other expenses incidental to the work. For Bidders on the General Construction prime contract, include in the Lump Sum Bid all additional costs in connection with quantity changes that are not compensated for at the given Unit Prices for quantities defined in the field.

All unit price items are listed in Section 00405 – UNIT PRICE BID LIST. Unit Price items for the General Construction prime contract are listed on BF-1 through BF-8. Unit Price items for the Electrical prime contract are listed on BF-9 through BF-14.

C. Alternates

General Construction prime contract Bids only. Provide an amount to be added to, or deducted from, the lump sum bid for incorporating changes described below. A full description of each alternate is included in Section 01000 – GENERAL PROVISIONS.

1. Deduct Alternate No. 1 – Bernie Milton Pavilion.
2. Deduct Alternate No. 2 – Gateway 1 & 2.
3. Deduct Alternate No. 3 – Water Feature.

End of Bid Item Descriptions

End of Instructions to Bidders

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00400
BID FORM**

PROPOSAL OF:

(hereinafter called "Bidder"), organized and existing under the laws of the State of _____ doing business as (a corporation) (a partnership) (an individual), to the City of Ithaca (hereinafter called "Owner").

In compliance with your Advertisement for Bids, Bidder hereby proposes to perform all work necessary for the completion of the _____ prime contract as part of the **"ITHACA COMMONS REPAIR & UPGRADE PROJECT, CONTRACT #3 – SURFACE IMPROVEMENTS,"** in conformance with the Contract Documents within the time frame set forth and at the prices stated below.

By submission of this Bid, each Bidder certifies, and in the case of a joint Bid, each party thereto certifies as to his own organization, that this Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this Bid with any other Bidder or with any competitor.

The Bidder's attention is called to:

- a. The fact that weather is always a consideration and it is reasonable to expect there may be significant periods of sub-freezing temperatures, high water flows, and precipitation during construction. Requests to extend the Contract Time or claims for delays in completion due in part or in whole to weather conditions will not be considered.
- b. The fact this project is of limited construction duration and requires an expedited construction schedule for completion after award.
- c. It is reasonable to expect material manufacturers may have limited production capacity and schedule opportunities. Requests to extend the Contract Time or claims for delays in completion due in part or in whole to providing the specified materials shall not be considered.
- d. Bidder shall put forth the necessary level of effort required to achieve the substantial completion date and to complete all Work within the specified Contract Time, and shall include the costs of this effort in the Bid.
- e. Liquidated damages are included in this Contract.
- f. In regard to any taxes applicable to the project, the Contractor shall acquire a copy of form ST-120.1 from the NYS Department of Taxation and Finance and follow accordingly.
- g. The Owner reserves the right to accept alternative bid items, if any, in any order or combination, unless otherwise specifically provided in the Bidding Documents. If the Contract is to be awarded, it will be awarded to the lowest responsive/responsible Bidder who demonstrates the work experience and project management qualifications, meets all the terms of the Contract Documents, and offers the lowest cost on the basis of the sum of the Base Bid and the Alternates accepted, where evaluation by the Owner indicates to the Owner that award will be in the best interest of the project.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

- h. Because bids and offers can at time be ambiguous, in its solicitation documents, the City reserves the right to request additional information before making an award. The City also reserves the right to seek clarification from any bidder or offeror about any statement in its bid or proposal that the City finds ambiguous.
- i. Final payment or release of retainage will be made to the Contractor upon completion of all services, submission of reports, as-built drawings, bonds, guarantees and approval of same by the Owner.

Bidder hereby agrees to commence work under this contract in accordance Article 3 - Contract Time and Performance of the Agreement, with completion in accordance with the Contract Term limits specified:

Substantial Completion within **250 consecutive calendar days** of the date fixed in the Notice to Proceed.

Completion and readiness for final payment within **310 consecutive calendar days** of the date fixed in the Notice to Proceed.

The Bidder shall schedule the construction duration within the period of time between the Notice to Proceed and the completion dates referenced, and shall be expected to put forth the necessary level of effort required to achieve the completion dates so established and shall include the costs of this effort in the Bid.

In accordance with the Article 3 of the Agreement, the Contractor shall pay liquidated damages for each calendar day after the **substantial completion** date that Contractor requires to achieve substantial completion of the work. Damages shall continue to be assessed until, in the opinion of the Owner, the project is ready for its intended use. The Contractor shall also pay liquidated damages for each calendar day after the final completion date the Contractor requires to achieve completion and readiness for final payment.

The Bidder shall submit a Unit Price Bid for all the work in this Contract that is being awarded on a unit price bid basis. On the following pages, the Bidder shall break down the Unit Price Bid by each item listing the unit bid price and extension by which the Bidder arrived at the Unit Price Bid. These items are probable quantities provided to the Bidder and are to be considered approximate only. The Owner does not expressly or by implication agree the actual quantities will correspond therewith and reserves the right to increase or decrease any quantity or to eliminate any quantity as the Owner may deem necessary. The Bidder shall be satisfied as to the accuracy of these quantities prior to submitting the Bid. The unit bid prices will be used to negotiate Change Orders should the Owner desire to modify the Scope of the project.

The Owner will award the contract for the proposed improvements to the Bidder submitting the lowest acceptable bid in accordance with the Contract Documents.

SECTION 00405 - UNIT PRICE BID LIST
ITHACA COMMONS REPAIR AND UPGRADE CONTRACT 3 - SURFACE IMPROVEMENTS

BID PROPOSAL

Brought Forward \$

ITEM NO.	ITEM WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT	QTY	UNIT BID PRICE	AMOUNT BID
N/A	Provide labor, materials and equipment for all work shown in the Contract Documents that is not included in the Unit Price Work. Includes mobilization and demobilization. For _____ Dollars and _____ Cents	ls	1	\$ _____	\$ _____
020800.01	Remove 12" to 18" ACP Pipe (Including Excavation and Backfill) For _____ Dollars and _____ Cents	lf	765	\$ _____	\$ _____
033000.01	Ductbank Concrete Encasement - Telcom For _____ Dollars and _____ Cents	cy	165	\$ _____	\$ _____
221113.0004	4" Ductile Iron Pipe Water Main Class 52 (Including Polyethylene Encasement, Excavation, and Backfill) For _____ Dollars and _____ Cents	lf	75	\$ _____	\$ _____
221113.0006	6" Ductile Iron Pipe Water Main Class 52 (Including Polyethylene Encasement, Excavation, and Backfill) For _____ Dollars and _____ Cents	lf	20	\$ _____	\$ _____
221113.1401	New 0.75" Copper Water Service (Including Excavation and Backfill) For _____ Dollars and _____ Cents	lf	25	\$ _____	\$ _____

BF -1

Carry Forward \$

SECTION 00405 - UNIT PRICE BID LIST
ITHACA COMMONS REPAIR AND UPGRADE CONTRACT 3 - SURFACE IMPROVEMENTS

BID PROPOSAL

Brought Forward \$

ITEM NO.	ITEM WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT	QTY	UNIT BID PRICE	AMOUNT BID
221113.1402	New 1.00" Copper Water Service (Including Excavation and Backfill) For _____ Dollars and _____ Cents	lf	50	\$ _____	\$ _____
221113.1404	New 1.50" Copper Water Service (Including Excavation and Backfill) For _____ Dollars and _____ Cents	lf	50	\$ _____	\$ _____
221113.1405	New 2.00" Copper Water Service (Including Excavation and Backfill) For _____ Dollars and _____ Cents	lf	45	\$ _____	\$ _____
221113.26	Yard Hydrant (Including Excavation and Backfill) For _____ Dollars and _____ Cents	ea	13	\$ _____	\$ _____
221113.3	Adjust Existing Water Valve Box to Grade (Including Excavation and Backfill) For _____ Dollars and _____ Cents	ea	70	\$ _____	\$ _____
221113.4	Adjust Existing Curb Box to Grade (Including Excavation and Backfill) For _____ Dollars and _____ Cents	ea	40	\$ _____	\$ _____

SECTION 00405 - UNIT PRICE BID LIST
ITHACA COMMONS REPAIR AND UPGRADE CONTRACT 3 - SURFACE IMPROVEMENTS

BID PROPOSAL

Brought Forward \$

ITEM NO.	ITEM WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT	QTY	UNIT BID PRICE	AMOUNT BID
221113.5	Cored Penetration of Existing Building for 0.75 to 2" Water Service (Including Excavation and Backfill) For _____ Dollars and _____ Cents	ea	18	\$ _____	\$ _____
221113.6	Cored Penetration of Existing Building for 4" to 6" Water Service (Including Excavation and Backfill) For _____ Dollars and _____ Cents	ea	12	\$ _____	\$ _____
221113.7	Connect New 1" to 2" Water Service to Existing Internal Water Piping (Including meter setter and meter, meter provided by City) For _____ Dollars and _____ Cents	ea	5	\$ _____	\$ _____
260543.0207	4" Sched 40 PVC Conduit, For Concrete Encasement - Telcom (Including Excavation and Backfill; Concrete Paid Separately) For _____ Dollars and _____ Cents	lf	1,210	\$ _____	\$ _____
260543.0407	4" Sched 40 PVC Conduit, Bedded in Sand - Telcom (Including Excavation, Sand Bedding, and Backfill) For _____ Dollars and _____ Cents	lf	2,100	\$ _____	\$ _____
260543.0607	4" GRC Conduit, Bedded in Sand - Telcom (Including Excavation, Sand Bedding, and Backfill) For _____ Dollars and _____ Cents	lf	910	\$ _____	\$ _____

SECTION 00405 - UNIT PRICE BID LIST
ITHACA COMMONS REPAIR AND UPGRADE CONTRACT 3 - SURFACE IMPROVEMENTS

BID PROPOSAL

Brought Forward \$

ITEM NO.	ITEM WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT	QTY	UNIT BID PRICE	AMOUNT BID
260543.2	Cored Penetration of Existing Building for 4" Telcom Service (Including Excavation and Backfill) For _____ Dollars and _____ Cents	ea	90	\$ _____	\$ _____
260545.125	1 1/4" Conduit Innerduct For _____ Dollars and _____ Cents	lf	16,000	\$ _____	\$ _____
312500.01	Erosion and Sediment Control For _____ Dollars and _____ Cents	ls	1	\$ _____	\$ _____
321216.01	Temporary Pavement For _____ Dollars and _____ Cents	sf	4,000	\$ _____	\$ _____
321216.03	Asphalt Pavement Restoration For _____ Dollars and _____ Cents	sf	3,300	\$ _____	\$ _____
330513.03	Adjust Existing Sanitary, Storm, or Telcom Manhole Frame and Cover (Including Excavation and Backfill) For _____ Dollars and _____ Cents	ea	20	\$ _____	\$ _____

SECTION 00405 - UNIT PRICE BID LIST
ITHACA COMMONS REPAIR AND UPGRADE CONTRACT 3 - SURFACE IMPROVEMENTS

BID PROPOSAL

Brought Forward \$

ITEM NO.	ITEM WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT	QTY	UNIT BID PRICE	AMOUNT BID
334100.0112	SICPP Pipe, Silt Tight, 12" Dia (Including Excavation and Backfill) For _____ Dollars and _____ Cents	lf	50	\$ _____	\$ _____
334100.0304	Polyvinyl Chloride Pipe Storm Lateral, SDR-35, 4" Dia (Including Excavation and Backfill) For _____ Dollars and _____ Cents	lf	90	\$ _____	\$ _____
334100.0306	Polyvinyl Chloride Pipe Storm Lateral, SDR-35, 6" Dia (Including Excavation and Backfill) For _____ Dollars and _____ Cents	lf	310	\$ _____	\$ _____
334100.0308	Polyvinyl Chloride Pipe Storm Lateral, SDR-35, 8" Dia (Including Excavation and Backfill) For _____ Dollars and _____ Cents	lf	42	\$ _____	\$ _____
334100.04	4" Storm Cleanout (Including Excavation and Backfill) For _____ Dollars and _____ Cents	ea	7	\$ _____	\$ _____
334100.0401	Adjust Existing Cleanout Riser, Frame, and Cover to Grade (Including Excavation and Backfill) For _____ Dollars and _____ Cents	ea	11	\$ _____	\$ _____

BF -5

Carry Forward \$

SECTION 00405 - UNIT PRICE BID LIST
ITHACA COMMONS REPAIR AND UPGRADE CONTRACT 3 - SURFACE IMPROVEMENTS

BID PROPOSAL

Brought Forward \$

ITEM NO.	ITEM WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT	QTY	UNIT BID PRICE	AMOUNT BID
334100.0501	Concrete Catch Basin, (24" x 24"), Frame, and Grate (Including Excavation and Backfill) For _____ Dollars and _____ Cents	ea	2	\$ _____	\$ _____
334100.0502	Concrete Catch Basin (24" x 32" -NYSDOT Type S), Frame, and Grate (Including Excavation and Backfill) For _____ Dollars and _____ Cents	ea	2	\$ _____	\$ _____
334100.06	Adjust Existing Catch Basin Frame and Grate to Grade (Including Excavation and Backfill) For _____ Dollars and _____ Cents	ea	7	\$ _____	\$ _____
334100.08	Catch Basin Frame and Grate/Cover (Including Excavation and Backfill) For _____ Dollars and _____ Cents	ea	3	\$ _____	\$ _____
334100.12	Abandon Existing Storm Sewer In Place with CLSM (Including Excavation and Backfill) For _____ Dollars and _____ Cents	cy	60	\$ _____	\$ _____
260010.2	Demolition of Existing Lighting System For _____ Dollars and _____ Cents	ls	1	\$ _____	\$ _____

SECTION 00405 - UNIT PRICE BID LIST
ITHACA COMMONS REPAIR AND UPGRADE CONTRACT 3 - SURFACE IMPROVEMENTS

BID PROPOSAL

Brought Forward \$

ITEM NO.	ITEM WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT	QTY	UNIT BID PRICE	AMOUNT BID
260010.3	Temporary Lighting System (Installation and Removal) For _____ Dollars and _____ Cents	ls	1	\$ _____	\$ _____
TOTAL AMOUNT OF BID - (TOTAL OF ALL FIGURES IN AMOUNT BID COLUMN)				\$	
TOTAL AMOUNT OF BID IN WORDS:					

SECTION 00405 - UNIT PRICE BID LIST
ITHACA COMMONS REPAIR AND UPGRADE CONTRACT 3 - SURFACE IMPROVEMENTS

BID PROPOSAL

Brought Forward \$

ITEM NO.	ITEM WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT	QTY	UNIT BID PRICE	AMOUNT BID
----------	---	------	-----	----------------	------------

THIS PAGE LEFT INTENTIONALLY BLANK

SECTION 00405 - UNIT PRICE BID LIST
ITHACA COMMONS REPAIR AND UPGRADE CONTRACT 3 - SURFACE IMPROVEMENTS

BID PROPOSAL

Brought Forward \$

ITEM NO.	ITEM WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT	QTY	UNIT BID PRICE	AMOUNT BID
33000.01	Ductbank Concrete Encasement - Electric For _____ Dollars and _____ Cents	cy	330	\$ _____	\$ _____
260010.1	Connect to Existing Electric Network For _____ Dollars and _____ Cents	ea	4	\$ _____	\$ _____
260519.02	#250 KCMILS Conductor (Including Misc Equipment, Connections, and Splicing) For _____ Dollars and _____ Cents	lf	200	\$ _____	\$ _____
260519.04	#4/0 Conductor (Including Misc Equipment, Connections, and Splicing) For _____ Dollars and _____ Cents	lf	1,980	\$ _____	\$ _____
260519.06	#6 Conductor (Including Misc Equipment, Connections, and Splicing) For _____ Dollars and _____ Cents	lf	40	\$ _____	\$ _____
260519.08	#8 Conductor (Including Misc Equipment, Connections, and Splicing) For _____ Dollars and _____ Cents	lf	5,605	\$ _____	\$ _____

SECTION 00405 - UNIT PRICE BID LIST
ITHACA COMMONS REPAIR AND UPGRADE CONTRACT 3 - SURFACE IMPROVEMENTS

BID PROPOSAL

Brought Forward \$

ITEM NO.	ITEM WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT	QTY	UNIT BID PRICE	AMOUNT BID
260519.1	#250 KCMILS Conductor (Including Misc Equipment, Connections, and Splicing) For _____ Dollars and _____ Cents	If	117,105	\$ _____	\$ _____
260519.12	#12 Conductor (Including Misc Equipment, Connections, and Splicing) For _____ Dollars and _____ Cents	If	425	\$ _____	\$ _____
260533.01	Bollard Electric Components For _____ Dollars and _____ Cents	ea	17	\$ _____	\$ _____
260543.0201	3/4" Sched 40 PVC Conduit, For Concrete Encasement (Including Excavation and Backfill; Concrete Paid Separately) For _____ Dollars and _____ Cents	If	3,995	\$ _____	\$ _____
260543.0202	1" Sched 40 PVC Conduit, For Concrete Encasement (Including Excavation and Backfill; Concrete Paid Separately) For _____ Dollars and _____ Cents	If	4,600	\$ _____	\$ _____
260543.0203	1 1/4" Sched 40 PVC Conduit, For Concrete Encasement (Including Excavation and Backfill; Concrete Paid Separately) For _____ Dollars and _____ Cents	If	6,200	\$ _____	\$ _____

SECTION 00405 - UNIT PRICE BID LIST
ITHACA COMMONS REPAIR AND UPGRADE CONTRACT 3 - SURFACE IMPROVEMENTS

BID PROPOSAL

Brought Forward \$

ITEM NO.	ITEM WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT	QTY	UNIT BID PRICE	AMOUNT BID
260543.0205	2" Sched 40 PVC Conduit, For Concrete Encasement (Including Excavation and Backfill; Concrete Paid Separately) For _____ Dollars and _____ Cents	lf	5,560	\$ _____	\$ _____
260543.0206	2 1/2" Sched 40 PVC Conduit, For Concrete Encasement (Including Excavation and Backfill; Concrete Paid Separately) For _____ Dollars and _____ Cents	lf	505	\$ _____	\$ _____
260543.0207	4" Sched 40 PVC Conduit, For Concrete Encasement (Including Excavation and Backfill; Concrete Paid Separately) For _____ Dollars and _____ Cents	lf	40	\$ _____	\$ _____
260543.0401	3/4" Sched 40 PVC Conduit, Bedded in Sand (Including Excavation, Sand Bedding, and Backfill) For _____ Dollars and _____ Cents	lf	1,260	\$ _____	\$ _____
260543.0402	1" Sched 40 PVC Conduit, Bedded in Sand (Including Excavation, Sand Bedding, and Backfill) For _____ Dollars and _____ Cents	lf	490	\$ _____	\$ _____
260543.0403	1 1/4" Sched 40 PVC Conduit, Bedded in Sand (Including Excavation, Sand Bedding, and Backfill) For _____ Dollars and _____ Cents	lf	290	\$ _____	\$ _____

SECTION 00405 - UNIT PRICE BID LIST
ITHACA COMMONS REPAIR AND UPGRADE CONTRACT 3 - SURFACE IMPROVEMENTS

BID PROPOSAL

Brought Forward \$

ITEM NO.	ITEM WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT	QTY	UNIT BID PRICE	AMOUNT BID
260543.1	Handhole, 17" x 30" x 24"d For _____ Dollars and _____ Cents	ea	46	\$ _____	\$ _____
260543.2	Handhole, 30" x 48" x 24"d For _____ Dollars and _____ Cents	ea	7	\$ _____	\$ _____
262816.0102	Electric Utility Enclosure, Complete - Cayuga Street For _____ Dollars and _____ Cents	ls	1	\$ _____	\$ _____
262816.0104	Electric Utility Enclosure, Complete - Bank Alley For _____ Dollars and _____ Cents	ls	1	\$ _____	\$ _____
262816.0106	Electric Utility Enclosure, Complete - Aurora Street For _____ Dollars and _____ Cents	ls	1	\$ _____	\$ _____
262816.0108	Electric Utility Enclosure, Complete - Stage For _____ Dollars and _____ Cents	ls	1	\$ _____	\$ _____

SECTION 00405 - UNIT PRICE BID LIST
ITHACA COMMONS REPAIR AND UPGRADE CONTRACT 3 - SURFACE IMPROVEMENTS

BID PROPOSAL

Brought Forward \$

ITEM NO.	ITEM WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT	QTY	UNIT BID PRICE	AMOUNT BID
262816.2	Snakehead Box For _____ Dollars and _____ Cents	ea	2	\$ _____	\$ _____
699.040001	Mobilization (in Conformance with NYSDOT Section 699) For _____ Dollars and _____ Cents	1	ls	\$ _____	\$ _____
TOTAL AMOUNT OF BID - (TOTAL OF ALL FIGURES IN AMOUNT BID COLUMN)				\$ _____	
TOTAL AMOUNT OF BID IN WORDS:					

SECTION 00405 - UNIT PRICE BID LIST
ITHACA COMMONS REPAIR AND UPGRADE CONTRACT 3 - SURFACE IMPROVEMENTS

BID PROPOSAL

Brought Forward \$

ITEM NO.	ITEM WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT	QTY	UNIT BID PRICE	AMOUNT BID
----------	---	------	-----	----------------	------------

THIS PAGE LEFT INTENTIONALLY BLANK

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00410
SUPPLEMENT A
BID PROPOSAL**

PROJECT IDENTIFICATION: **ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS
CP# 724**

THIS BID IS SUBMITTED TO: City of Ithaca Department of Public Works
108 East Green Street
Ithaca, New York 14850

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

2. BIDDER accepts all of the terms and conditions of the Advertisement for Bids, the Instructions to Bidders, and its supplement, if any, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for forty-five days after the day of Bid opening. BIDDER will sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements as indicated in the Instruction to Bidders.

3. In submitting this Bid, BIDDER represents and certified, as more fully set forth in the Agreement, that:

- a. BIDDER has examined copies of all the Contract Documents and of the following addenda, receipt of all which is hereby acknowledged:

Addendum Date

Addendum Number

b. BIDDER has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

c. BIDDER has studied carefully all reports and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions; as provided in paragraph 4.2 of the General Conditions.

d. BIDDER has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies (in addition to or to supplement those referred to in (C) above) which pertain to the subsurface or physical

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

conditions at the site or otherwise may affect the cost, progress, performance or furnishing of the Work as BIDDER considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Document, including specifically the provisions of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, exploration, test, reports or similar information or data are, or will be required by BIDDER for such purposes.

e. BIDDER has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, test, reports of similar information or data in respect of said Underground Facilities are or will be required by BIDDER in order to perform and furnish the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3 of the General Conditions.

f. BIDDER has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

g. BIDDER has given OWNER written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by OWNER is acceptable to BIDDER.

h. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.

4. BIDDER agrees that the work under this contract shall be substantially complete within 270 consecutive calendar days of the date fixed in the NOTICE TO PROCEED, and complete and ready for final payment in accordance with Article 14 of the General Conditions within 330 consecutive calendar days of the date fixed in the NOTICE TO PROCEED. The BIDDER accepts the provisions in the Agreement as to liquidated damages.

5. The following documents are submitted with and made a condition of this Bid:

- a. Bid Proposal (Supplement A);
- b. Required Bid security as outlined in Instructions to Bidders (Supplement B);
- c. Required Bidder's Qualification Statement (Supplement C);
- d. Non-Collusive Bidding Certification (Supplement D);
- e. List of Subcontractors (Supplement E);
- f. Indemnification Agreement (Supplement F);
- g. Disclosure of Lobbying Activities (Supplement H);
- h. Disadvantaged Business Enterprise Utilization Requirements (Supplement I);
- i. Iran Energy Divestment Certification (Supplement J);
- j. Buy America Certification (Supplement K);

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

- k. Federal Transit Administration Certifications and Assurances (Supplement L);
- l. MWBE and EEO Policy Statement (Section 00830, Exhibit H-1);
- m. Staffing Plan (Section 00830, Exhibit H-2);
- n. MWBE Utilization Plan (Section 00830, Exhibit H-4).

6. Suspension and Debarment : By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

- a. The certification in this clause is a material representation of fact relied upon by City of Ithaca. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to City of Ithaca, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- b. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer.
- c. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7. Estimated Quantities

- a. The Bidder agrees that the estimated quantities given in the bid are only for the purpose of comparing bids and that the Bidder is satisfied with and will at no time dispute the estimates as a means of comparing the aforesaid bids, that the Bidder will make no claim for loss of profits or anticipated profits because of any difference between the estimated quantities and the quantities of the various classes of work actually furnished or performed, that the Owner not be held responsible if any of the estimated quantities should be found to not even approximate those actually measured during performance of the work, and the engineer may direct an increase, decrease or omission of the quantities of any class or part of the work as may be deemed necessary or desirable. The Bidder is advised that in the event of an overrun and/or underrun in the estimated unit price quantities contained in the bid, the unit price of that respective item will be used for payment.

8. Bid Proposal. This Bid is submitted for the _____ prime contract.

- a. Lump Sum (General Construction prime contract Bids only). Bidder shall complete the Lump Sum Work in accordance with the Contract Documents for the prime contract specified above for the **ITHACA COMMONS REPAIR & UPGRADE PROJECT, CONTRACT #3 – SURFACE IMPROVEMENTS** on, or before, the dates specified in the Contract Documents for the total Lump Sum Base Bid amount of:

Write out in words

Write out in dollar figures

- b. Unit Price (All Bids). Bidder shall complete the Unit Price Work in accordance with the Contract Documents for the prime contract specified above for the **ITHACA COMMONS REPAIR & UPGRADE PROJECT, CONTRACT #3 – SURFACE IMPROVEMENTS** on, or before, the dates specified in the Contract Documents for the Unit Prices listed on attached

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

document, **Section 0405 Unit Price Bid List**, and for the total estimated Unit Price Base Bid sum of:

Write out in words

Write out in dollar figures

c. Alternates (General Construction prime contract Bids only). Indicate in the spaces provided below the amount to be deducted from the Lump Sum Base Bid if each of the following alternates as described in the Contract Documents are accepted by the Owner.

Include in the amount of each alternate all labor, materials, overhead and profit, modification of work specified in the Contract Documents, and additional work required under your scope of work that may be required by acceptance of the alternate.

Include a bid amount for all alternates with lump sum work applicable under your scope of work.

Refer to Instructions to Bidders, Bid Item Description, and Section 01000 General Provisions for additional information regarding the alternates.

ALTERNATE NO. 1: Delete Bernie Milton Pavilion

Deduct _____

Write out in words

Write out in dollar figures

ALTERNATE NO. 2: Delete Gateway 1 & 2

Deduct _____

Write out in words

Write out in dollar figures

ALTERNATE NO. 3: Delete Water Feature

Deduct _____

Write out in words

Write out in dollar figures

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

9. This Bid is submitted by:

If BIDDER is: An individual

By _____
(Individual's Signature)

Name (typed or printed): _____

Doing business as: _____

If BIDDER is: A Partnership

by _____
(Partnership Name)

(Signature of General Partner – attach evidence of authority to sign)

Name (typed or printed): _____

If BIDDER is: A Corporation

by _____
(Corporation Name) (Seal)

(State of Incorporation)

by _____
(Signature – attach evidence of authority to sign)

Name (typed or printed): _____

(Title) (Corporate Seal)

Attest _____
(Secretary)

Date of Qualification to do business in New York is ____ / ____ / ____

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

If BIDDER is: A Joint Venture

Name of Joint Venture: _____

First Joint Venture Name: _____ (SEAL)

by _____
(Signature – attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Second Joint Venture Name: _____ (SEAL)

by _____
(Signature – attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above).

Following to be completed by all Bidders:

Bidder's Business Address: _____

Phone No.: _____

Fax No.: _____

E-mail: _____

SUBMITTED ON: _____, 20____

State Contractor License No.: _____
(if applicable)

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00420
SUPPLEMENT B**

**STATEMENT OF SURETY'S INTENT TO PROVIDE PERFORMANCE, LABOR AND MATERIAL,
AND MAINTENANCE BONDS FOR THE PROJECT**

To: _____
(Owner)

We _____ have reviewed the Bid of _____
(Name of Insurance Company) (Contractor)

of _____
(Address)

for _____
(Project)

Bids for which will be received on _____ and wish to advise
(Bid Opening Date)

that should this Bid of the Contractor be accepted and the Contract awarded to them, it is our present intention to become surety on the performance bond, labor and material bond, and maintenance bond required by the Contract.

Any arrangement for the bonds required by the Contract is a matter between the Contractor and ourselves and we assume no liability to you or third parties if for any reason we do not execute the requisite bonds.

We are duly authorized to do business in the State of New York.

Attest: _____
(Name of Company)

By: _____
Surety's Authorized Signature(s)
(in blue or other non-black ink)

(Printed Name)

(Title)

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

PAGE INTENTIONALLY LEFT BLANK

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00430
SUPPLEMENT C
STATEMENT OF BIDDER'S QUALIFICATIONS
PROOF OF COMPETENCY**

The submission of this signed and notarized form is a requirement of the Bidding Documents. All items must be answered and the data given must be clear and comprehensive. Failure to provide the requested information or to answer these questions in a complete and satisfactory manner may result in the rejection of the bid. Submittal of incomplete, non-specific or vague responses to the statement of bidder qualifications is not in the bidder's favor and may result in the rejection of the bid. The Contractor may also submit the New York State Vendor Responsibility Questionnaire for Profit Construction (CCA-2) in place of this questionnaire.

The Owner reserves the right to reject any bidder who, in the judgment of the Owner, and based on a review of the information provided by the Bidder on the Qualifications forms provided herein, is determined not to be qualified to perform the work of the Contract as specified. The Owner's decisions regarding rejection of any bid, based on the bidder's descriptive qualifications submitted with the bid, shall be final.

If necessary, questions may be answered on separate attached sheets. The Owner reserves the right to, but is not obligated to, solicit additional clarifying information from the bidder.

1. Name and permanent address of Bidder.

2. Permanent main office telephone number, facsimile number and Federal I.D. number.

Ph: () _____ - _____

Fx: () _____ - _____

Federal or Tax I.D. No.

3. When organized.

4. If a corporation, where incorporated.

5. Number of years engaged in the contracting business under your present firm or trade name.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

6. Were you ever engaged in the contracting business under a previous firm or trade name? If so, what name and number of years engaged in the contracting business under a previous firm or trade name?
7. Amount of credit available for this project:
8. Bank references:
9. General character of work performed by your company.
10. List your major equipment made available for this contract.
11. Have you ever failed to meet substantial or final contract completion dates? If so, where and why?
_____ No
_____ Yes ... Explain:
12. Have you required an extension in the Contract Time? If so, on which project and why?
_____ No
_____ Yes ... Explain:
13. Have you ever failed to complete any work awarded to you? If so, where and why?
_____ No
_____ Yes ... Explain:
14. Have you ever defaulted on a contract? If so, where and why?
_____ No
_____ Yes ... Explain:
15. Have you ever had a (Sub-Contractor / Vendor / Supplier) place a lien against you on a Contract?
_____ No
_____ Yes ... Explain:

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

16. Have you ever had a judgment or court order entered against you for non-payment?
_____ No
_____ Yes ... Explain:
17. Contracts on hand: (Indicate Contract; Owner; Project Reference with name, position and telephone number; schedule of completion for each including contract start and completion dates; contract amounts; specific types and character of work; anticipated dates of completion.)
a)
b)
c)
18. Based on your Contracts on hand, provide a brief graphical construction progress schedule indicating the critical milestone events of the remaining contracted work, dates for completion of Contracts, and the anticipated schedule required to complete this Contract.
19. List a minimum of three of the more important projects recently completed by your company. (Indicate Contract; Owner; Project Reference with name, position and telephone number; schedule of completion for each including contract start and completion dates; contract amounts; specific types, character and scope of work.)
a)
b)
c)
20. List a minimum of three projects which are directly applicable to the types, character and scope of work as specified for this project that your company has completed. (Indicate Contract; Owner; Project Reference with name, position and telephone number; schedule of completion for each including contract start and completion dates; contract amounts; specific examples of the applicable types and character of work.)
a)
b)
c)
21. Describe previous work experience with the City of Ithaca. (Indicate Contract; Project Reference; contract start and completion dates; contract amounts; specific type and character of work.)
a)
b)
c)

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

22. List all Subcontractors who are to furnish principal items of labor, equipment and materials for the proposed work. (Indicate the name of the subcontractor, percentage of work to be performed, specific type and character of work to be performed.)
- a) _____ %
 - b) _____ %
 - c) _____ %
23. List the background and experience of the principal members of your organization, including officers and principal construction management staff.
- a)
 - b)
 - c)
24. In accordance with Article 3 - Contract Time and Performance of the Agreement, the project shall generally commence progress in accordance with the following Construction Phase Schedule, with Completion in accordance with the Contract Term limits specified:
- Substantial Completion on/within **250 consecutive calendar days** of the date fixed in the Notice to Proceed.
- Complete and ready for final payment in accordance with Article 14 of the General Conditions within **310 consecutive calendar days** of the date fixed in the Notice to Proceed.
25. The Contractor shall schedule construction duration within the period of time between the Notice of Award and the completion dates referenced. The Contractor shall file for dispensation with NYSDOL for overtime required to complete the work within the proposed construction duration, and include the cost of said overtime in the Bid.
26. Per Safety and Health Procedure 1.11, Contractor shall submit, in writing, as part of this bid, the following documents or certifications:
- a) A certified summary of the Contractor's worker's compensation experience modification rate (EMR), the OSHA recordable incidence rate, and the OSHA DART rate for the past 3-years.
 - b) A written comprehensive safety and health plan covering the safety and health process used by the Contractor, responsibilities for safety, any program-specific written plans required by OSHA (such as Hazard Communication, Lockout/Tagout, PPE, electrical safety, blood borne pathogens, confined space entry, hot work, fall protection, excavation safety, emergency response, etc.), and a safety plan for the project being bid.
 - c) Certification that all employees to be used on the job or contract will have satisfactorily completed the OSHA ten-hour construction safety program, or equivalent, before they begin work. Course completion cards must be carried by all individuals while on the City of Ithaca

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

contract and they must present the cards for verification by City staff or designated agents, when asked.

Bidder is required to furnish in this bidder's qualifications statement, evidence satisfactory to the Owner to demonstrate that he has sufficient means and experiences in each type of work called for to assure completion of the contract in a timely and satisfactory manner.

The bidder hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the City of Ithaca, in verification of the information comprising this Statement of Bidders Qualifications.

Seal: (If firm is a Corporation)

Firm

Address

City

State

ZIP

Name and title of signer

Signature

(in blue or other non-black ink)

Date

Notary Public

Date

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

PAGE INTENTIONALLY LEFT BLANK

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00440
SUPPLEMENT D
NON-COLLUSIVE BIDDING CERTIFICATION**

Required by section 103-d of the General Municipal Law

By submission of this bid or proposal, the bidder certifies that: (a) this bid or proposal has been independently arrived at without collusion with any other bidder or with any competitor or potential competitor; (b) this bid or proposal has not been knowingly disclosed, prior to the opening of bids or proposal; (c) no attempt has been or will be made to induce any other persons, partnership or corporation to submit or not to submit a bid or proposal; (d) the person signing this bid or proposal certifies that s/he has fully informed her/himself regarding the accuracy of the statement contained in this certification, and under the penalties of perjury, affirms the truth thereof, such penalties being applicable to the bidder as well as the person signing on its behalf; and, (e) that attached hereto (if a corporate bidder) is a certified copy of resolution authorizing the execution of this certificate by the signatory of this bid or proposal on behalf of the corporate bidder.

(Signature of Individual Signing Bid)

Resolved that _____
(Signature of Individual Signing Bid)

be authorized to sign and submit the bid or proposal of this corporation for the following project:

(Description of Project)

and to include in such bid or proposal the certificate as to non-collusion required by section 103-d of the General Municipal Law as the act and deed of such corporation, and for any inaccuracies or misstatements in such certificate this corporate bidder shall be liable under penalty of perjury.

The foregoing is a true and correct copy of the resolution adopted by

corporation at a meeting of its board of directors held on the _____ day of _____,
20____.

(Secretary)

(Seal of the Corporation)

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

PAGE INTENTIONALLY LEFT BLANK

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00450
SUPPLEMENT E
LIST OF SUBCONTRACTORS**

Project: ITHACA COMMONS REPAIR & UPGRADE PROJECT, CONTRACT #3 – SURFACE IMPROVEMENTS
Sponsor: City of Ithaca

List anticipated Subcontractors, Suppliers and Material Sources to be used for this Project. OWNER has the right to reject any entities submitted. Alternates must be submitted for approval by OWNER prior to their involvement with the project.

With this chart, Bidder must submit written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal and written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.

Subcontractor	Address	Phone #	M/WBE Status	DBE Status	Work Items	% of Project to be completed by Subcontractor	Dollar Amount

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

MATERIAL SUPPLIERS:

Supplier/ Material Source	Address	DOT Approved	M/WBE Status	DBE Status	Items to be Supplied	Dollar Amount

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00460
SUPPLEMENT F
INDEMNIFICATION AGREEMENT**

The Contractor agrees:

- (a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the City, the Contractor agrees to indemnify and hold harmless the City of Ithaca, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Contractor or third parties under the direction or control of the Contractor; and
- (b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of the Agreement and to bear all other costs and expenses related thereto.

Signature of Representative of Firm or Corporation:
(in blue or other non-black ink)

Date:

Name of Firm:

Mailing Address:

City, State, Zip Code:

Subscribed and sworn before me

This _____ day of _____ 20__

Title _____

My commission expires _____

NOTE: If Bidder is a Corporation, the corporate name and title of officer signing must be stated.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

PAGE INTENTIONALLY LEFT BLANK

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00470
SUPPLEMENT G
NON-BIDDER'S RESPONSE**

For purposes of maintaining accurate Bidders list and facilitating your firm's response to our invitation for bid, the Owner is interested in ascertaining reasons for prospective Bidders' failure to respond to invitations for bids. If your firm is not responding to this bid, please indicate the reason(s) by checking any appropriate item(s) below and returning this form to the Office of Engineering, 108 East Green Street, Ithaca, NY, 14850 or email mkuo@cityofithaca.org.

Failure to either submit a bid proposal or return this form will result in removal of your firm's name from our Bidders list. Thank you for your cooperation.

We are not responding to this invitation for bid for the following reason(s):

- ☐ General character and scope of work not performed by our company.
- ☐ Project too large in scope for our company.
- ☐ Project too small in scope for our company.
- ☐ Current project workload would not facilitate addition of another project at this time.
- ☐ Specifications not clearly understood or applicable (too vague, too rigid, etc.)
- ☐ Insufficient time allowed for preparation of bid.
- ☐ Other reason(s): _____
- _____
- ☐ We are unable to bid at this time but would like to continue _____ to receive invitations for bids.
- ☐ We are unable to bid and wish to be removed from the bidders list.
- ☐ Incorrect address used.

Signature of Representative of Firm or Corporation:
(in blue or other non-black ink)

Date:

Name of Firm:

Mailing Address:

City, State, Zip Code:

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

PAGE INTENTIONALLY LEFT BLANK

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00480
SUPPLEMENT H**

CERTIFICATION REGARDING LOBBYING AND DISCLOSURE OF LOBBYING ACTIVITIES

The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq .)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Date

Name and Title of Contractor's Authorized Official

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001".
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code for the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the Federal covered action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form; print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB Control Number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington D.C. 2050

CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 (See reverse for public burden disclosure.)

1. Type of Federal Action:		2. Status of Federal Action:		3. Report Type:	
a. contract		a. bid/offer/application		a. initial filing	
b. grant c. cooperative agreement d. loan		b. initial award c. post-award		b. material change For Material Change Only: year quarter	
e. loan guarantee				date of last report	
f. loan insurance					
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier , if known:			5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:		
Congressional District, if known:			Congressional District, if known:		
6. Federal Department/Agency:			7. Federal Program Name/Description:		
			CFDA Number, if applicable:		
8. Federal Action Number, if known:			9. Award Amount, if known:		
			\$		
10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):			b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):		
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.			Signature:		
			Print Name:		
			Title:		
			Telephone No.:		
Federal Use Only:					Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

REQUIREMENTS REGARDING LOBBYING ACTIVITIES ON FEDERAL AID CONTRACTS

DISCLOSURE OF LOBBYING ACTIVITIES
Continuation Sheet

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ Of _____

Authorized for Local Reproduction - Standard Form LLL

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00490
SUPPLEMENT I
DISADVANTAGED/ MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE
UTILIZATION REQUIREMENTS**

The Department has established the following Disadvantaged Business Enterprise (DBE) utilization goals for this contract. The goal is expressed as a percentage of the total bid price.

Disadvantaged Business Enterprise Utilization Goal 4.8%

This project also has the following Minority And Women-Owned Business Enterprise (MWBE) utilization goal:

Minority And Women-Owned Business Enterprise Utilization Goal 3.2%

Information related to the current certification status of Disadvantaged/ Minority and Women-Owned Business Enterprises, can be obtained by contacting the:

NYS Department of Transportation
Office of Civil Rights
50 Wolf Road
POD 6-2
Albany, NY 12232
(518) 457-1128 or 457-1129

Disadvantaged Business Enterprise Officer

The Bidder shall designate and enter below the name of a Disadvantaged/ Minority And Women-Owned Business Enterprise Officer who will have the responsibility for and must be capable of effectively administering and promoting an active Disadvantaged/ Minority And Women-Owned Business Enterprise Program and who must be assigned adequate authority and responsibility to do so.

Bidder Designated D/MWBE Officer _____
(Name, Title)

Telephone Number _____

RETURN THIS PAGE WITH BID

1 OF 1

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

THIS PAGE INTENTIONALLY LEFT BLANK

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00495
SUPPLEMENT J
IRAN ENERGY DIVESTMENT CERTIFICATION**

**Attachment “D”
Certification Pursuant to Section 103-g
Of the New York State
General Municipal Law**

- A. By submission of this bid/proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the New York State Finance Law.
- B. A Bid/Proposal shall not be considered for award, nor shall any award be made where the condition set forth in Paragraph A above has not been complied with; provided, however, that in any case the bidder/proposer cannot make the foregoing certification set forth in Paragraph A above, the bidder/proposer shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where Paragraph A above cannot be complied with, the Purchasing Unit to the political subdivision, public department, agency or official thereof to which the bid/proposal is made, or his designee, may award a bid/proposal, on a case by case business under the following circumstances:
1. The investment activities in Iran were made before April 12, 2012, the investment activities in Iran have not been expanded or renewed after April 12, 2012, and the Bidder/Proposer has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran; or
 2. The political subdivision makes a determination that the goods or services are necessary for the political subdivision to perform its functions and that, absent such an exemption, the political subdivision would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

Signature

Title

Date

Company Name

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

PAGE INTENTIONALLY LEFT BLANK

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00500
SUPPLEMENT K
BUY AMERICA CERTIFICATION**

**Buy America Certification Requirement for Procurement
of Steel, Iron, or Manufactured Products**

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

PAGE INTENTIONALLY LEFT BLANK

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00510
SUPPLEMENT I
FEDERAL TRANSIT ADMINISTRATION
CERTIFICATIONS AND ASSURANCES**

**Federal Transit Administration
Certifications and Assurances**

Name of Bidder: _____

Name of Authorized Person: _____

Title of Authorized Person: _____

By endorsing this signature page, _____ (authorized person) declares they are duly authorized to make the certification and assurances on behalf of the Bidder and bind the Bidder to comply with them. When its authorized person signs this document, the Bidder agrees to comply with all Federal statutes, regulations, and executive orders required for Third party Contracts.

The Bidder affirms the truthfulness and accuracy of the certifications and assurances it has made in this statement herein and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801, et seq. apply to any certification, assurance or submission made to the City of Ithaca and the FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances and other statements made by me on behalf of the Bidder are true and correct.

Date

Signature of Authorized Person

State of _____
COUNTY of _____

On this _____ day of _____, 2013, before me came _____, known to me to be the person who executed the foregoing certification, in witness whereof, I set my hand and seal.

Notary Public – signature

(Seal)

My Commission Expires: _____

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE PROJECT
CONTRACT #3 – SURFACE IMPROVEMENTS**

PAGE INTENTIONALLY LEFT BLANK

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

SECTION 00600

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT**

This Agreement is dated the _____ day of _____, in the year _____, by and between **CITY OF ITHACA** (hereinafter called the Owner), and _____ (hereinafter called the Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

- 1.01 Contractor shall complete all Work as specified, described or indicated, in the Contract Documents (plans, drawings and specifications) and acknowledge the conditions set forth as these documents are complete in their description of the work to be performed. The Project for which the Work under the Contract Documents may be the whole or only a part is titled as follows: **ITHACA COMMONS REPAIR & UPGRADE, CONTRACT #3 – SURFACE IMPROVEMENTS, Prime Contract No.**_____.

ARTICLE 2. ENGINEER

- 2.01 The Project has been designed by Sasaki Associates, 64 Pleasant Street, Watertown, Massachusetts 02472, who is hereinafter called Engineer and who is to act as Owner's representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIMES AND PERFORMANCE

3.01 *Time of the Essence*

All time limits for Milestones, if any, Substantial Completion, and Completion (readiness for final payment) as stated in the Contract Documents are of the essence of the Contract. The Contractor shall issue progress report and schedule with each payment request, and as directed by the Engineer and shall inform the Owner immediately of any delay in performance of its obligation under this agreement.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

3.02 *Days to Achieve Substantial Completion and Final Payment*

A. Contractor shall progress the Work as necessary to achieve milestones as specified below:

1. The Work will be substantially completed within 250 consecutive calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 330 consecutive calendar days after the date when the Contract Times commence to run.

3.03 *Liquidated Damages*

A. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 3.02 above, plus any extensions thereof allowed through written amendment in accordance with Article 12 of the General Conditions. Contractor shall pay Owner \$1,000.00 (ONE THOUSAND DOLLARS AND ZERO CENTS) for each calendar day that expires after the time specified in paragraph 3.02 until the Work is substantially complete. In addition, Contractor shall also pay Owner \$1,000.00 (ONE THOUSAND DOLLARS AND ZERO CENTS) for each calendar day that expires after the time specified in paragraph 3.02 for completion and readiness for final payment. Assessed damages will be subtracted from progress payments and/or the final payment.

3.04 *Termination for Convenience*

A. The Owner, upon 30-days notice to the Contractor, may terminate this Agreement in whole or in part when the Owner deems it to be in its best interest. In such event, the Contractor shall be compensated and the Owner shall be liable only for payment for services already rendered under this Agreement prior to the effective date of termination. No other claims for costs, profit or overhead will be considered.

B. In the event of a dispute as to the value of the services rendered by the Contractor prior to the date of termination, it is understood and agreed that the Owner shall determine the value of such services rendered by the Contractor. Such reasonable and good faith determination shall be accepted by the Contractor as final.

3.05 *Termination for Cause*

A. In the event the Owner determines that there has been a material breach by the Contractor of any of the terms of the Agreement and such breach remains uncured for 5-days after service on the Contractor of written notice thereof, the

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

Owner, in addition to any other right or remedy it might have, may terminate this agreement and the Owner shall have the right, power and authority to complete the services provided for in this Agreement, or contract for their completion, and any additional expense of cost of such completion shall be charged to and paid by the Contractor. Notice hereunder shall be effective on the date of mailing.

B. In the event of a dispute as to the value of the services rendered by the Contractor prior to the date of termination, it is understood and agreed that the Owner shall determine the value of such services rendered by the Contractor. Such reasonable and good faith determination shall be accepted by the Contractor as final.

ARTICLE 4. CONTRACT PRICE

4.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraph 5.01.A, below:

A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit. The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in Paragraph 11.04 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities or classifications are to be made by Engineer as provided in Paragraph 9.08 of the General Conditions.

For all Lump Sum Work, unless otherwise changed by Change Order:

_____ \$ _____
(Words) (Figures)

For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in the Unit Price Proposal which shall not exceed the following amount, as also referenced in the Bid Form, unless otherwise changed by Change Order:

_____ \$ _____
(Words) (Figures)

ARTICLE 5. PAYMENT PROCEDURES

5.01 *Submittal and Processing of Payments*

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

5.02 *Progress Payments*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as revised and recommended by Engineer, once each month during performance of the Work as explained below. All such payments will be measured by the schedule of values established in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is not a schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine, or Owner may withhold, including but not limited to liquidated damages, deductions, or fines, in accordance with Article 14 of the General Conditions or this Agreement.

a. 95% of Work completed will be paid.

2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95% of the Work completed, less such amounts as Engineer shall determine in accordance with Section 14 of the General Conditions or this Agreement and less Engineer's estimate of the value of the Work to be completed or corrected, or Owner may withhold.

5.03 *Final Payment*

A. Final payment or release of retainage will be made to the Contractor upon completion of all services, submission of reports, as-built record drawings, bonds, guarantees and approval of same by the Owner.

B. Upon final completion and acceptance of the Work in accordance with Article 14 of the General Conditions, Owner shall pay the remainder of the Contract price (less any liquidated damages, any other deductions or any fines) as recommended by Engineer and approved by the Owner.

ARTICLE 6. INTEREST

6.01 Owner is liable to pay 2% per annum interest on any overdue payments

ARTICLE 7. CONTRACTOR'S REPRESENTATIONS

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

7.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents (including the Addenda list in Paragraph 8) and the other related data identified in the Bidding Documents including “technical data.”

B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, performance or furnishing of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.

D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions, (2) reports and drawings of Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Article 4 of the General Conditions. If applicable, Contractor accepts the determination set forth in the Supplementary Conditions of the extent of the “technical data” contained in such reports and drawings upon which Contractor is entitled to rely as General Conditions. Contractor acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor’s purposes.

E. Contractor acknowledges that Owner and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to underground facilities at or contiguous to the Site.

F. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and underground facilities) at or contiguous to the Site or otherwise which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by the Contractor, and safety precautions and programs incident thereto.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

G. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the contract Price, within the Contract Times and in accordance with the other terms and conditions of the contract Documents.

H. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the contract Documents.

I. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

J. Contractor has given Owner written notice of all conflicts, errors, omissions, quantity miscalculations, missing bid items, incorrect ambiguities or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Owner is acceptable to Contractor.

K. Contractor has incorporated all labor, materials, tools, equipment, support services, signage and any other incidental items or activities necessary to complete the work within the specified bid items and will have no claims that additional bid items are required to complete the Work.

L. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8. CONTRACT DOCUMENT

8.01 Contents

A. The Contract Documents which comprise the entire agreement between Owner and Contractor concerning the Work consist of all or some of the following:

1. This Agreement;
2. Performance, Payment, Maintenance and other Bonds and Insurances, as required;
3. General Conditions;
4. Supplementary Conditions;
5. Construction and Material Specifications;
6. Contract Drawings;
7. Addenda (if any) issued for this contract;
8. Contractor's Bid, including Bid Form, all Supplements, and Unit Price Bid List;

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

9. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:
- a. Notice to Proceed
 - b. Work Change Directives
 - c. Change Orders
 - d. All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.04 of the General Conditions.

B. The documents listed in Paragraph 8.01 above 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 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

ARTICLE 9. MISCELLANEOUS

9.01 Terms used in this Agreement, which are defined in the General Conditions or Supplementary Conditions, shall have the meanings indicated in the General Conditions and Supplementary Conditions.

9.02 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 Owner and Contractor 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.

9.04 All original records compiled by the Contractor in completing the work described in this Agreement, including but not limited to written reports, studies, drawings, blueprints, negatives of photographs, computer printouts, graphs, charts, plans, specifications and all similar recorded data, shall become and remain the property of the Owner. The Contractor may retain copies of such records for its own use.

9.05 Any purported delegation of duties or assignment of rights under this Agreement without the prior express written consent of the Owner is void. The Contractor shall not subcontract any part of the work without the prior written consent of the Owner. All

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

subcontracts shall provide that subcontractors are subject to all terms and conditions set forth in the contract documents. All work performed by a subcontractor shall be deemed work performed by the Contractor.

9.06 The Contractor agrees that it has no interest and will not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the services and duties hereunder. The Contractor further agrees that, in the performance of this Agreement, no person having any such interest shall be employed by it. The Contractor represents and warrants that it has not employed or retained any person, other than a bona fide full time salaried employee working solely for the Contractor to solicit or secure this Agreement, and that it has not paid or agreed to pay any person (other than payments of fixed salary to a bona fide full time salaried employee working solely for the Contractor) any fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, without limiting any other rights or remedies to which the Owner may be entitled or any civil or criminal penalty to which any violator may be liable, the Owner shall have the right, in its discretion, to terminate this Agreement without liability, and to deduct the contract price, or otherwise to recover, the full amount of such fee, commission percentage, gift or consideration.

9.07 The Contractor shall comply, at its own expense, with the provisions of all applicable state and municipal requirements and with all state and federal laws applicable to the Contractor as an employer of labor or otherwise. The Contractor shall further comply with all rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subcontractors and other employed to render the services hereunder.

9.08 The Contractor expressly agrees:

A. That in the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, no Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, sex, age, physical disability or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates; and

B. That no Contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, sex, age, physical disability or national origin; and

C. In accordance with the laws of the State of New York and ordinances of the CITY OF ITHACA, the CONSULTANT shall not discriminate against any employee, applicant for employment, sub-contractor, supplier of materials or services, or program participant because of actual or perceived: age, creed, color, disability, ethnicity,

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

familial status, gender, height, immigration or citizenship status, marital status, national origin, race, religion, sexual orientation, socio-economic status, or weight;

D. Contractors shall give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee;

E. In accordance with the Title VI of the Civil Rights Act, as amended, and other applicable Federal laws and regulations, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations;

F. The Contractor is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed, no later than thirty (30) days after the Contractor has received payment from the City as indicated in Supplementary Condition 6.06.I and the reporting requirements in Supplementary Condition 6.06.J; and

G. That this Agreement may be canceled or terminated by the Owner, and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of this section of the Agreement.

9.09 In addition to, and not in limitation of the insurance requirements contained in "Insurance Requirements", attached hereto in the Supplementary Conditions and made a part hereof, the Contractor agrees:

A. That except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the Owner, the Contractor shall indemnify and hold harmless the Owner, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the acts or omissions hereunder by the Contractor or third parties under the direction or control of the Contractor; and

B. To provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of the acts or omissions referred to in paragraph (A) and to bear all other costs and expenses related thereto.

9.10 All notices of any nature referred to in this Agreement shall be in writing and sent by registered or certified mail postage prepaid, to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing:

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

To the Owner:

To the Contractor:

**City of Ithaca
Office of the City Engineer
108 E. Green Street
Ithaca, New York 14850
Attn: Michael R. Kuo**

All notices required by the contract documents to be delivered to the Engineer shall also be sent to the Owner at the address set forth above.

9.11 This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

9.12 This Agreement shall be construed and enforced in accordance with the laws of the State of New York, without regard to, or the application of, New York State's choice of law provisions. The parties further agree that the Supreme Court of the State of New York, held in and for the County of Tompkins shall be the forum to resolve disputes arising out of either this agreement or work performed according thereto, and consent to the jurisdiction of such court.

9.13 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 Owner and Contractor, who agree that 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.

IN WITNESS WHEREOF, The OWNER and the CONTRACTOR have executed this Agreement in triplicate with copies submitted to OWNER and CONTRACTOR.

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

Approved as to form City Attorneys' Office

By _____

Approved by Chair of the City Administration Committee

By _____

Corporate
Seal

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

Approved by City Controller

By _____

OWNER:

The City of Ithaca

By _____
Mayor

By _____
Superintendent of Public Works

THE CONTRACTOR

Corporate
Seal

By _____
(Signature)

Print Name and Title _____
(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

INDIVIDUAL, CORPORATE, PARTNERSHIP OR LLC ACKNOWLEDGMENT

On the ____ day of _____, in the year 20____ before me personally appeared _____, known to me to be the person who executed the within instrument, who being duly sworn by me did depose and say that ____he resides at _____ in the Town of _____, County of _____, State of _____, and further that:

(☐ If a limited liability company): __he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that __he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, __he executed the foregoing instrument in the name of and on behalf of said limited liability company, as the act and deed of said limited liability company.

A-12

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 610
NOTICE OF AWARD**

Date: _____

To: _____

**PROJECT: ITHACA COMMONS REPAIR & UPGRADE, CONTRACT #3 – SURFACE IMPROVEMENTS – _____
City of Ithaca
Tompkins County, New York**

The Owner has considered the Bid submitted by you for the described Work in response to the Advertisement of Bids dated _____ and Instructions to Bidders.

You are hereby notified that your Bid has been accepted for the items in the amount of:

_____ *dollars and* _____ *cents*

You are required by the Instruction to Bidders to execute the Agreement and furnish the required Contractor's Performance Bond, Labor and Material Payment Bond, and certificates of insurance within ten calendar days from the date of this Notice.

If you fail to execute the Agreement and to furnish the required Bonds within ten calendar days from the date of this Notice, the Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the Owner.

Owner: City of Ithaca

By: _____ Date: _____
Superintendent of Public Works

Acceptance of Notice

Receipt of the above Notice of Award is hereby acknowledged,

Date: _____

By: _____

Title: _____

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

PAGE INTENTIONALLY LEFT BLANK

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00620
NOTICE TO PROCEED**

Date: [DATE]

To: [NAME]
[ADDRESS]
[CITY], [STATE] [ZIP]

**PROJECT: *ITHACA COMMONS REPAIR & UPGRADE, CONTRACT #3 – SURFACE IMPROVEMENTS – _____
City of Ithaca
Tompkins County, New York***

You are hereby notified to commence Work in accordance with the Agreement dated _____ on or before _____ and you are to complete the Work on or before the Substantial and Final Completion dates indicated in the Contract Documents.

You are required to return an acknowledged copy of this Notice to Proceed to the Owner.

Owner: City of Ithaca

By: _____ Date: _____
Tom West
Director of Engineering

Acceptance of Notice

Receipt of the above Notice to Proceed is hereby acknowledged,

Date: _____

By: _____

Title: _____

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

PAGE INTENTIONALLY LEFT BLANK

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00700
GENERAL CONDITIONS**

Index

	<u>Page</u>
<u>ARTICLE 1 - DEFINITIONS AND TERMS</u>	
1.01 <i>Defined Terms</i>	GC-6
1.02 <i>Description of Terms</i>	GC-10
<u>ARTICLE 2 - PROJECT STARTS</u>	
2.01 <i>Delivery of Bonds and Insurances</i>	GC-11
2.02 <i>Availability of Documents</i>	GC-11
2.03 <i>Contract Times and Notice to Proceed</i>	GC-12
2.04 <i>Work Start</i>	GC-12
2.05 <i>Before Commencing Construction</i>	GC-12
2.06 <i>Pre-construction Conference</i>	GC-13
2.07 <i>Schedule Acceptance</i>	GC-13
<u>ARTICLE 3 - CONTRACT INTENT: REFERENCES & DOCUMENTS</u>	
3.01 <i>Intent of Contract Document</i>	GC-13
3.02 <i>Standards</i>	GC-14
3.03 <i>Reporting and Resolving Discrepancies</i>	GC-14
3.04 <i>Amending and supplementing Contract Documents</i>	GC-14
3.05 <i>Reuse of Documents</i>	GC-14
<u>ARTICLE 4 - PHYSICAL CONDITION: AVAILABILITY OF LANDS:</u>	
<u>SUBSURFACE CONDITIONS; REFERENCE POINTS</u>	
4.01 <i>Availability of Lands</i>	GC-15
4.02 <i>Subsurface and Physical Conditions</i>	GC-15
4.03 <i>Differing Subsurface or Physical Conditions</i>	GC-16
4.04 <i>Underground Facilities</i>	GC-17
4.05 <i>Reference Points</i>	GC-19
4.06 <i>Hazardous Environmental Condition at Site</i>	GC-19
<u>ARTICLE 5 - BONDS AND INSURANCE</u>	
5.01 <i>Performance, Payment and Other Bonds</i>	GC-20
5.02 <i>Certificates of Insurance with Limited Liability</i>	GC-20
5.03 <i>Contractor's Liability Insurance</i>	GC-21
5.04 <i>Owner's Liability Insurance</i>	GC-22
5.05 <i>Property Insurance</i>	GC-22
5.06 <i>Insurance Coverage and Waiver of Rights</i>	GC-23
5.07 <i>Receipt and Application of Insurance Proceeds</i>	GC-23
5.08 <i>Acceptance of Bonds and Insurance; Option to Replace</i>	GC-24
5.09 <i>Partial Utilization, Acknowledgment of Property Insurer</i>	GC-24

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01	<i>Supervision.....</i>	GC-24
6.02	<i>Survey Layout and Working Hours.....</i>	GC-25
6.03	<i>Services, Materials, and Equipment.....</i>	GC-25
6.04	<i>Progress Schedule.....</i>	GC-26
6.05	<i>Value Engineering</i>	GC-26
6.06	<i>Concerning Subcontractor, Suppliers, and Others.....</i>	GC-30
6.07	<i>Patent Fees and Royalties.....</i>	GC-30
6.08	<i>Permits.....</i>	GC-31
6.09	<i>Laws and Regulations.....</i>	GC-31
6.10	<i>Taxes.....</i>	GC-31
6.11	<i>Use of Site and Other Areas.....</i>	GC-32
6.12	<i>Record Documents.....</i>	GC-33
6.13	<i>Safety and Protection.....</i>	GC-33
6.14	<i>Safety Representative.....</i>	GC-34
6.15	<i>Hazard Communication Programs.....</i>	GC-34
6.16	<i>Emergencies.....</i>	GC-34
6.17	<i>Shop Drawings and Samples.....</i>	GC-34
6.18	<i>Continuing the Work.....</i>	GC-37
6.19	<i>Contractor's General Warranty and Guarantee.....</i>	GC-37
6.20	<i>Project Sign.....</i>	GC-37

ARTICLE 7 - OTHER WORK

7.01	<i>Related Work at Site.....</i>	GC-38
7.02	<i>Coordination.....</i>	GC-38

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01	<i>Communications to Contractor.....</i>	GC-39
8.02	<i>Replacement of Engineer.....</i>	GC-39
8.03	<i>Furnish Data.....</i>	GC-39
8.04	<i>Pay Promptly When Due.....</i>	GC-39
8.05	<i>Lands and Easements; Reports and Tests.....</i>	GC-39
8.06	<i>Insurance.....</i>	GC-39
8.07	<i>Change Orders.....</i>	GC-40
8.08	<i>Inspections, Tests, and Approvals.....</i>	GC-40
8.09	<i>Limitations on Owner's Responsibilities.....</i>	GC-40
8.10	<i>Undisclosed Hazardous Environmental Condition.....</i>	GC-40

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01	<i>Owner's Representative.....</i>	GC-40
9.02	<i>Visits to Site.....</i>	GC-40
9.03	<i>Project Representative.....</i>	GC-41
9.04	<i>Clarifications and Interpretations.....</i>	GC-41
9.05	<i>Authorized Variations in Work.....</i>	GC-41
9.06	<i>Rejecting Defective Work.....</i>	GC-41
9.07	<i>Shop Drawings, Change Orders and Payments.....</i>	GC-41
9.08	<i>Determinations for Unit Price Work.....</i>	GC-41
9.09	<i>Interpretation of Contract Documents and Acceptability of Work..</i>	GC-42
9.10	<i>Limitations on Engineer's Authority and Responsibilities.....</i>	GC-42

**ARTICLE 10 - PROCEDURE FOR MAKING CHANGES IN THE WORK AND
RESULTING CLAIMS**

10.01	<i>Authorized Changes in the Work.....</i>	GC-42
10.02	<i>Unauthorized Changes in the Work.....</i>	GC-43
10.03	<i>Execution of Change Orders.....</i>	GC-43
10.04	<i>Notification of Surety.....</i>	GC-43
10.05	<i>Claims and Disputes.....</i>	GC-43

ARTICLE 11 - PAYING THE COST OF THE WORK

11.01	<i>Change in Contract Price.....</i>	GC-44
11.02	<i>Cost of the Work – Time and Materials.....</i>	GC-45
11.03	<i>Cash Allowances.....</i>	GC-48
11.04	<i>Unit Price Work.....</i>	GC-48

**ARTICLE 12 - CHANGES IN CONTRACT PRICE AND CONTRACT TIMES FOR
COMPLETION**

12.01	<i>Change of Contract Price.....</i>	GC-49
12.02	<i>Change of Contract Times.....</i>	GC-51
12.03	<i>Delays Beyond Contractor's Control.....</i>	GC-51
12.04	<i>Delays Within Contractor's Control.....</i>	GC-51
12.05	<i>Delays Beyond Owner's and Contractor's Control.....</i>	GC-51
12.06	<i>Delay Damages Claimed by Contractor.....</i>	GC-52
12.07	<i>Delay Damages Claimed by Owner.....</i>	GC-52

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

**ARTICLE 13 – VERIFICATION OF WORK STANDARDS: TEST AND INSPECTIONS;
CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

13.01	<i>Notice of Defects</i>	GC-52
13.02	<i>Access to Work</i>	GC-52
13.03	<i>Tests and Inspections</i>	GC-52
13.04	<i>Uncovering Work</i>	GC-53
13.05	<i>Stop Work Ordered by the Owner</i>	GC-54
13.06	<i>Correction or Removal of Defective Work</i>	GC-54
13.07	<i>Correction Period</i>	GC-54
13.08	<i>Acceptance of Defective Work</i>	GC-55
13.09	<i>Owner May Correct Defective Work</i>	GC-55

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01	<i>Schedule of Values</i>	GC-55
14.02	<i>Progress Payments</i>	GC-56
14.03	<i>Contractor's Warranty of Title</i>	GC-58
14.04	<i>Substantial Completion</i>	GC-58
14.05	<i>Partial Utilization</i>	GC-59
14.06	<i>Final Inspection</i>	GC-59
14.07	<i>Final Payment</i>	GC-60
14.08	<i>Final Completion Delayed</i>	GC-61
14.09	<i>Waiver of Claims</i>	GC-61

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01	<i>Owner May Suspend Work</i>	GC-62
15.02	<i>Owner May Terminate for Cause</i>	GC-62
15.03	<i>Owner May Terminate For Convenience</i>	GC-63
15.04	<i>Contractor May Stop Work or Terminate</i>	GC-63

ARTICLE 16 – DISPUTE RESOLUTION

16.01	<i>Methods and Procedures</i>	GC-64
-------	-------------------------------------	-------

ARTICLE 17 – MISCELLANEOUS

17.01	<i>Giving Notice</i>	GC-64
17.02	<i>Computation of Times</i>	GC-64
17.03	<i>Cumulative Remedies</i>	GC-64
17.04	<i>Survival of Obligations</i>	GC-65
17.05	<i>Controlling Law</i>	GC-65
17.06	<i>Contractor Review</i>	GC-65

ARTICLE 18 – PROVISIONS REQUIRED BY LAW

18.01	<i>Provisions Deemed Inserted</i>	GC-65
18.02	<i>Workmen's Compensation and Disability Insurance</i>	GC-65
18.03	<i>No Assignment</i>	GC-66
18.04	<i>Maintenance and Inspection of Records</i>	GC-66

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

18.05	<i>Contract Deemed Executory.....</i>	GC-66
18.06	<i>Non-discrimination in Employment.....</i>	GC-66

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

CONTRACT GENERAL CONDITIONS

ARTICLE 1 – DEFINITIONS AND TERMS

1.01 *Defined Terms*

- A. Wherever used in the Contract Documents, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.
1. *Addenda* – Written documents or drawings issued prior to the opening of Bids that clarify, correct, or change the Bidding Requirements or the Contract Documents.
 2. *Agreement* – The written instrument which is evidence of the agreement between Owner and Contractor covering the work.
 3. *Application for Payment* – The formal supportive documents provided by, or accepted by, Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments.
 4. *Bid* – The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder* – A person, firm, or corporation submitting a Bid for the work.
 6. *Bonds* – Performance and payment bonds and other instruments of security.
 7. *Change Orders* – A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 8. *Claims* – A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price and/or Contract terms.
 9. *Contract* – The entire and integrated written agreement between the Owner and Contractor concerning the Work that includes contract documents and drawings. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
 10. *Contract Documents* – The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions,

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and Engineer's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

11. *Contract Drawings* - Shall mean those plans and Drawings which show the scope and character of the Work and are specifically referred to as such in the Contract Documents.
12. *Contract Price* – The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents.
13. *Contract Times* – The number of days or the dates stated in the Agreement, as modified or confirmed through the progress schedule, to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment. The intent of the Contract Times is to set a reasonable time period for the Contractor to complete the work. It is not the intent for the Contractors to use the entire time period, but only to give a window of time that the Contractor's progress schedule must fit.
14. *Contractor* – The individual or entity with whom Owner has entered into the Agreement. It shall include its respective officers, directors, partners, employees or agents of same.
15. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor.
16. *Documents and Requirements* – The Advertisement, Instructions to Bidders, Bid security, if any, the Bid form with any supplements and proposed contract Documents.
17. *Effective Date of the Agreement* – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
18. *Engineer* – The individual or entity named as such in the Agreement.
19. *Field Order* – A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract price or the Contract Times.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

20. *Guarantee Period* - The one-year guarantee period shall commence on the date the project is approved for Final Payment.
21. *Hazardous Environmental Condition* – The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
22. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
23. *Invert* - The inside bottom of a pipe or the surface upon which water flows.
24. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens* – Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Major Item* - Any item for which the original bid price multiplied by the original quantity exceeds \$50,000 or 2% of the total Contract bid price.
27. *Notice of Award* – The written notice by Owner to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed* – A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner* – The individual, entity, public body, or authority with whom Contractor has entered into the Agreement and for whom the Work is to be performed. The Owner shall include its directors, supervisors, officers, and employees.
30. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.
31. *Resident Project Representative* – The authorized representative of Engineer who may be assigned to the Site or any part thereof.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

32. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
33. *Scope* - All work required to satisfactorily complete the work enumerated in the Contract Documents, including protection of adjacent properties, highway facilities and utilities within the right-of-way.
34. *Significant Change* - An actual quantity in excess of 125% of the stated quantity, or less than 75% of the original quantity.
35. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled for this contract by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
36. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
37. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other subcontractor.
38. *Substantial Completion* - The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
39. *Supplementary Conditions* – That part of the Contract Documents which amends or supplements these General Conditions.
40. *Supplier* – A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any subcontractor.
41. *Surety* - The bondsmen or party or parties who have made secure the fulfillment of the Contract by a Bond and whose signatures are attached to said Bond.
42. *Underground Facilities* – All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments,

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

43. *Units* - Payment for each unit item shall be made for the number of units (area, linear, volumetric, etc.) within the lines and grades shown on the drawings, with no reduction allowed due to material yield or percent compaction.
44. *Unit Price Work* – Work to be paid for on the basis of unit prices.
45. *Work* – The entire completed or phased construction as required under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
46. *Work Change Directive* – A written statement to Contractor ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract price or Contract Times.
47. *Written Amendment* – A written statement modifying the Contract Documents, signed by Owner and Contractor on or after the Effective Date of the Agreement and normally dealing with the non-Engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

1.02 Description of Terms

Intent

1. Whenever in the Contract Documents the terms “as allowed,” or terms of like effect or import are used, or the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the contract Documents.
2. The General Conditions shall guide the pertinence of the Contract unless otherwise specifically stated in other sections of the Contract Documents.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

3. These General Conditions may be modified with supplementary Conditions shown attached to these General Conditions.

Day

1. The word “day” shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

Defective

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents.

Definition of Furnish, Install, Perform, Provide

1. The word “furnish” shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install” shall mean to put into use or place in final position.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install.
 4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- E. Unless stated otherwise in the Contract Documents, a well-known technical or construction industry phrase or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PROJECT STARTS

2.01 Delivery of Bonds and Insurances

- A. The Contractor shall deliver all Bonds and Insurances along with the executed Agreement to Owner.

2.02 Availability of Documents

- A. Engineer shall furnish to Contractor up to five (5) copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

2.03 *Contract Times and Notice to Proceed*

- A. The Contract Times will commence to run on the Thirtieth (30th) day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30-days after the Effective Date of the Agreement. The notice to proceed will be set in accordance with the progress schedule that is presented by the Contractor for approval by the Engineer. The Contractor, Engineer and Owner will reach the start date that offers the shortest work period, but still remains within the Contract Times as stated in the specifications.

2.04 *Work Start*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. The Contractor shall work daily and continuously on the project. Failure on the part of the Contractor to plan the work so that work can be done continuously will result in the Owner charging the Contractor for any expenses occurred by the Owner. These charges will be deducted from the payment invoices.

2.05 *Before Commencing Construction*

- A. *Contract Document Review* – Before beginning work, Contractor shall review the Contract Documents and check and verify all applicable field measurements. If any error or discrepancy is discovered, the Contractor shall notify Engineer and request written clarification of same.
- B. *Preliminary Schedules* – Within 10-days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for its timely review:
 - 1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work. This progress schedule shall consider time necessary to submit and review shop drawings, sample submittals and manufacturers lead times and delivery dates.
 - 2. A preliminary schedule of Shop Drawing and Sample submittals, which will list each, required submittal and the times for submitting, reviewing and processing such submittal. 14-days are reserved for the Engineer's to review each submittal and re-submittal. Voluminous submittals should be discussed with the Engineer to establish reasonable review period.
 - 3. A preliminary schedule of values (for lump sum items) for all of the component parts that includes quantities and prices of items which when added together equal the Contract price.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- C. *Evidence of Insurance* – Contractor and Owner shall provide Certificate of Insurance naming each as additionally insured.

2.06 *Preconstruction Conference*

- A. A conference attended by Contractor and his/her Superintendent, Engineer, and others as appropriate will be held to explain the project, highlight important aspects of the Work, discuss the schedule submittals, project payments and record keeping.
- B. Contractor shall not commence work until the Preconstruction conference is completed.

2.07 *Schedule Acceptance*

- A. Initial schedule(s) shall be presented before or at the preconstruction conference. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer:
1. The progress schedule will be acceptable to Engineer if it provides an orderly and continuous progression of the Work to completion within any specified project phases work detail and the Contract Times. Once accepted, the progress schedule will be used to assign inspection personnel and to establish any changes to the substantial completion date.
 2. Contractor's schedule of Shop Drawing and Sample submittals will be acceptable to Engineer if it is provided before the start of work or at least 10-days before the phase of work commences using these materials.
 3. Contractor's schedule of values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT INTENT: REFERENCES AND DOCUMENTS

3.01 *Intent of Contract Document*

- A. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, tools or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for in a particular bid item at no additional cost to Owner.
- B. Clarifications and interpretations of the Contract documents shall be issued by Engineer.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

3.02 *Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, shall mean the most recent edition in effect at the time of opening of Bids except as may be otherwise specifically stated in the Contract Documents.
2. Any reference standard, specification, manual or code, or any instruction of a Supplier shall not change the duties or responsibilities of Owner, Contractor, or Engineer, from those set forth in the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. If at any time, the Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between any Law or Regulation applicable to the performance of the Work or of any instruction of any supplier, Contractor shall report it to Engineer in writing at once. Contractor shall not proceed with the Work affected until an amendment or supplement to the Contract Documents has been issued.

B. Resolving Discrepancies

1. The provisions of the Contract shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents.

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) Engineer's approval of a Shop Drawing or Sample; or (iii) Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

- A. Contractor and any subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with Owner: shall

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

not reuse or assume any Ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared for this project. The Contractor can retain copies of the Contract Documents for record purposes.

**ARTICLE 4 – PHYSICAL CONDITION: AVAILABILITY OF LANDS; SUBSURFACE
CONDITIONS; REFERENCE POINTS**

4.01 *Availability of Lands*

- A. Owner shall furnish the Site and notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

- A. Reports, Borings and Drawings - The logs of any available soundings, borings, rock cores, and other subsurface data, if secured in behalf of the Owner, are for the convenience of the Contractor, included in the Specifications. Such data (1) are made available in good faith solely for the purpose of supplementing the Contractor's own investigation, (2) have been utilized for general design purposes only and may not be indicative of all subsurface conditions that may be encountered, (3) may be inadequate for purpose of preparing a bid, and (4) are in no event to be contractually considered a part of the Contract Documents. Bidders have the responsibility to familiarize themselves with the subsurface conditions. The Contractor's interpretation of such data will be solely according to his own judgment, and he acknowledges that he is not to rely upon the same as accurately describing the subsurface conditions which may be found to exist.
- B. Adequacy of Technical Data – Contractor may rely upon the general accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Contractor may not rely upon or make any Claim against Owner, Engineer, or any of Engineer’s Consultant with respect to:
 - 1. The completeness of such reports and drawings for Contractor's purposes in completing the work under this contract.
 - 2. Other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

3. Any Contractor interpretation of or conclusion drawn from any “technical data” (reports, drawings and borings).
4. The Contractor shall perform such borings, soundings, test pits excavations, seismic and geo-technical investigations as may be required to inform himself as to surface and subsurface water conditions, rock and other materials which may be encountered, prior to submitting a bid. The Contractor acknowledges that he assumes all risk contingent upon the nature of the subsurface conditions to be actually encountered by him in performing the work covered by the contract, even though such actual conditions may be of an unusual nature, differing materially from those ordinarily encountered or may result in the Contractor performing more or less work than he originally anticipated.

4.03 *Differing Subsurface or Physical Conditions*

- A. Should the Contractor encounter subsurface and/or latent conditions at the site materially differing from those shown on the Plans and indicated in the Specifications, he shall immediately give written notice to the Engineer of such conditions and, before they are disturbed, the Engineer shall promptly investigate the conditions and if he finds that a change in design and/or specifications is necessary and such change is implemented, any increase or decrease of cost resulting from such changes are to be adjusted in the manner provided herein for adjustments as to extra and /or additional work and changes.
- B. *Engineer's Review:* After receipt of written notice Engineer will promptly review the condition, determine the necessity of Owner obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.
- C. *Possible Price and Times Adjustments*
 1. The Contract Price or the Contract Times, or both, will be adjusted if the change in physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Such condition reveals that technical data is materially inaccurate, a design change is warranted or is of unusual nature.
 - b. With respect to work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of these General Conditions.
 2. Under no circumstances will claims for costs associated with project delays be considered by the Owner.
 3. The provisions of this Section are not to be construed as an indication that, where rock excavation is not a pay item but is included in the unit bid prices for pipe and

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

structures, there would be additional payment for rock excavation because of subsoil conditions found to be different. Where the unit bid prices for pipe and structures include the cost of rock excavation, there will be no deduction in payments or additional payments to the Contract for rock levels found to vary from the depths or amounts indicated or implied.

4. Contractor shall not be entitled to any adjustments in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Bids were submitted or becoming bound under a negotiated contract.
 - b. The existence of such condition could reasonably have been discovered or revealed as a result of any examination, by or for Contractor prior to Contractor making a bid or entering into a negotiated contract with the Owner.
 - c. Contractor failed to give the written notice.
5. If Owner and Contractor are unable to agree on any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, Owner and Engineer shall not be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with this project or any other project or anticipated project.

4.04 *Underground Facilities*

- A. *Shown or Indicated:* The Existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the Owners of such Underground Facilities,
 1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data.
 2. The cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data
 - b. locating all Underground Facilities shown or indicated in the Contract Documents,
 - c. coordination of the Work with the Owner of such Underground Facilities, including Owner during construction,
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

3. The Owner recognizes that the need to relocate utilities or structures owned by others may delay the schedule of all or part of the work. Such related delays shall be worked into the initial progress schedule. Neither the Owner or Contractor shall be penalized through fines or change order requests for such delays.
4. The Contractor shall verify the location of public or private facilities and structures on, under, or over the project, which may interfere with his operations, and it shall be assumed that he has prepared his Bid and entered into the Contract under full responsibility of the conditions to be encountered. From investigations and field surveys, the location of such facilities and structures as have been brought to the attention of the Engineer are indicated on the Drawings, but the location and the nature of materials is not guaranteed. The indication on the Drawings of such facilities shall not relieve the Contractor of any responsibility with respect thereto; neither shall the Owner or the Engineer be held responsible for any omission or failure to give notice to the Contractor or any other facility or structure, on, under, or over the project, or the presence of rock or unsuitable material.
5. The Contractor shall notify all utilities through Dig Safely New York at (800) 962-7962 at least 3-working days prior to any excavation so that each utility can mark or locate their respective lines for the Contractor.
6. The Contractor shall indicate that he has notified all utilities by supplying to the Engineer the serial or code numbers received from the respective utility.

B. *Facilities not shown in Contract Document*

1. If an underground Facility is uncovered or revealed that is not shown not shown or indicated in the Contract Documents, Contractor shall (before further disturbing conditions) identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility. No claims for delay damage by the Contractor can be made while the Engineer reviews new conditions and makes changes, if any.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

4.05 *Reference Points*

- A. Owner and Engineer shall provide the Contractor with necessary survey information regarding reference points to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments and shall make no changes or relocations without the prior written approval of Owner. Contractor shall be responsible for the accurate replacement or relocation of such reference points or property monuments damaged by Contractor work. The accurate replacement or relocation shall be completed by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* Refer to the Supplementary Conditions or Technical Specifications for the identification of a Hazardous Environmental Condition that has been utilized by the Engineer in the preparation of the Contract Documents.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the “technical data” (as presented in the Supplementary Conditions), but such reports and drawings are not Contract Documents. Contractor may not rely upon or make any Claim against Owner, Engineer or any of Engineer’s Consultants with respect to:
 - 1. The completeness of such reports and drawings for Contractor's purposes in completing the work under this contract.
 - 2. Other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings.
 - 3. Any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered which was not shown in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created by acts of the Contractor.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in any area affected thereby; and (iii) notify Owner and Engineer.
- E. Contractor shall not be required to resume Work in any area affected until after Owner has obtained any required permits. Owner and Contractor shall agree to any adjustment in Contract Price or Contract Times, or both, as a result of any special

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

work conditions. No delay claims can be made by the Contractor due to the Owner and Engineer taking steps to secure the site, make changes in design or securing the permits per unit.

- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work and the corresponding value of the work deleted by a change order. Owner may have such deleted portion of the Work performed by Owner's own forces or others.
- G. Contractor shall indemnify and hold harmless Owner and Engineer against all claims, costs, losses, and damages arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment Bonds or irrevocable line of credit, as stipulated by the Owner, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. These Bonds shall remain in effect at least one year after the date when final payment becomes due. Contractor shall also furnish such other bonds as required by the Contract Documents. Contractor and Surety shall jointly complete and execute all Bond forms.
- B. All Bonds shall be in the form prescribed by the Contract Documents and shall be executed by such sureties licensed and authorized in the jurisdiction of the project as are named in the current list of "Companies Holding Certificates of Authority Reinsuring Companies" as published in circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- C. If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its business is terminated in any state where any part of the Project is located or it ceases to meet the requirements, Contractor shall within 20 days thereafter substitute another acceptable Bond and surety.

5.02 *Certificates of Insurance with Limited Liability*

- A. Contractor shall deliver to Owner (as additionally insured) with copies to each additional insured identified in the Supplementary Conditions, certificates of

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

- B. The limits of liability for the insurance required by the Owner's Standard Insurance Provisions shall provide coverage for not less than the amounts specified or greater where required by Laws and Regulations.

5.03 Contractor's Liability Insurance

- A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable in amounts no less than the amounts specified in the Owner's Standards Insurance Provisions:
1. claims under Worker's Compensation, disability benefits, and other similar employee benefit acts;
 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (ii) by any other person for any other reason;
 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 6. claims for damages because of bodily injury or death of any person or property damage arising out of the Ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance so required by the Owner's Standard Insurance Provisions to be purchased and maintained shall:
1. with respect to insurance required include as additional insured (subject to any customary exclusion in respect of professional liability) Owner, and any other individuals or entities identified in the Supplementary Conditions.
 2. include at least the specific coverages and be written for not less than the limits of liability provided in the Owner's Standard Insurance Provisions.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

3. include (1) completed premises and operations insurance, (2) independent Contractor's protection, (3) product and completed operations, (4) work in progress, (5) broad form property damage, (6) explosion, collapse and underground, (7) personal injury with employment exclusion deleted;
4. include contractual liability insurance covering Contractor's indemnity obligations;
5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30-days prior written notice has been given to Owner and Contractor;
6. remain in effect at least until final payment and at all times when Contractor may be correcting, removing, or replacing defective work;
7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least one (1) year after final payment.

5.04 *Owner's Liability Insurance*

- A. The Contractor on request of the Owner shall provide liability coverage for the obligations of the Owner. This may be accomplished by an endorsement of the Contractor's Comprehensive Liability Policy including the Owner as additional insured or by providing a separate Protective Liability Policy.

5.05 *Property Insurance*

- A. The Owner may, but is not required, purchase and maintain property insurance to cover the Work at the Site if standard insurances carried by the Contractor is insufficient for this project. This insurance shall:
 1. include the interests of Owner, Contractor, subcontractors and Engineer, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;
 2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form;
 3. include expenses incurred in the repair or replacement of any insured property;
 4. cover materials, work in progress, and equipment stored at the Site or at another location that was agreed to in writing by Owner;
 5. allow for partial utilization of the Work by Owner;

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner and Contractor, with 30-days written notice to each other additional insured to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required.
- C. All the policies of insurance (and the certificates or other evidence thereof) shall provide that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30-days prior written notice has been given to Owner and Contractor.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified to protect the interests of Contractor, to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor.
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order or Written Amendment.

5.06 Insurance Coverage and Waiver of Rights

- A. Owner and Contractor intend that all policies purchased in accordance will protect Owner, Contractor, subcontractor, and all other individuals or entities in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insured or additional insured thereunder. Owner and Contractor waive all rights against each other for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work.

5.07 Receipt and Application of Insurance Proceeds

- A. Any insured loss under the policies of insurance will be adjusted with Owner and made payable to Owner as fiduciary for the insured, as their interests may appear. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced and the monies so received.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- B. Owner shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15-days after the occurrence of loss to Owner's exercise of this power. If such objection were made, Owner shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach.

5.08 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage provided in the certificates of insurance, the objecting party shall so notify the other party in writing within 10-days after receipt of the certificates. If the Contractor does not purchase or maintain all of the Bonds and insurance required by the Contract Documents, either party may elect to obtain equivalent Bonds or insurance to protect their interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.09 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion of the Work prior to Substantial Completion no such use or occupancy shall commence before the insurers providing property insurance, pursuant to Owner's Standard Insurance Provisions. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent thereto who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. Such superintendent shall be on site at all times during the project when crews are commencing and progressing work and available by mobile telephone. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.
- C. Resident superintendent shall be on site during all Contractor activities performed by Contractor or subcontractor and available by mobile telephone.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- D. Contractor is responsible to employ safety procedures in accordance with conditions and OSHA regulations.
- E. Failure to provide continuous supervision through the Resident Superintendent results in increased cost to the Owner through inspection and administration. The Owner will provide due notice to Contractor if supervision does not adhere to these specifications. Liquidated Damages will be assessed in the amount of \$500 per day for each work day or part thereof that a cited deficiency is not corrected or is permitted to recur. Any assessed Liquidated Damages will be deducted from the next payment application.

6.02 *Survey Layout and Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours.
- C. Unless otherwise especially permitted, no work shall be done between the hours of 7:00 p.m. and 7:00 a.m. nor on Sunday or a legal holiday, except as necessary for the proper care and protection of work already performed. If it shall become absolutely necessary to perform work at night or on Sunday or a legal holiday, the Engineer shall be informed at least 24 hours in advance of the beginning of performance of such work. Only such work shall be done at night as can be done satisfactorily as determined by the Engineer and in a first-class manner. Good lighting and all other necessary facilities for carrying out and inspecting the work shall be provided and maintained at all points.

6.03 *Services, Materials, and Equipment*

- A. Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, installed and connected, in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

6.04 *Progress Schedule*

- A. Contractor shall adhere to the progress schedule established in accordance in Article 2 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer any proposed adjustments in the progress schedule that will not result in changing the established completion date. Such adjustments will conform generally to the progress schedule then in effect.
 - 2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted to the Engineer and may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 *Value Engineering*

A. *Purpose*

It is the intent of Owner to share with Contractor any cost savings, which may be generated on a Contract as a result of a proposal or proposals, offered by Contractor and approved by Owner. The purpose is to encourage the use of Contractor's ingenuity and experience in arriving at alternative, lower cost construction than reflected in the Contract Documents by sharing the resulting savings.

B. *Scope*

The Value Engineering proposals contemplated are those that could produce a savings to Owner without, in the sole judgment of Engineer, impairing essential functions and characteristics of the facility, including but not limited to, service life, economy of operation, ease of maintenance, desired appearance and safety.

C. *Submittal of Proposal*

As a minimum, the following materials and information shall be submitted with each proposal plus any additional information requested by Engineer.

- 1. A statement the proposal is submitted as a Value Engineering proposal.
- 2. A description of the difference between the existing Contract requirements and the proposed change, and the comparative advantages and disadvantages of each, including considerations of service life, economy of operation, ease of maintenance, desired appearance and safety.
- 3. Complete plans and specifications showing the proposed revisions relative to the original contract features and requirements.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

4. A complete cost analysis indicating the costs and quantities to be replaced by the proposal, the new costs and quantities generated by the proposal, and the cost effects of the proposed changes on operational, maintenance and other considerations.
5. A statement of the time by which a Change Order adopting the proposal must be executed so as to obtain the maximum cost reduction during the remainder of the Contract. This date must be selected to allow Engineer and Owner ample time for review and processing a Change Order to the Contract, but without affecting Contractor's schedule. Should Engineer find insufficient time is available for review and processing, Engineer may reject the proposal solely on such basis. If Engineer fails to respond to the proposal by the date specified, Contractor shall consider the proposal to be rejected and shall have no claims against Owner as a result thereof.
6. A statement as to the effect the proposal will have on the time for completion of the Contract.
7. A description of any previous use or testing of the proposal on another project and the conditions and results therewith. If the proposal was previously submitted on another Contract, indicate the date, Contract name, Contract number, and the action taken by Owner.

D. *Conditions*

Value Engineering proposals will not be considered in determining the lowest responsible Bidder. Value Engineering proposals will be considered after award and only when all of the following conditions are met:

1. Contractor is cautioned not to base any bid prices on the anticipated approval of a Value Engineering proposal and to recognize such proposal may be rejected and Contractor will be required to complete the Contract in accordance with the plans and specifications at the prices bid.
2. All proposals, whether or not approved by Engineer and Owner for use in the Contract, apply only to the Contract referenced in the proposal and become the property of Owner and shall contain no restrictions imposed by Contractor on their use or disclosure. Owner shall have the right to use, duplicate and disclose in whole or in part any data necessary for the utilization of the proposal. Owner retains the right to utilize any accepted proposal or part thereof on any other or subsequent project without any obligation to Contractor submitting the same.
3. If Owner already has under consideration certain revisions to the Contract or has approved certain changes in specifications or standards for general use, which are subsequently incorporated in the Value Engineering proposal submitted by

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

Contractor, Owner shall reject Contractor's proposal and proceed with such revisions if it so desires without any obligation to Contractor.

4. Contractor shall have no claim against Owner for any costs or delays due to Engineer's rejection of a Value Engineering proposal, including but not limited to development costs, anticipated profits or increased material or labor costs resulting from delays in the review of such proposal.
5. Engineer shall be the sole judge as to whether a proposal qualifies for consideration and evaluation. Engineer may reject any proposal that requires excessive time or costs for review, evaluation and/or investigations, or which is not consistent with standard of practice, design policies and basic design criteria for the Work.
6. Engineer may reject all or any portion of work performed pursuant to an approved Value Engineering proposal if Engineer determines unsatisfactory results are being obtained. Engineer may direct the removal of such rejected work and require Contractor to proceed in accordance with the original Contract requirements without reimbursement for any work performed under the proposal, or for its removal. Where modifications to the Value Engineering proposal are approved by Change Order to adjust to field or other conditions, reimbursement will be limited to the total amount payable for the work at the Contract bid prices as if it were constructed in accordance with the original Contract requirements. Such rejection or limitation of reimbursement shall not constitute the basis of any claim against Owner for delay or for any other costs.
7. The Value Engineering proposal shall not be experimental in nature but shall have been proven to Engineer's satisfaction under similar or acceptable conditions on another project.
8. Value Engineering proposals shall be considered only if equivalent options are not already provided in the Contract Documents.
9. The savings generated by the proposal, and benefit to the work must be of sufficient significance, in the sole judgment of Engineer, to warrant review and processing.
10. If additional information is needed to evaluate proposals, this information must be provided in a timely manner. Contractor's failure to provide additional information will result in rejection of the proposal.
11. Contractor may submit Value Engineering proposals for an approved SUBCONTRACTOR, provided reimbursement is made by Owner to Contractor and the terms of the pass through to the SUBCONTRACTOR are satisfactorily negotiated and accepted before the proposal is submitted to the Engineer. SUBCONTRACTORS may not submit a proposal except through the Contractor.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

12. Contractor shall meet all requirements of Section 6.07 Patent Fees and Royalties.
13. Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any Value Engineering proposal.

E. *Payment to Contractor*

If Owner accepts the Value Engineering proposal, a Change Order therefore will authorize the changes and payment. Reimbursement to Contractor will be made as follows:

1. The changes will be incorporated into the Contract via changes in the quantities of unit bid items, new agreed price items or by force account.
2. Contractor's costs for development, design and implementation of the Value Engineering proposal are not eligible for reimbursement.
3. The cost of the revised work as determined from the aforementioned changes in quantities, new items or force account shall be paid as negotiated in accordance with Article 11 and 12 herein and documented in an approved Change Order. In addition, Owner will pay Contractor, via a separate item, 50 percent of the savings to Owner as reflected by the difference between the above payment and the cost of the related construction required by the original Contract plans and specifications computed at Contract bid prices less Engineer's cost reimbursement.

F. *Engineer's Cost Reimbursement*

1. Engineer will record time required by Engineer and Engineer's Consultants in evaluating Value Engineering proposals submitted by Contractor.
 - a. If Engineer approves a Value Engineering proposal submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposal. The cost will be charged against any cost savings offered the Owner and be paid as negotiated and documented in an approved Change Order.
 - b. If Engineer rejects a Value Engineering proposal submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposal. Owner shall submit an Invoice to Contractor for reimbursement. The reimbursement shall be made by certified check to Owner.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity against whom Owner or Engineer may have reasonable objection. Contractor shall not be due any additional costs associated with providing an alternate acceptable Subcontractor.
- B. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. There is no obligation on the part of Owner or Engineer to pay or to see to the payment of any monies due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers of delineating the Work to be performed by any specific trade.
- G. Subcontractors and/or suppliers shall sign agreement with the Contractor assuring the terms and conditions of the Contract Documents. This agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance. They agree to waive all rights against Owner, Contractor and Engineer for all losses and damages caused by or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use products or process which is the subject or patent rights or copyrights held by others. If royalties or fees are known to the Owner for the proper performance of the Contract, this will be stated in the Contract Document. The Contractor shall

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

indemnify and hold harmless Owner and Engineer from and against any and all claims, demands or causes of action arising directly or indirectly out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents.

6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Any regulations or requirements issued by the particular authority or agency shall be the Contractor's responsibility to comply and adjust operation as necessary. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Contractor shall pay all charges of utility owners for connections to the Work.
- B. Working within the Right of Ways will require work permits as granted by State, County or Municipal governments.

6.09 *Laws and Regulations*

- A. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages arising out of or relating to such Works. However, it shall be the Engineer's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor's obligation under Article 3.
- C. Changes in Laws or Regulations after the opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) may require adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

6.10 *Taxes*

- A. In regards to any taxes applicable to the work, the Contractor shall obtain a copy of form ST-120.1 from the NYS Department of Taxation and Finance and follow accordingly.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- B. The Owner is exempt from payment of all state and local sales and compensating use taxes of the State of New York. Such taxes shall not be included in the contract bid price. This exemption does not, however, apply to tools, machinery, equipment, other property purchased by or leased to the Contractor or a Subcontractor, or to supplies, machinery, equipment and materials which, even though they are consumed in the performance of the Agreement, are not incorporated into the completed work.
- C. The Contractor and his or her Subcontractor(s) and suppliers shall be solely responsible for obtaining or delivering any and all exemption or other certificates and for furnishing a Contractor Exempt Purchase Certificate or other appropriate certificates to all persons, firms, or corporations from whom they purchase supplies, materials, and equipment for the performance of the work covered by this Agreement.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

- 1. The Contractor shall not unreasonably encumber the Site and other areas with construction equipment or other stored materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area and repair just damage back to its original condition.
- 2. Should any claim be made by any residing Owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party. Failure to acknowledge claim or to make reasonable attempts to negotiate a settlement will result in Owner deducting additional retainage from progress or final payments until a settlement is reached.
- 3. Contractor shall indemnify and hold harmless Owner and Engineer arising out of or relating to any claim or action, brought by any such Owner or occupant based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the site and other areas free from accumulations of waste materials, rubbish, and other debris. Failure to keep a reasonably clean and orderly work area will result in the Owner, at its discretion, to deduct Contractor \$100/day and subtract such fine from the subsequent payment application.

C. *Cleaning:* Prior to Substantial Completion of the Work, Contractor shall clean all structures and items built or disturbed under this contract and restore all storage yards to original condition and make it ready for utilization by Owner. At the completion of the Work, Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

original condition all property not designated for alteration by the Contract Documents.

- D. The Contractor shall not subject any part of the Work or adjacent property to stresses or pressures that will endanger its integrity.

6.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, change orders, Work Change Directives, Field orders, and written interpretations and clarifications, in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to the Owner.
- B. *Record Drawings:* The Contractor shall obtain from the Engineer one set of Contract Drawings in non-reproducible prints for the purpose of documenting “record” conditions.
- C. It shall be the responsibility of the Contractor to mark each sheet of the non-reproducible “Record Drawings” in red and to record thereon in a neat form, any and all approved field changes and conditions as they may occur. A complete file of record field sketches, diagrams and other changes, as may become necessary during the progress of the work, shall also be maintained and attached to the “Record” set of Contract Drawings. At completion of the work, each sheet of “Record” prints, plus all record field sketches and diagrams shall be submitted to the Engineer for his review and use in establishing a basis for final payment. If additional drawings are required to document “record” conditions, they shall be prepared on Mylar of the same size as the Contract Drawings and submitted as outlined above.
- D. The Engineer will review progress on the record drawings before each pay request to assure continual updates. Failure to update the record drawings continuously may result in delays in processing payments.

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.
- B. The Contractor shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91-596) and under Section 107 of the Contract Work Hours and Safety Standards Act (PL 91-54).

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- C. The attention of the Contractor is directed to the provisions of Section 4(b) (4) of the Occupational Safety and Health Act of 1970, as follows:

“Nothing in this Act shall be construed to supersede or in any manner affect any workman’s compensation law or to enlarge or diminish or affect any manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.”

- D. The Contractor shall at all times, comply with the latest applicable State Laws pertaining to the Safety of Workers in the construction field.
- E. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor that the Work is acceptable (Article 14).

6.14 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site.

6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall notify the Engineer if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused resulting in the need for a Work Change Directive or Change Order.
- B. Contractor shall designate one person to respond to emergencies or issues on the Contractor's behalf during off-work hours at the project site. The Contractor shall provide records of person’s name, address, telephone and pager numbers during the pre-construction meeting and updated continuously thereon.

6.17 *Shop Drawings and Samples*

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- A. Contractor shall submit Shop Drawings to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals referred will be identified by the Engineer. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by paragraph 6.17.F.
- B. Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as Engineer may require to enable Engineer to review the submittal. The numbers of each Sample to be submitted will be as specified in the Specifications.
- C. The terms appearing on Engineer's Shop Drawing Review Stamp to denote results of Engineer's review of Contractor's submitted data have the following meanings, including procedures for disposition of the various copies of such data:
 - 1. "Approved" if no change or rejection is made. All but two (2) copies of the submitted data will be returned.
 - 2. "Approved as Noted" if minor changes or additions are made, but re-submittal is not considered necessary. All but two (2) copies of the submitted data will be returned and all copies will bear the corrective marks.
 - 3. "Revise and Resubmit" if the changes requested are extensive. In this case, re-submittal after correction is necessary and the same number of copies shall be included in the re-submittal as in the first submittal. One (1) copy of the first submittal will be retained by the Engineer's office and only two (2) copies will be returned unless the Contractor has requested the return of additional copies as set forth above. All other copies will be destroyed.
 - 4. "Rejected" if it is considered that the data submitted cannot with reasonable revision meet the requirements of the Plans and Specifications. Only two (2) copies will be returned unless additional copies have been requested. One (1) copy will be retained by the Engineer's office and all others will be destroyed.
 - 5. "Submit Specified Item" if the data submitted is not clear, complete, or for other reasons cannot be examined by the Engineer to establish compliance with the Plans and Specifications. Only two (2) copies will be returned to the Contractor, one (1) copy will be retained by the Engineer and all other copies will be destroyed. If such related Work is unacceptable to Engineer, or is incompatible with or does not conform to the requirements of the subsequently reviewed Shop

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

Drawings, Contractor shall correct or replace such Work at his own expense as well as the Work of other prime Contractors whose Work is affected in any way.

- D. Work performed prior to Engineer's review and approval of the pertinent submittals will be at the sole expense and responsibility of Contractor.

E. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:
 - a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - b. all materials with respect to intended use, handling, assembly, and installation pertaining to the performance of the Work;
 - c. all procedures of construction and safety precautions; and
 - d. the necessary coordination each Shop Drawing or Sample with other Shop Drawings and Samples as required.
2. Each submittal shall include a written indication that Contractor reviewed and approved submittal in satisfaction of contract provisions.
3. At the time of each submittal, Contractor shall give Engineer specific written notice of exceptions, variations or substitutions from the requirements of the Contract Documents.

F. Engineer's Review

1. Engineer will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to Engineer.
2. Engineer's review and approval will not extend to procedures of construction (except where a particular technique, or procedure of construction is specified in the Contract Documents) or to safety precautions or programs that need to be in place. The review and approval of a separate item will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval of Shop Drawings or Samples shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents. Contractor is responsible to obtain written approval by the

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

Engineer of each such variation incorporated in or accompanying the Shop Drawing or Sample approval.

G. *Resubmittal Procedures*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and New Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with Owner.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor, Subcontractor and supplier warrants and guarantees to Owner and Engineer that all Work will be in accordance with the Contract Documents and will not be defective.
- B. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Acts by the Owner or Engineer that may constituted as acceptance of Work (approval of Shop Drawings, inspection, use, etc.) that is not performed and completed by the Contractor in accordance with the Contract Documents shall not be a release of Contractor's obligation to perform the Work in accordance with the Contract Documents.

6.20 *Project Sign*

- A. The Contract provisions will indicate the need for project signs. A bid item will be included for payment. If the Contract calls for such signs and the specific bid item is established, the cost of such signs shall be spread across the bid item.

The Contractor or the General Contractor in the case of more than one Contract, shall provide and maintain at the site a project sign as shown on the plans and conforming to the specifications.

- B. The sign shall be erected in a substantial manner with adequate bracing, at the location(s) directed by the Engineer. The Contractor shall protect the sign from injury during the continuance of the work under the Contract and shall do all patching of lettering, painting, and bracing thereof necessary to maintain same in first class condition and in proper positions. At the expiration of the time specified under the Contract, the project sign shall be removed by the Contractor. The Contractor shall restore, at his own expense, all areas disturbed by the project sign to the satisfaction of the Engineer.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

ARTICLE 7 – OTHER WORK

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site by Owner's employees, or performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. Owner and Contractor shall agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work. In general, no change in contract price will be allowed for work by others on the site. Contractor's schedule may need to be adjusted to assure compatibility with others who must work at the site.
- B. Contractor shall afford the Owner's Employee or other Contractor who is performing the other work with proper and safe access to the Site for performance of the work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, Contractor shall properly connect or otherwise make its several parts come together and properly integrate with such other work.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent effects and deficiencies in such other work.
- D. No delay claims by the Contractor may be made for the performance of this other work by the Owner, Owner's agent or utility company if the need for such work comes from unforeseen or changes in Contract conditions.
- E. It may be necessary for utility companies to move poles, pipes, conduits, or other approved items in the work area in order for the Contractor to perform the work of this contract. The Contractor is obligated, at no expense or claim to the Owner, to accommodate the schedule for work by these utilities.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various Contractors will be identified;
 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

- A. Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an Engineer whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay Promptly When Due*

- A. Owner shall make payments to Contractor promptly when they are due, usually within 60-days of an approved payment application, and in the same billing and payment cycle employed by the Owner.

8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties in respect of providing lands and easements and providing Engineering surveys to establish reference points are set forth in Article 4. Engineer will make available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

8.06 *Insurance*

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- A. Owner's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Article 10.

8.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility in respect to certain inspections, tests, and approvals is set forth in Article 13.

8.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Article 4.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The Engineer may be a consultant or staff representative from the Owner. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer.

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Owner and Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work.

9.04 *Clarifications and Interpretations*

- A. Engineer will issue within 2-days such written clarifications or interpretations of the requirements of the Contract Documents as Engineer may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on Owner and Contractor.

9.05 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly.

9.06 *Rejecting Defective Work*

- A. Engineer will have authority to disapprove or reject Work that Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed at a cost payable to the Contractor.

9.07 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority as to Shop Drawings, Samples, Change Orders, and Payment Applications, see Articles 6, 10, 11, 12, and 14.

9.08 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision. These quantities will be reviewed with Contractor on a continuous basis before the

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

application for payment is prepared by the Contractor. The prices reviewed with the Contractor shall be the basis for payment, the Application for Payment.

9.09 *Interpretation of Contract Documents, Acceptability of Work and Decision in Dispute*

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work. Claims, disputes and other matters relating to work product, interpretation of Contract Documents or additional work claims must be made in writing within 10-days after the start of the occurrence or event. Supporting data for the dispute must be received by the Engineer within 45-days. A decision will be made within 30-days of all supporting information on the dispute.
- B. When functioning as interpreter and judge under this section, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Engineer will be a condition precedent to any exercise by Owner or Contractor of these remedies.

9.10 *Limitations on Engineer's Authority and Responsibilities*

- A. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's procedures of construction, or the safety precautions and programs. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents or to comply with the laws and regulations.
- B. Engineer will not be responsible for the acts or omissions of Contractor, Subcontractor, or Supplier performing any of the work.
- C. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- D. The limitations upon authority and responsibility set forth in this section also apply to Engineer's, Consultants, Resident Project Representative, and assistants.

ARTICLE 10 – PROCEDURE FOR MAKING CHANGES IN THE WORK AND RESULTING CLAIMS

10.01 *Authorized Changes in the Work*

- A. Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, Field Order, or a Work

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved that will be performed under the applicable conditions of the Contract Documents.

- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made as described later in this Article. Where such change involves work covered by existing bid items, the Contractor agrees to do the work at those bid prices without recourse for claims trying to invalidate the applicability of those items.

10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, including work done outside payment limits, as amended, modified, or supplemented, except in the case of an emergency or in the case of uncovering Work.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
 - 1. changes in the Work as ordered by Owner to cover defective Work.
 - 2. changes in the Contract Price or Contract Times that are agreed to by the parties.
 - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision.
- B. The Contractor shall carry out the Change Order even if the conditions of the change order are under dispute. The Contractor shall carry on the Work and adhere to the progress schedule.

10.04 *Notification of Surety*

- A. If notice of any change affecting the general scope of the work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Contractor's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

10.05 *Claims and Disputes*

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- A. *Written Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 10-days) after the start of the event-giving rise thereto. Failure to promptly notify (in writing) the Engineer within the 10-day time frame constitutes acceptance of the change order, written directions or any action taken with respect to the provisions of the Contract Document.
- B. Supporting data shall be delivered to the Engineer and the other party to the Contract. The Engineer may allow additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matters.
- C. A Claim for an adjustment in Contract Price or time shall be prepared in accordance with the provisions of Article 12. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within the 30-days after receipt of the claimant's last submittal (unless Engineer allows additional time).
- D. *Engineer's Decision:* Engineer will render a formal decision in writing within 30-days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. Engineer's written decision on such Claim, dispute, or other matter will be final and binding upon Owner and Contractor unless:
 - 1. an appeal from Engineer's decision is taken within 10-days in accordance with the dispute resolution procedures set forth in Article 16; or
 - 2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from Engineer's written decision is delivered by Owner or Contractor to the other and to Engineer within 10-days after the date of such decision. A formal proceeding need be requested by the appealing party. This process will begin with a conference with the Owner. The Owner will reach its decision within 30-days of the hearing. Any further appeal will be conducted in accordance with applicable NYS laws and regulations.
- E. If Engineer does not render a formal decision in writing within the time stated, the Contractor understands the decision is to deny the Claim in its entirety.
- F. No Claim for an adjustment in Contract price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 – PAYING THE COST OF THE WORK

11.01 *Change in Contract Price*

- A. The value of any Work covered by a Change Order or any claim for an increase or decrease in the Contract Price shall be determined by one of the following methods:

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

1. By such applicable unit prices, if any, as are set forth in the Contract; or
2. If no such unit prices are so set forth, then by unit prices or by a lump sum mutually agreed upon by the Owner and the Contractor; such unit or lump sum being arrived at by estimates of reasonable value prepared in general conformance with outline set forth in paragraph 11.02 below; or
3. Where there are no applicable unit prices and agreed lump sum prices cannot be readily established or substantiated, the Contractor shall be paid the actual and reasonable cost for the work by time and materials.

11.02 *Cost of the Work – Time and Materials*

A. *Costs Included:* The term “Cost of the Work” means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. The costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event-giving rise to the Claim. Such costs shall be in amounts no higher than those prevailing in the locality of the Project and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Engineer and Contractor. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers’ compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Engineer.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and suppliers’ field services required in connection therewith. All cash discounts, salvage value, trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

In calculating the cost of equipment and plant rentals, the base hourly rates shall be the daily rate as listed in the current Rental Rates for Construction Equipment prepared by Associated Equipment Distributors divided by eight (8); thereafter

- a. The first 20 hours will be paid at 90% of the above base hourly rate; for 21 to 40 hours, the rate will be 80% of the above base hourly rate; and
- b. For over 40 hours, the rate will be 45% of the above base hourly rate.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- c. The number of hours to be paid for shall be the number of hours that the equipment or plant is actually used in performing the work of the Change Order.

Equipment to be used by the Contractor shall be specifically described and be of suitable size and suitable capacity required for the work to be performed. In the event the Contractor elects to use equipment of a higher rental value than that suitable for the work, payment will be made at the rate applicable to the suitable equipment. The equipment actually used and the suitable equipment paid for will be recorded as part of the record for the work performed. The Engineer will determine the suitability of the equipment. If there is a differential in the rate of pay of the operator of oversize or higher rate equipment, the rate paid for the operator will likewise be that for the suitable equipment.

In the event that a rate is not established in the Associated Equipment Distributors Rental Rates for a particular piece of equipment or plant, the Owner shall establish a rate for that piece of equipment or plant that is consistent with its cost and use.

It is mutually understood that the base daily rates include all costs incidental to equipment and plant rentals including cost of moving to and from the site.

- 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from Subcontractors. The Owner will then determine, with the advice of Engineer, which bids, if any, will be acceptable.

If any of the work is performed by a subcontractor, the Contractor shall be paid the actual and reasonable cost of such subcontracted work computed as outlined above or on such other basis as might be approved by the Owner, plus an additional allowance of five percent (5%) to materials and direct labor to cover the Contractor's profit, superintendence, administration, insurance and other overhead. The cost of the premium portion of overtime pay shall be excluded when computing the above-described charges for profit and overhead.

- 4. Costs of special consultants (including but not limited to Engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
- 5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
- c. Rentals of all construction equipment and machinery, and the parts thereof and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms set forth in 11.02, paragraph 2. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
- d. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work provided such losses and damages have resulted from causes other than the negligence of Contractor, and Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- e. The cost of utilities, fuel, and sanitary facilities at the Site unless contained within equipment rental rates.
- f. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.
- g. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.
- h. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Administrative payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, supervising employees, Engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.
 5. Other overhead or general expense costs.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Article 12.
- D. *Documentation:* Contractor will establish and maintain records in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.03 Cash Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents.
1. the allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. Contractor's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- B. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.04 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, the Contract Price will be equal to the sum of the unit price for each

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Article 9.

- B. The quantities listed in the Unit Price Schedule, which is a part of the Contractor's Bid and the Agreement, have been estimated by the Engineer based on information available during the preparation of the Contract Documents. The Final Contract Price is determined on the basis of the number of units for each item of work actually performed at the unit prices stated in the Unit Price Schedule. These actual quantities can vary widely from the estimated quantities because of field conditions. The Contractor is cautioned that no extra compensation will be made because of a variation in final quantities from estimated quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Contractor may only make a Claim for an adjustment in the Contract Price if the final quantity of any item of Unit Price Work performed by Contractor differs by less than thirty five percent (35%) from the estimated quantity of such item indicated in the Agreement.

Owner may only make a Claim for an adjustment in the Contract Price if the final quantity of any item of Unit Price Work performed by Contractor differs by more than thirty five percent (35%) from the estimated quantity of such item indicated in the Agreement.

- E. No adjustment in the Contract Price will be made on any quantity of Asphalt Concrete – Truing & Leveling Course, Item 403.21nnnn over the estimated quantity indicated in the Proposal.
- F. For any item (unit prices or lump sum) eliminated from the Contract, there will be no adjustment in unit prices to other items in consideration.

**ARTICLE 12 – CHANGES IN CONTRACT PRICE AND CONTRACT TIMES FOR
COMPLETION**

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order or by a Written Amendment submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Article 10.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract price will be determined as follows:
1. where the Work (or portions of Work) involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved; or
 2. where the Work (or portions of Work) involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum or unit price; or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum or new unit prices is not reached under paragraph 12, on the basis of the Cost of the Work plus a Contractor's fee for overhead and profit.
- C. Contractor's Fee: The Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred for labor, equipment and materials, the Contractor's fee shall be fifteen (15) percent;
 - b. for costs incurred as result of using approved Subcontractors, the Contractor's fee shall be five (5) percent;
 - c. If any of the Subcontractors will be paid on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the Subcontractor who actually performs the Work will be paid a fee of 15 percent of the costs incurred by such Subcontractor for labor, equipment and materials. The Contractor will each be paid a fee of five percent of the amount paid to the Subcontractor;
 - d. no fee shall be payable on the basis of costs as a result of negligence or for any other overhead costs;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with this article.

12.02 *Change of Contract Times*

- A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment submitted by the party making the claim to the Engineer and the other party to the Contract in accordance with the provisions of Article 10 and 12. Such claims to change the contract should be made within 72-hours of the cause leading to the request.

12.03 *Delays Beyond Contractor's Control*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) established by the progress schedule due to delay beyond the control of Contractor, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made within the parameters of this Article.
- B. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility Owners or other Contractors performing other work as contemplated by Article 7, fires, floods, epidemics, hurricanes, tornadoes, micro-bursts or other acts of God. Loss of time due to rain, cold, or snow does not warrant a change in the contract times, unless deemed abnormal by the Owner.

12.04 *Delays Within Contractor's Control*

- A. The Contract Times (or Milestones) will not be extended due to delays within the control of Contractor. Contractors are expected to adjust crew size and effort to account for periods of normally occurring adverse weather conditions, equipment and some power issues, Subcontractor's performance, utility company delays material availability and the like.

12.05 *Delays Beyond Owner's and Contractor's Control*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both Owner and Contractor, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be Contractor's sole and exclusive remedy for such delay.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

12.06 *Delay Damages Claimed by Contractor*

- A. No claims will be considered resulting from:
 - 1. delays caused by or within the control of Contractor; or
 - 2. normal weather delays unless beyond the control of both Owner and Contractor, including but not limited to, fires, floods, epidemics, unseasonable and abnormal weather conditions, acts of God, or acts or neglect by utility Owners or other Contractors performing other work.
- B. A change in Contract Price or Contract Times can be made to compensate for delay, interference, or disruption directly attributable to actions or inactions of Owner or anyone for whom Owner is responsible.

12.07 *Delay Damages Claimed by Owner*

- A. If the Work is not substantially completed and/or ready for final payment within the times specified in the Contract, plus any extensions thereof allowed through written amendment in accordance with this Article of the General Conditions, the Contractor shall pay either damages as stipulated in the Contract or, if no such damage clause is stated, then Contractor shall pay Owner all costs, including Engineering charges, lost revenues, user delay charges, etc., incurred by the Owner and constituency from the specified date of substantial completion and/or final payment until the Work is substantially completed and/or ready for final payment. Such costs or damages can be deducted from any subsequent payment application.

**ARTICLE 13 – VERIFICATION OF WORK STANDARDS: TESTS AND INSPECTIONS;
CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

13.01 *Notice of Defects*

- A. Owner or Engineer will give prompt notice of known defective work. All defective Work may be rejected, corrected, or accepted.

13.02 *Access to Work*

- A. The Owner or its agents and other governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs.

13.03 *Tests and Inspections*

- A. When the Owner is responsible to arrange testing and/or inspections, Contractor shall give Engineer timely notice of readiness of the Work for all required inspections,

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except: where such tests are necessary for materials, equipment, defective work or work covered up before inspection.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.
- F. Uncovering Work for inspection or testing shall be at Contractor's expense unless Owner or Engineer has not acted with reasonable promptness in response to notice by the Contractor that Work is ready for testing.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, the Contractor shall make available that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, Contractor shall pay all claims, costs, losses, fees, and damages arising out of this work and of satisfactory replacement or reconstruction. Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing,

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in paragraph 10.05.

13.05 *Stop Work Ordered by the Owner or Engineer*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers, continuous supervision through the Resident Superintendent, suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner or Engineer may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.
- B. This right of Owner to stop the Work shall not be construed as a duty on the part of Owner and Engineer to exercise this right for the benefit of a person or entity.

13.06 *Correction or Removal of Defective Work*

- A. Contractor shall correct all defective Work, rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all Claims, costs, fees, charges, losses, damages, court fees, etc. arising out of or relating to such correction or removal.

13.07 *Correction Period*

- A. If within 1-year after the date of Final Payment or as modified by any specific provisions of the Contract Documents, any Work or repairs is found to be defective, Contractor shall promptly (as defined by Owner with notice to the Contractor) repair, replace or cause to be rectified without cost to Owner and in accordance with Owner's written instructions. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work repaired, corrected or replaced and all Claims, fees, costs, losses and damages will be paid by Contractor.
- B. In special circumstances where a particular item of equipment is placed in continuous service before Final Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided by Written Amendment.
- C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced, the correction guarantee period with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- D. Contractor's obligation under this section is in addition to all other obligations or warranties.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

13.08. *Acceptance of Defective Work*

- A. The Owner may, upon consultation with the Engineer, accept defective work.
- B. Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

- A. The Owner may, after 7-days written notice to Contractor, correct and remedy any defective or rejected work.
- B. In exercising the rights and remedies under this paragraph, Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents, Engineers and employees, access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All Claims, costs, fees, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this section will be charged against Contractor, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price.
- D. Contractor shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this section.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The schedule of values established as provided in paragraph 2.07 will serve as the basis for progress payments and will be incorporated into a form of Application for Payments acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

14.02 *Progress Payments*

A. *Applications for Payments*

1. At least 20-days before the date established for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. No payment will be made for materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligation associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
4. All payment applications shall include certified payroll logs that wages are in accordance with state regulations.
5. Any damage claims, fines, penalties, Contractor charge backs or other such claims can be deducted by the Owner from any payment application.

B. *Review of Applications*

1. Engineer will, within 10-days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents subject to any testing in an evaluation of the Work as a functioning whole prior to or upon Substantial Completion.
 - c. that the Contractor and Engineer have daily measured and agreed to all quantities used in relation to Unit Price Bid and the Schedule of Values.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- d. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
- 3. Neither Engineer or Engineer's review of Contractor's Work for the purposes of recommending payments will impose responsibility on Engineer to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work.
- 4. Engineer may refuse to recommend the whole or any part of any payment if in Engineer's opinion:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. Owner has been required to correct defective Work or complete Work;
 - c. Engineer has actual knowledge of the occurrence of any of the events that would cause to have the price adjusted from that requested;
 - d. The submittal fails to include progress schedule updates or certified payrolls;
 - e. The Contractor has failed to submit required documentation (such as MBE's utilization form) to outside regulating agencies or Owners financial sources (such as for grants or subsidized aid); or
 - f. Contractor has failed to submit other documentation required (such as shop drawings).

C. Payment Becomes Due

- 1. 60-days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment

- 1. Owner may refuse to make payment of the full amount recommended by Engineer or make adjustments to payment request because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. There are other items entitling Owner to a setoff against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events that would cause to have price adjusted.
- 2. If Owner adjusts the payment amount recommended by Engineer, Owner must give Contractor written notice stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld.
 - 3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due with no penalty.

14.03 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed as incomplete) and request that Engineer issue a certificate of Substantial Completion.

Promptly thereafter, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. The Engineer must determine if the Work can be placed in service for its intended use. This shall include all cleaning, testing and training as requested. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

If Engineer and Owner consider the Work substantially complete, Engineer will prepare and deliver to Owner a tentative certificate of substantial Completion that shall fix the date of Substantial Completion.

When applicable, there shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. At the time of delivery of the tentative certificate of Substantial Completion Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

- B. If Work is not substantially complete within the specified time as stipulated in the accepted program schedule and/or in the contract agreement the Contractor shall pay the Owner all stipulated damages, or if no damage clause exists in the contract, then Contractor shall pay for all Engineer and inspection charges and all other costs incurred by the Owner from the specified date for substantial completion as determined by the Engineer. Those costs may be deducted from Contractor's application for payment.
- C. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion, but Owner shall allow Contractor reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

- A. Use by Owner at Owner's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part to the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.
 - 1. Owner at any time may request Contractor in writing to permit Owner to use any such part of the Work which Owner believes to be ready for its intended use and substantially complete.
 - 2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.09 regarding property insurance.

14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete and Contractor has certified (in writing) that all work is done and inspected in compliance with the contract document, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

14.07 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents, and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by: a) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance; b) consent of the surety, if any, to final payment; c) complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work; d) certified payrolls; e) as-built drawings or documentation; f) operation and maintenance manuals; and g) any other information required by the Owner.
3. In lieu of the releases or waivers of Liens and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: a) the releases and receipts include all labor, services, material, and equipment for which a lien could be filed; and b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied.

B. *Review of Application and Acceptance*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within 10-days after receipt of the final approved Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

C. Payment Becomes Due

1. 60-days after the presentation to Owner of the approved final Application for Payment and accompanying documentation, the amount recommended by Engineer will become due and, when due, will be paid by Owner to Contractor.

D. Operation and Maintenance Manuals

1. Upon receipt of the final reviewed shop drawings, the Contractor shall, within 30-days, furnish six (6) sets of Operating and Maintenance Manuals for use by the Owner. The manuals shall include operating and maintenance information on all systems and items of equipment, where specifically requested in the specifications and in the format as described in the General Requirements.
2. Completed manuals shall be submitted to the Engineer for review and acceptance. Incomplete or inadequate manuals will be returned to the Contractor for correction and resubmission. Manuals must be in acceptable form prior to full payment of that item or equipment.
3. The Contractor shall also furnish spare parts data for each different item of equipment as outlined in the General Requirements. The foregoing shall not relieve the Contractor of any responsibilities under any guaranty specified herein. The above shall be submitted with the Operation and Maintenance Manual submission for the equipment.

14.08 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment and recommendation of Engineer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in writing which are still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90-consecutive days by notice in writing to Contractor and Engineer, which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. No adjustments in the Contract Price directly attributable to any such suspension shall be due Contractor. Contract Times may be extended by the Owner to account for the time that work is suspended.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents including, but not limited to: a) failure to supply sufficient skilled workers or suitable materials or equipment; b) failure to adhere to the progress schedule established under Article 2 as adjusted by the Owner; c) unsafe working conditions; or d) failure to stay within project limits;
 2. Contractor's disregard of laws or Regulations of any public body having jurisdiction;
 3. Contractor's disregard of the authority of Engineer or Owner; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. The Owner may, after giving Contractor (and the surety, if any) 5-days written notice, terminate the services of Contractor, exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner or have such amount deducted from payment application. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.

- C. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of monies due Contractor by Owner will not release Contractor from liability.

15.03 *Owner May Terminate For Convenience*

- A. Upon 30-days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Contractor shall be paid (without duplication of any items):
1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work;
 3. for all reasonable expenses incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 4. for reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid for loss of anticipated overhead or profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, the Work is suspended for more than 90-consecutive days by Owner or under an order of court or other public authority, or Engineer fails to act on any approved Application for Payment within 60-days after it is presented for payment, or Owner fails for 60-days to pay Contractor any sum determined to be due by the Owner, then Contractor may, upon 7-days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 45-days after it is submitted, or Owner has failed for 60-days to pay Contractor any sum finally determined to be due, Contractor may, 7-days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

- A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, Owner and Contractor may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.
- B. The Owner will not participate in any Arbitration procedures.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice. No fax or electronic mail shall be considered valid notice.

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Agreement.

17.05 *Controlling Law*

- A. This Contract is to be governed by the law of the State in which the Project is located.

17.06 *Contractor Review*

- A. The Contractor shall carefully review the Contract Documents to ascertain that they are free from ambiguity and sufficient for bid purposes. The Contractor shall base his bid solely on these Contract Documents, not relying on any explanation or interpretation from other sources.

ARTICLE 18 – PROVISIONS REQUIRED BY LAW

18.01 *Provisions Deemed Inserted*

Each and every provision required by law to be inserted in the Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein and in the event any such provisions are not inserted or are not correctly inserted then, upon the application of either party, this Contract shall forthwith be physically amended to make such insertion or correction.

18.02 *Workmen's Compensation and Disability Insurance*

The Contractor will secure workmen's compensation and disability benefit insurance for the benefit of, and keep insured during the life of the Contract, such employees as are required to be insured by the provisions of Chapter 41 of the Laws of 1914, as amended, known as the Workmen's Compensation Law, and the Disability Benefits Law, as amended.

The Contract shall be void and of no effect unless the Contractor complies with the provisions of this subdivision of the Contract.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

18.03 *No Assignment*

The Contractor is prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of the Contract, or his right, title or interest therein, or his power to execute the Contract to any other person, company, or corporation without the prior consent, in writing, of the Owner.

If the provisions of this Section are violated, the Owner shall revoke and annul the Contract and the Owner shall be relieved of any and all liability and obligation thereunder to the Contractor or to the person, company or corporation to whom the Contractor shall assign, transfer, convey, sublet or otherwise dispose of the Contract, and the Contractor and such transferee shall forfeit and lose all monies theretofore earned under this Contract, except so much as may be required to pay the Contractor's employees.

18.04 *Maintenance and Inspection of Records*

The Contractor shall maintain books, records, documents, and other evidence in accordance with appropriate accounting procedures and practices, directly pertinent to the performance of the work under this Contract until the expiration of three years from the date of final payment. The Owner, the Comptroller General of the United States, the New York State Department of Health, or any other of their duly authorized representatives shall have access to any such books, documents, papers, and records for the purpose of making audit, examination, excerpts, and transcriptions. The Contractor shall preserve and make such records available during said 3-year period. The Contractor's facilities and records shall also be subject to all reasonable times to inspection and audit by said agencies or representatives during the period of performances of the Contract Work.

18.05 *Contract Deemed Executory*

The Contractor agrees that the Contract shall be deemed executory to the extent of the monies available and that no liability shall be incurred by the Owner beyond the monies available therefore.

18.06 *Non-Discrimination in Employment*

- A. During the performance of this contract, the Contractor agrees to the following: The Contractor will not discriminate against any employee, applicant for employment, sub-contractor, supplier of materials or services, or program participant because of actual or perceived: age, creed, color, disability, ethnicity, familial status, gender, height, immigration or citizenship status, marital status, national origin, race, religion, sexual orientation, socio-economic status, or weight.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

**SECTION 00800
SUPPLEMENTARY CONDITIONS**

These Supplementary Conditions amend or supplement the Contract General Conditions and other provisions of the Contract Documents as indicated below. All provisions, which are not so amended or supplemented, remain in full force and effect.

The terms used in these Supplementary Conditions will have the meanings indicated in the Contract General Conditions. Additional terms used in these Supplementary Conditions have the meanings indicated below, which are applicable to both the singular and plural thereof.

Supplementary Conditions – 1.01.A.20. Replace the paragraph with the following paragraph:

20. *Guarantee Period* – The one-year guarantee (Manufacturers' Warranty Only) period shall commence on the date the project is approved for Final Payment.

Supplementary Conditions – 2.01. Amend the paragraph by adding the following paragraphs after paragraph 2.01.A:

- B. A Performance Bond in the amount of one hundred percent (100%) of the total amount bid must be issued within 10 days of notification of award naming the "City of Ithaca" as Obligee. The Performance Bond shall remain in effect at least one year after the date when final payment becomes due.
- C. A Labor and Material Payment Bond in the amount of one hundred percent (100%) of the total amount bid must be issued within 10 calendar days of notification of award naming the "City of Ithaca" as Obligee. The Labor and Material Payment Bond shall remain in effect at least one year after the date when final payment becomes due.
- D. A Maintenance Bond in the amount of one hundred percent (100%) of the total amount bid must be issued with the application for final payment naming the "City of Ithaca" as Obligee. The Maintenance Bond shall remain in effect at least one year after the date when final payment becomes due.
- E. Copies of the Performance Bond, Labor and Material Payment Bond, and Insurance issued to the Contractor for this project shall be provided to the Owner at the offices of the City of Ithaca, within 10 days of notification of award. Proof of Bonds and Insurance must be received and approved by the Engineer prior to commencing any work for the City of Ithaca.

Supplementary Conditions – 2.04. Amend the paragraph by adding the following paragraphs after paragraph 2.04.A:

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- B. The Contractor shall post all necessary bonds and insurance, and start work on the project within 10 days of the date fixed in the Notice to Proceed or as ordered by the Engineer upon review of the Contractor's construction schedule.

Supplementary Conditions – 2.06. Amend the paragraph by adding the following paragraphs after paragraph 2.06.A:

- B. Engineer will schedule a Preconstruction Conference upon receipt of Contractor's as-planned construction progress schedule. The as-planned construction progress schedule shall be a directed tree graphic critical path progress schedule as defined in Supplementary Conditions – 2.07.

Supplementary Conditions – 2.07. Amend the paragraph by adding the following paragraphs after paragraph 2.07.A:

- B. The Contractor shall provide a directed tree graphic critical path progress schedule showing the order in which the Contractor proposes to direct his operations towards the completion of the proposed improvements, the start and duration of major items of work or activities, critical features including procurement of critical materials, submittal schedule and anticipated dates of milestone task completion. The progress schedule shall provide sufficient detail and identify measurable milestone events used to track job progress.
- C. The Critical Path Method (CPM) networking diagram shall indicate the as-planned construction progress schedule at the time of award. The as-planned schedule shall indicate how the Contractor plans to progress the work towards completion. The schedule shall identify all necessary work tasks and activities required for completion and the sequential relationship between these activities.
- D. The activities indicated on the progress schedule shall be comprehensive, breaking down the project into logical sequences of activities, required duration of each activity and milestone events whose completion have considerable impact on subsequent project activities. Activities shall also include permit requirements, procurement of significant materials or equipment, and submittal and approval of shop drawings.
- E. The time assigned to each activity shall be realistic with due consideration of the degree of difficulty involved with performing the activity, availability of skilled labor, seasonal weather variations and other factors necessary for completion of the activity.
- F. The CPM progress schedule shall indicate work activity, milestones, and duration. Each activity shall indicate duration and identify early start (ES), latest start (LS), early finish (EF), latest finish (LF) and free float. Total float available within the approved construction schedule shall belong to the project. The earliest start time

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

path through the progress schedule from the start of the project to completion shall be highlighted as the Critical Path.

- G. Gantt charts and bar charts are not acceptable for determination of the critical path or for monitoring construction progress. These charts may be submitted as preliminary documentation and as a means of identifying the labor and equipment resource requirements on a project time line.

Supplementary Conditions – 3.02. Amend the paragraph by adding the following paragraphs after paragraph 3.02.A.2:

3. Throughout these Contract Documents, references are made to other specifications. References to other specifications shall mean that the applicable portions thereof shall be followed as if the specifications were actually incorporated into these Contract Documents. All work shall be constructed in accordance with the latest New York State Department of Transportation Standard Specifications and related Standard Sheets regarding item specifications, descriptions, materials, construction details and related work necessary to complete the improvements, unless specifically shown otherwise.

Supplementary Conditions – 3.03.B. Remove paragraph 3.03.B *Resolving Discrepancies* in its entirety.

Supplementary Conditions – 3.04. Amend the paragraph by adding the following paragraphs after paragraph 3.04.B:

- C. The Contractor may be furnished additional instructions and detail drawings, by the Owner or his Representative, as necessary to carry out the Work required by the Contract Documents. The additional drawings and instructions thus supplied will become a part of the Contract Documents. The Contractor shall carry out the Work in accordance with the additional detail drawings and instructions.

Supplementary Conditions – 4.01. Amend the paragraph by adding the following paragraphs after paragraph 4.01.C:

- D. Prior to the issuance of Notice to Proceed, the Owner shall make every effort to obtain all land and right-of-way necessary for the completion of the work to be performed pursuant to the Contract Documents.
- E. If the Owner is unable to obtain all land and right-of-way prior to the issuance of Notice to Proceed the Contractor shall conduct his operations within the available land and right-of-way. Contractor shall not make any claim against the Owner for the inability of the Owner to obtain all land and right-of-way prior to the issuance of Notice to Proceed.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

Supplementary Conditions – 5.02. Amend the paragraph by adding the following paragraphs after paragraph 5.02.B:

C. The limits of Liability for insurance required by Paragraph 5.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Worker's Compensation, and related coverages under Paragraphs 5.03.A.1 and A.2 of the General Conditions:

- a. State Statutory
- b. Applicable Federal (e.g. Longshoreman's) Statutory
- c. Employer's Liability \$500,000

2. Contractor's General Liability under Paragraphs 5.03.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody, and control of the Contractor:

- a. General Aggregate \$2,000,000
- b. Products – Completed Operations Aggregate \$1,000,000
- c. Personal and Advertising Injury \$1,000,000
- d. Each Occurrence (Bodily Injury and Property Damage) \$1,000,000
- e. Property Damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable.
- f. Excess or Umbrella Liability
 - 1) General Aggregate \$5,000,000
 - 2) Each Occurrence \$5,000,000

3. Automobile Liability under Paragraph 5.03.A.6 of the General Conditions:

- a. Bodily Injury
 - 1) Each Person \$1,000,000
 - 2) Each Accident \$1,000,000
- b. Property Damage
 - 1) Each Accident \$1,000,000
- c. Combined Single Limit of \$1,000,000

4. The Contractual Liability coverage required under Paragraph 5.03.B.4 of the General Conditions shall provide coverage for not less than the following amounts:

- a. Bodily Injury
 - 1) Each Person \$2,000,000
 - 2) Each Accident \$2,000,000
- b. Property Damage

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

1) Each Accident	\$2,000,000
2). Annual Aggregate	\$2,000,000

5. Other persons or entities to be included on policy as additional insured are:

- a. City of Ithaca
- b. PTR Management Consulting, LLC
- c. NYS and its Employees
- d. Sasaki Associates

Supplementary Conditions – 5.03. Amend paragraph 5.03.A. to **INSERT** language in **bold and underlined** as follows (the remainder of paragraph 5.03 remains as written in the General Conditions):

- A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable in amounts no less than the amounts specified in the Owner's Standard Insurance Provisions, **and which are included as Contract Documents in Section 00840 Insurance Requirements:**

Supplementary Conditions – 6.01. Amend the paragraph by adding the following paragraphs after 6.01.E:

- F. On-site job meetings will be held during the performance of the work of this Contract. Meeting will be held every two weeks at a mutually agreed upon location, convenient to the work site. Corporate officers representing the Contractor and major subcontractors that are deemed necessary must attend. Representatives of the Owner, Engineer, Utility Owners, or other interested agencies may also attend. The Contractor's representation shall be at no cost to the Owner.
- G. The Contractor and Owner shall review the progress schedule in completion of the projected milestone events, and propose necessary adjustments to the construction operations as necessary to maintain the completion schedule.

Supplementary Conditions – 6.02. Delete paragraph 6.02.C in its entirety, and add the following paragraphs after 6.02.B:

- C. Unless otherwise especially permitted, no work shall be done between the hours of 7:30 p.m. and 7:30 a.m. nor on Sunday or a legal holiday, except as necessary for emergency repairs or for the proper care and protection of work already performed. If it shall become absolutely necessary to perform the work at night or on Sunday or a legal holiday, the Engineer shall be informed at least 48 hours in advance of the beginning of performance of such work. Only such work shall be done at night as can be done satisfactorily as determined by the Engineer and in a first-class manner. Good

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

lighting and all other necessary facilities for carrying out and inspecting the work shall be provided and maintained at all points.

D. Existing highway record drawings are not available for review.

Supplementary Conditions – 6.03. Amend the paragraph by adding the following paragraphs after 6.03.B:

Contractor shall provide a portable toilet complying with applicable sanitary codes, for the duration of the project. The Contractor shall be responsible for locating the portable toilet in a location that is acceptable to the Owner.

The Contractor shall guarantee that all work performed is of the highest quality and free from imperfections; that all materials used are new and unused; that they are of standard construction and readily available in this area; that all material and equipment used meets all state, federal and local ordinances including OSHA and Underwriters Laboratories.

Supplementary Conditions – 6.05. Amend the paragraph by adding the following paragraphs after 6.05.F:

G. Owner's Engineer will record time required by Staff in evaluating Value Engineering proposals submitted by Contractor. Whether or not Engineer approves a Value Engineering proposal submitted by Contractor, Contractor shall reimburse Owner for the charges of Staff for evaluating each such proposal. The cost will be charged against any cost savings offered the Owner and be paid as negotiated and documented in an Invoice submitted by Owner to Contractor. The reimbursement shall be made by certified check to the City of Ithaca.

Supplementary Conditions – 6.06. Amend the paragraph by adding the following paragraphs after 6.06.G:

H. The Apparent Low Bidder shall submit to the Owner a list of Subcontractors, Suppliers and other persons and organizations (including those who are to furnish the principal items of material and equipment) prior to the Award of the Contract. The Apparent Low Bidder shall submit the list within 7-days after the Bid opening. An experience statement shall accompany the list with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, person or organization. If the Owner or Engineer after due investigation has reasonable objection to any proposed Subcontractor, Supplier, other person or organization, may before the notice of Award is given request the apparent Successful Bidder to submit an acceptable substitute without an increase in Bid price.

I. PROMPT PAYMENT TO SUBCONTRACTORS

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

1. The Contractor is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed, no later than thirty (30) days after the Contractor has received payment from the Owner.
2. In addition, all Retainage amounts must be paid by the Contractor to the Subcontractor no later than thirty (30) days after the Subcontractor has, in the opinion of the Engineer, satisfactorily completed its portion of the Work.
3. A delay in or postponement of payment to the Subcontractor requires good cause and prior written approval of the Engineer.
4. The Contractor is required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.
5. The Owner will not pay the Contractor for work performed unless and until the Contractor ensures that the Subcontractors have been promptly paid for the work they have performed under all previous payment requests, as evidenced by the filing with the Authority of lien waivers, canceled checks (if requested), and the Contractor's sworn statement that it has complied with the prompt payment requirements. Prime Contractors must submit a prompt payment affidavit, (form to be provided by the Owner) which identifies each subcontractor (both DBE and non-DBE) and the date and amount of the last payment to such subcontractor, with every payment request filed with the Owner, except for the first payment request, on every contract with the Owner. (See attached Prompt Payment Affidavit included in the contract documents as Section 850).
6. Failure to comply with these prompt payment requirements is a breach of the Contract, which may lead to any remedies permitted under law, including, but not limited to, Contractor debarment.

J. REPORTING REQUIREMENTS DURING THE TERM OF THE CONTRACT

1. The Contractor shall, within five (5) business days of contract award, or prior to any work being performed, execute formal subcontracts or purchase orders with the DBE firms included in the bid. These written agreements shall be made available to the Owner or Owner's Representative upon request. All contracts between the bidder and its subcontractors must contain a prompt payment clause as set forth in Section 6.06.I herein.
2. During the term of annual contracts, the bidder shall submit regular "Status Reports of DBE Subcontract Payments" in a form acceptable to the City. The frequency with which these reports are to be submitted will be determined by the Resident Project Representative, but in no event will reports be required less frequently than quarterly. In the absence of written notice from the Resident Project Representative, the bidder's first "Status Report of DBE Subcontract Payments"

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

will be due ninety (90) days after the date of contract award, with additional reports due quarterly thereafter.

3. In the case of a one-time procurement with either a single or multiple deliveries, a “Status Report of DBE Subcontract Payments,” in a form acceptable to the Authority, indicating final DBE payments shall be submitted directly to the Resident Project Representative. The information must be submitted prior to or at the same time as the bidder’s final invoice to the Authority user department identified in the solicitation. Failure to follow these directions may delay final payment.

Supplementary Conditions – 6.08. Amend the paragraph by adding the following paragraphs after 6.08.B:

- C. Contractor shall obtain all required divisible load permits from the State, County and local municipalities. Owner **will not** waive divisible load permit requirements and fees for work done on this project.
- D. If Contractor conducts operations outside of the project limits such as, but not limited to, surplus material disposal areas, borrow areas, and equipment storage areas with soil disturbances greater than 1 acre a NYSDEC SPDES General Permit and Stormwater Pollution Prevention Plan (SWPPP) will be required. NYSDEC’s SPDES General Permit defines the term “Operator” as “the person, persons, or legal entity, which owns or leases the property on which the soil disturbance is occurring.” Therefore, Contractor operations conducted outside the project limits will require the landowner (not the Contractor) to obtain the NYSDEC SPDES General Permit and develop the SWPPP.
- E. A NYSDEC SPDES General Permit and Stormwater Pollution Prevention Plan (SWPPP) has been obtained for the project. The Contractor and its Subcontractor(s) shall complete and sign the Contractor/Subcontractor SPDES Permit Certification Form (CONR 5) to certify they understand the SWPPP, the General Permit, and their responsibilities for compliance. The Contractor shall also identify at least one trained individual who will be responsible for implementing the SWPPP and who shall be on-site on a daily basis when soil disturbance activities are performed.

Supplementary Conditions – 6.17. Amend this paragraph by adding the following paragraphs after 6.17.G:

- H. Contractor shall schedule submission of shop drawings to allow sufficient time for review, submission of additional information required by the Owner, and revisions. At a minimum, shop drawings and materials information shall be submitted a minimum of 14 days prior to intended use. No materials shall be installed without approved shop drawings.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- I. Contractor shall provide four (4) copies of Shop Drawings and materials information to the Owner for review, two copies shall be returned to the Contractor. Submittals shall identify the project, Contractor, and reference the pertinent detail, drawing or specification. The Contractor shall submit in writing requests for modification to the plans and Specifications. These requests shall state the specific changes, and reasons for the requested changes. In all cases, changes to the plans and Specifications shall become the responsibility of the Contractor.
- J. Substitutions for specified materials and equipment may be considered by the Owner. The cost for review of substitution will be charged to the Contractor unless the substitution results in cost savings to the Owner beyond the cost of review.
- K. Submittals, which are incomplete, lack the Contractor's stamp and signature certifying his review for accuracy and coordination with field conditions and Contract Documents, shall be returned without action.

Supplementary Conditions – 6.20. Add the following new paragraph immediately after paragraph 6.20.B:

- C. A Project Sign will not be required.

Supplementary Conditions – 6.21. Add the following new paragraphs immediately after Article 6.20:

6.21 Schedule of Minimum Wage Rates

- A. The labor on this contract shall be performed in all respects in full accordance with the Labor Law of the State of New York. In accordance with Section 220, Subdivision 3, and Section 220-D, of the Labor Law, the industrial Commissioner has designated minimum hourly rates to be paid to employees. The most recent Wage Rate Schedule shall be posted in a prominent and convenient place for the inspection of the Contractor's employees. The Contractor can obtain updated prevailing wage schedules from the New York State Department of Labor.
- B. Article 8, Section 220 of the Labor Law, as amended by Chapter 750 of the Laws of 1956, provides, among other things, that it shall be the duty of the fiscal officer to make a determination of the schedule of wages and supplements to be paid to all laborers, workmen, and mechanics employed on public work projects. The amount of supplements listed on the enclosed schedule does not necessarily include all types of prevailing supplements.
- D. The Contractor shall make provisions for disability benefits, workmen's compensation, unemployment insurance, and social security as required by law.
- E. Article 8 of the New York State Labor Law was amended on July 15, 1983 to provide that wages for public projects are to be paid pursuant to the existing bargaining

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

agreement in the area where work is to be performed. Wages are to be paid on this project as herein set forth or pursuant to the collective bargaining agreement in effect and the federal wage rates, whichever is higher.

- F. The Contractor's attention is called to Article 8 of the Labor Laws of the State of New York as last amended, which provides, among other things, that the Contractor must file a statement in writing before receiving payment for each estimate certifying to the amounts then due and owing from such Contractor to any and all laborers for daily or weekly wages on account of labor performed on the contract, setting forth therein the names of the persons whose wages are unpaid and the amount due to each respectively, such statement to be verified by the oath of the Contractor, etc.
- G. In accordance with the New York State Labor Law, the Contractor shall submit certified payrolls to the Owner commencing at the first payroll after award of this Contract and shall continue to submit certified payrolls each 30-days thereafter or with each payment application, whichever is the lesser. No applications for payment shall be processed without receipt of the required certified payrolls.
- H. Three (3) copies of certified payrolls shall be submitted as follows:
 - a. One original payroll sheet.
 - b. One copy with first names and job titles legible and **all other personal information (last name, address, and social security number) made illegible by strike through with a black marker or blanked out** (personal information may be legible through marker on this copy).
 - c. One photocopy of the illegible personal information (personal information shall be completely illegible on this copy).
- I. Your attention is directed to the following Amendment to Article 8, Section 220(3-a) of the NYS Labor Law:

Assembly Bill Number 1839, entitled: "AN ACT to amend the Labor law, in relation to signs posted at public works projects"

APPROVED: This bill amends section 220(3-a) of the Labor Law to set forth specific requirements for signs at public work locations listing all prevailing wages specified in the contract. The bill mandates that such signs "be written in plain English and titled, in lettering no smaller than two inches in height and two inches in width," with the phrase "Prevailing Rate of Wages." The bill further requires that the sign be weatherproof. The bill takes effect on March 6, 2000.

The complete text of this Bill is available for review at the office of the City of Ithaca.

Supplementary conditions – 11.04. Replace paragraphs 11.04.A and 11.04.B in their entirety with the following:

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, the Contract Price for the Unit Price Work will be equal to the sum of the respective products of the unit price for each separately identified item of Unit Price Work and the corresponding estimated quantity of each such item as indicated in the Agreement
- B. The quantities listed in the Unit Price Bid List, which is a part of the Contractor's Bid and the Agreement, have been estimated by the Engineer based on information available during the preparation of the Contract Documents. The final Contract Price for Unit Price Work is determined on the basis of the number of units for each item of work actually performed at the unit prices stated in the Unit Price Bid List. These actual quantities can vary widely from the estimated quantities because of field conditions. The Contractor is cautioned that no extra compensation will be made because of a variation in final quantities from estimated quantities.

Supplementary Conditions – 13.07.A. Replace paragraph in its entirety with the following:

- A. If within the Manufacturers' Warranty period, starting the date of Final Payment or as modified by any specific provisions of the Contract Documents, any Work or repairs is found to be defective, Contractor shall promptly (as defined by Owner with notice to the Contractor) repair, replace or cause to be rectified without cost to the Owner and in accordance with Owner's written instructions. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work repaired, corrected or replaced and all Claims, fees, costs, losses and damages will be paid by Contractor.

Supplementary Conditions – 14.02. Add the following new paragraph immediately after paragraph 14.02.D:

- E. Quantity estimates shall be made for the quantities of work performed and materials placed in accordance with the Contract Documents as determined by measurements of the Engineer. For computations of the quantities of various items of earthwork, the planimeter shall be considered an instrument of precision and quantities computed by areas obtained by its use shall be accepted by all parties as accurate. Computation utilizing other computing devices including electronic computers shall not preclude by reference to planimeter. For computations of various items of other work, the number of units (area, linear, volumetric, etc.) within the payment limits, and lines and grades shown on the drawings shall be used. The resulting quantities shall be accepted as final, conclusive and binding on the Contractor.

Supplementary Conditions – 14.10, 14.11 and 14.12. Add the following new paragraphs immediately after Article 14.09:

- 14.10 *Non-Payment for Failure to Comply with Contract Requirements for ground/surface restoration.*

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- A. Owner and Contractor recognize the importance of completing temporary and permanent surface restorations in a timely manner. The Contractor shall complete rough grading operations of the work completed the previous day in areas other than pavement. In pavement areas, the Contractor shall complete fine grading and install temporary asphalt the same day.
- B. Permanent restoration of pavement, shoulder and field/lawn areas shall be completed by the Contractor within 30 calendar days of the initial disturbance, unless seasonal constraints exist as determined by the Engineer.
- C. If the Contractor does not comply with the above contract requirements, Non-Payment by the Owner will be assessed under the appropriate bid item requiring restoration for each calendar day or part thereof after the above time frames have expired during which the temporary or permanent surface restoration remains incomplete or deficient to the satisfaction of the Engineer.
- D. The non-payment amount shall be five Hundred Dollars (\$500) per calendar day and shall be deducted from the appropriate bid item on a subsequent application for payment. Each separate occurrence each day will be considered a separate violation and subject to a separate non-payment deduction by the Owner. This non-payment will be a permanent deduction from the total monies paid under this Contract.

14.11 *Non-Payment for Failure to Comply with Contract Requirements for Traffic Control.*

- A. Owner and Contractor recognize the importance of proper Work Zone Traffic Control (WZTC) and dust control for the duration of the contact.
- B. The Contractor shall provide, install and maintain all suitable signs, barricades, and other protective devices for the maintenance and protection of traffic for the proposed work. The minimum standards shall be as set forth in the Manual of Uniform Traffic Control Devices together with the NYS Supplement and must be installed to the satisfaction of the Engineer. Contractor shall provide a WZTC plan for review and approval by the Engineer. The Contractor shall provide dust control measures as required by the Engineer for the duration of the project.
- C. When there are substantial deficiencies in Work Zone Traffic Control occur or dust control as determined by the Engineer, the Contractor shall immediately provide corrective measures to remove the deficiencies to the satisfaction of the Engineer. Where minor deficiencies occur as determined by the Engineer, the Contractor shall install/repair said deficiencies to the satisfaction of the Engineer, within 24 hours of notification by the Engineer. Payment for WZTC and dust control shall be made under the appropriate bid item. When no specific bid item is listed, then Contractor shall include costs in other items. No additional claims for a change order covering for added costs shall be made by the Contractor for WZTC or dust control.

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

- D. Non-Payment will be assessed under WZTC for each calendar day during which there are substantial deficiencies in compliance with maintenance and protection of traffic, as determined by the Engineer.
- E. For minor deficiencies in WZTC or dust control as determined by the Engineer, Non-Payment by the Owner will be assessed under either the WZTC item for each calendar day or part thereof after the initial 24-hour period.
- F. The non-payment amount shall as specified under Specification Section 619 for deficiencies per calendar day or part thereof plus Liquidated Damages as specified in the Agreement and shall be deducted from either the WZTC or Mobilization item on a subsequent application for payment. Each separate occurrence each day will be considered a separate violation and subject to a separate non-payment deduction by the Owner. This non-payment will be a permanent deduction from the monies paid under this Contract.

14.12 *Non-Payment for Failure to Comply with Contract Requirements for Erosion Control.*

- A. Owner and Contractor recognize the importance of erosion control due to the proximity of local water supplies. The Contractor shall install, maintain and replace adequate erosion control measures for the duration of the contract. The Contractor shall submit a plan for control of erosion and sedimentation. This plan shall include diversion ditches, sedimentation ponds, straw bale placement, stone and other filters, erosion fencing, etc. The plan shall be in at least two parts – one for during construction and post-construction. The Engineer will be the final judge of the adequacy of the Contractor's erosion and sediment control efforts. Payment for this item will be in an appropriate bid item or included in other bid item. Under no circumstances will a change order be approved for any claim for added costs necessary to build, change or intensify the erosion control effort.
- B. When substantial deficiencies in erosion and sediment control occur as determined by the Engineer, the Contractor shall immediately provide corrective measures to remove the deficiencies to the satisfaction of the Engineer. Where minor deficiencies in erosion and sediment control occur as determined by the Engineer, the Contractor shall install/repair said deficiencies to the satisfaction of the Engineer within 24 hours of notification by the Engineer. Any damages caused by the failures of Contractor erosion control methods shall be rectified to the satisfaction of the Owner and Engineer.
- C. Non-Payment by the Owner will be assessed under the appropriate item for each calendar day or part thereof, during which there are substantial deficiencies in compliance with erosion and sediment control, as determined by the Engineer.
- D. The non-payment amount shall be Five Hundred Dollars (\$500) per calendar day and shall be deducted from a subsequent application for payment. Each separate occurrence within each day will be considered a separate violation and subject to a

**CITY OF ITHACA
ITHACA COMMONS REPAIR & UPGRADE
CONTRACT #3 – SURFACE IMPROVEMENTS**

separate non-payment deduction by the Owner. This non-payment will be a permanent deduction from the monies paid under this Contract.

Supplementary Conditions – 17.05.A. Delete the entire paragraph and replace with the following:

“This Agreement shall be governed under the laws of the Charter of the City of Ithaca and the State of New York, without regard to, or the application of, New York State choice of law provisions. The parties further agree that the Supreme Court of the State of New York, held in and for the County of Tompkins shall be the forum to resolve disputes arising out of either this agreement or work performed according thereto, and consent to the jurisdiction of such court.”

Supplementary Conditions – 18.06. Add the following new paragraphs immediately following paragraph 18.06.A:

- B. Contractors shall give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.
- C. In accordance with the Title VI of the Civil Rights Act, as amended, and other applicable Federal laws and regulations, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations.

Supplementary Conditions – City of Ithaca Clauses. Add the following paragraphs to the end of the General Conditions:

- 18.07 The City of Ithaca is exempt from Federal, State and local taxes. A tax exempt form will be issued by the Owner upon execution of the contract.