Terms and Conditions
dated May 06, 2010

For furnishing all labor, materials and equipment, together with all work incidental thereto, necessary and required for the contract entitled:

PROJECT TITLE: The Construction of The Veterans Administration Outpatient Clinic

NHCC Sealed Bid #: MC98-06010-4950 (the “Project”)

THIS AGREEMENT (the “Agreement”, the “Contract” or “Contract Documents”) as further outlined below, is made and entered as of this day of , 20 , is by and between the NASSAU HEALTH CARE CORPORATION (“NHCC” or “Owner”), a Public Benefit Corporation of the State of New York, having its principal office at 2201 Hempstead Turnpike, East Meadow, New York 11554 and ___________________________ (“Contractor”), having its principal office at ____________________________.

In consideration of the mutual stipulations, agreements and covenants contained in the Agreement, the parties hereto, for themselves, their successors and assigns or their executors, administrators and assigns, have agreed as follows:

Article 1. Contract Contents

1. Except for titles, sub-titles, headings, running headlines, tables of contents and indices (all of which are printed herein merely for convenience) the following, except for such portions thereof as may be specifically excluded, shall be deemed to be part of this Agreement:

   a. The Notice to Bidders;
   b. The Instructions to Bidders;
   c. Form of Bid Bond;
   d. Bidder’s Affirmations;
   e. Bidder Subcontractor List, if applicable (GML §101(5));
f. The Formal Sealed Bid Proposal;

g. Form of Performance Bond;

h. Form of Labor and Material Payment Bond;

i. Contract Specifications;

j. Drawings;

k. All addenda issued by the Owner or the duly authorized representatives prior to the receipt of bids;

l. All provisions required by law to be inserted in this Contract, whether actually inserted or not;

m. This Terms and Conditions, dated May 06, 2010 (the “Terms and Conditions”);

n. The Notice of Intent to Award Letter dated from NHCC to Contractor dated ________;

o. The Project Manual dated April 30, 2010 (the “Project Manual”); and

p. The Purchase Order/Notice to Proceed.

Article 2. Definitions

1. The following words and expressions, or pronouns used herein, shall, wherever they appear in this document, be construed as follows, unless a different meaning is clear from the context.

“Addendum” or “Addenda” - shall mean the additional Contract provisions issued in writing by the Owner prior to the receipt of bids.

“Agreement” or “Contract” or “Contract Documents” - shall mean each of the various parts of the Agreement both as a whole and severally as set forth in Article 1 {Contract Contents} above

“Architect/CM” - shall mean the Owner’s Architect and/or Construction Manager acting for the Owner, or any other representative duly designated by the Owner to act as such, with the powers and duties given to such person(s) or entity.

“Change Order” - shall mean the order modifying the Contract which sets forth the Extra Work to be performed.

“Contract Work” - shall mean everything expressly or implicitly required to be furnished and done by the Contractor or by any one or more of the parts of the Contract, except Extra Work as hereinafter defined; it being understood that, in case of any inconsistency in or between any part or parts of this Contract, the Architect/CM shall determine which shall prevail.
“Contractor” - shall mean the party of the second part hereto, whether corporation, Contractor or individual, or any combination thereof, and its, their or his successors personal representatives, executors, administrators and assigns, and any person, Contractor or corporation who or which shall at any time be substituted in the place of the party of the second part under this Contract.

“Extra Work” - shall mean work other than that required either expressly or implicitly by the Contract in its present form.

“Final Acceptance” - shall mean acceptance of the work by the Owner or his designated representative as evidenced by his signature upon the final certificate of completion. Such acceptance shall be deemed to have taken place only if and when such signature is affixed to such certificate.

“He”, “Him”, “Himself” - The word “he” shall mean “he or she” the word “him” shall mean “him or her”, the word “himself” shall mean “himself or herself”, wherever appropriate throughout the Contract.

“Owner” or “NHCC” - shall mean Nassau Health Care Corporation a.k.a. NuHealth, a.k.a. the party of the first part hereto.

“Service of Notices” - The Contractor hereby designates the business address specified in his bid, as the place where all notices, directions or other communications to the Contractor may be delivered, or to which they may be mailed. Actual delivery of any such notice, direction or communication to the aforesaid place, or depositing it in a postpaid wrapper addressed thereto in any post-office box regularly maintained by the United States Post Office Department, shall be conclusively deemed to be sufficient service thereof upon the Contractor as of the date of such delivery or deposit. Such address may be changed at any time by an instrument in writing executed and acknowledged by the Contractor and delivered to and receipted for in writing by the Owner. Nothing herein contained shall, however, be deemed to preclude or render inoperative the service of any notice, direction or other communication upon the Contractor personally, or, if the Contractor be a Corporation, upon any officer or director thereof.

“Site” - shall mean the area shown on the Contract Drawings.

“Specifications” - shall mean all of the directions, requirements, and standards of performance applying to the Work as hereinafter detailed and designated as such.

“Subcontractor” - shall mean any person, Contractor or corporation, other than employees of the Contractor who or which Contracts with the Contractor to furnish, or actually furnishes labor or labor and materials, or labor and equipment, at the site.

“Surety” - shall mean any person, Contractor or corporation that has executed as surety, the Contractor's performance bond securing the performance of this Contract.

“Work” - shall mean everything expressly or implicitly required to be furnished and done by the Contractor under the Contract and shall include both Work and Extra Work.
2. Whenever they refer to the Work or its performance in the Contract, the words “directed”, “required”, “permitted”, “ordered”, “designated”, “prescribed”, and words of like import, shall imply the direction, requirements, permission, order, designated or prescription of the Architect/CM and “approved”, “acceptable”, “satisfactory”, “in the judgment of”, and words of like import, shall mean approved by, or acceptable to, or satisfactory to, or in the judgment of the Architect/CM and the Owner.

Article 3. Contractor's Responsibility

1. The Contractor and NHCC acknowledge and agree that the Agreement shall consist of all items referenced in Article 1 (Contract Contents) above under the definition of the Agreement. The Contractor shall do all the Work and furnish at his own cost and expense, all plant, labor, materials, equipment, and other facilities, except as herein otherwise provided, that may be necessary and proper for performing and completing the Work in accordance with the Agreement. The Contractor shall be responsible for the entire Work until completed and accepted by the Owner.

2. The said Work shall be performed in accordance with the true intent and meaning of the Contract Documents. Unless otherwise expressly provided, the Work must be performed in accordance with the best modern practice, with materials and workmanship of the highest quality, all as determined by, and entirely to the satisfaction of, the Owner and the Owner's Architect/CM.

3. The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all provisions of the Work under the Contract.

Article 4. Inspection

1. During the progress of the Work and up to the date of final acceptance, the Contractor shall at all times afford the representatives of the Owner and of the Architect/CM, every reasonable, safe and proper facility for inspecting the Work done or being done at the site and also the manufacture or preparation of materials and equipment at the place of such manufacture or preparation. The inspection of any Work shall not relieve the Contractor of any of his obligations to perform proper and satisfactory Work as herein specified. Finished or unfinished Work found not to be in strict accordance with the Contract shall be replaced as directed by the Architect/CM, even though such Work may have been previously approved and paid for.

2. The Owner shall have the right to reject materials and workmanship which are defective, or require correction. Rejected Work and materials shall be promptly taken away and removed from the site, which must at all times be kept in clean and neat condition.

3. Should it be considered necessary or advisable by the Owner at any time before final acceptance of the entire Work to make examination of Work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor and materials. If such Work is found to be defective in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all expenses of such examination and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Contract, the cost of
examinations and restoration of same shall be considered an item of Extra Work to be paid for in accordance with the provisions of the Article 20 (Extra Work) hereof.

Article 5. Protection of Work, Persons and Property

1. During performance and up to the date of final acceptance, the Contractor shall each be under an absolute obligation to protect the finished and unfinished Work against any damage, loss or injury; and in the event of such damage, loss or injury, each shall promptly replace or repair such Work. The obligation to deliver finished Work in strict accordance with the Contract, prior to final acceptance, shall be absolute and shall not be affected by the Owner’s approval of or failure to prohibit means and methods of construction used by the Contractor.

2. During performance and up to the date of final acceptance each prime Contractor must take all reasonable precautions to protect the persons and property of the Owner, the project under construction, and the property of others on or adjacent to the site from damage, loss or injury resulting from his subcontractor’s operations under this Contract. The Contractor’s obligation shall include the duty to provide, place and adequately maintain at or about the site suitable and sufficient lights, barricades and enclosures. The Contractor shall provide sufficient safeguards to adequately protect the construction site. The Contractor shall abide by the decision of the Owner as to the adequacy and extent of protection necessary. Within three days after notice to him of the happening of such loss, damage or injury to work, persons or property, the Contractor shall make a full and complete report thereof in writing to the Architect/CM. The provisions of this Article shall not be deemed to create any new right of action in favor of third parties against the Contractor or Owner.

Article 6. Boundaries

The Contractors shall confine their equipment, apparatus, the storage of materials and supplies of his workmen to limits indicated by law, ordinance, permits or directions of the Owner or Architect/CM, and to the limits established on the plot plans and as otherwise required herein.

Article 7. Time of Start and Completion

1. The Contractor shall commence Work on the day specified in the Notice to Proceed/Purchase Order. Time being of the essence of this Contract, the Contractor shall thereafter prosecute the Work diligently, using such means and methods of construction as will assure its full completion, in accordance with the requirements of the Contract Documents, not later than the date specified in the said notice.

2. Unless the date for completion is extended as herein provided, the Contractor shall complete the Work in the number of consecutive calendar days fixed in this Contract. The period for performance shall start from the day specified in the Owner’s Notice to Proceed.

3. Unless approved in writing by the Owner, in its sole and absolute discretion, no Work shall be permitted on Official Holidays as determined by NHCC. The Contractor is responsible for coordination with the Owner and/or his duly authorized representative prior to the start of Work to determine the date(s) of observance of the Holiday(s) that may occur during the course of the Contract. The Official Holidays are: New Year’s Day, President’s Day, Memorial Day, Fourth
of July, Labor Day, Veterans Day, Thanksgiving, Friday after Thanksgiving, Christmas Day (according to the PLA Agreement). Failure of the Contractor(s) to consider Official Holidays during the preparation of their work plans and schedules shall not be cause for a delay claim against the Owner. Should circumstances arise, during the course of the Contract, where the Contractor requests approval to work on an Official Holiday and it is granted, the Contractor will be required to reimburse the Owner for the cost of providing inspection services. Furthermore, failure of the Contractor to have considered such contingency costs in his bid price shall not be cause for an Extra Work claim to the Owner at a later date.

Article 8. Progress Schedule

1. To enable the Work to be laid out and prosecuted in any orderly and expeditious manner, the Contractor, within fifteen (15) days after the execution of this Contract, unless otherwise directed by the Architect/CM, shall submit to the Architect/CM a proposed progress schedule, showing the anticipated time of commencement and completion of each of the various operations to be performed under this Contract, together with all necessary and appropriate information regarding sequence and correlation of Work and an estimated time required for delivery of all materials and equipment required for the Work. The proposed schedule shall be revised as directed by the Architect/CM, until finally approved by them and after such approval shall be strictly adhered to by the Contractor unless changed as provided for in the following paragraph.

2. Within ten (10) days after receiving notice of any change in the Contract or any Extra Work to be performed or of any other conditions entirely beyond the control of the Contractor which are likely to cause or are actually causing delays, the Contractor shall notify the Architect/CM in writing of the effect, if any, of such change or Extra Work or suspension or other conditions upon the previously approved progress schedule and shall state in what respects, if any, the schedule should be revised with the reasons therefore. These proposed changes in the progress schedule shall be revised by the Contractor as directed by the Architect/CM, until approved by them and as so approved the revised schedule must be strictly adhered to by the Contractor.

3. If the Contractor shall fail to adhere to the approved progress schedule or to the schedules as revised, he must promptly adopt such other or additional means and methods of construction as will make up for the time lost and will assure completion of the Work in accordance with such schedule.

Article 9. Approval Requests

From time to time as the Work progresses and in the sequence indicated by the approved progress schedule, the Contractor shall submit to the Architect/CM a specific request in writing for each item of information or approval required by him. These requests shall be submitted sufficiently in advance of the date upon which the information or approval is actually required by the Contractor to allow for the time the Architect/CM may take to act upon such submissions or re-submissions. The Contractor shall not have any right to an extension of time on account of delays due to his failure to submit his request for the required information or the required approval in accordance with these requirements.
Article 10. Coordination with other Contractors

During the progress of the Work, other contractors may be engaged in performing other Work. The Contractor shall coordinate the Work to be done hereunder with the Work of such other contractors in such a manner as the Architect/CM may direct. It is mutually agreed that the direction of the Architect/CM of the order and sequence of Work shall not in itself constitute a basis for extension of time.

Article 11. Extension of Time

1. It is mutually agreed that no extension beyond the date of completion fixed by the terms of the Contract shall be effective unless consented to in writing by the Owner. An application by the Contractor for extension of time must be in writing, setting forth in detail the reasons and causes of delay and the date upon which each such cause of delay began and ended, and must be submitted to the Owner within ten (10) days after the start of the alleged delay. If the Owner should determine that the delay was not due to any act or omission on the part of the Contractor or was due to causes beyond the control of the Contractor, the Contractor shall be entitled to an extension of time equal to the number of days actually delayed if such extension shall be required. If, however the Owner should determine that the delay was caused directly or indirectly be the act or conduct of the Contractor or any of his sub-Contractors or suppliers, the Owner may refuse to grant an extension of time and direct the Contractor to re-arrange his progress schedule so as to complete the Work within the time set forth in the Contract.

2. If the Owner deems it advisable and expedient to have the Contractor complete and finish the Work after the expiration of the Contract date of completion, and in order that the Owner’s fiscal officers may be permitted to make payment to the Contractor for Work performed beyond the completion date, the Owner may, at its option, grant an extension of time necessary to complete the Work. If liquidated damages are set forth in this Agreement, such liquidated damages may be assessed and deduction of liquidated damages may be made from monies which may become due hereunder.

3. In the event of delay for any cause, the Contractor’s sole remedy shall only be extension of time granted as herein above provided, and the Contractor shall have no right to, or cause of, action for damages or additional costs resulting from any such delay.

4. Time necessary for review by the Owner of shop drawings and delays incurred by normal seasonal and weather conditions should be anticipated and are neither compensatory nor eligible for extensions of time.

Article 12. Liquidated Damages - NOT APPLICABLE

It is mutually agreed between the parties that time is of the essence of this Contract and that there will be on the part of the Owner considerable monetary damage in the event the Contractor should fail to complete the Work within the time fixed for completion. The sum of (____________________ *) Dollars per day is hereby agreed upon as the liquidated damages for each and every calendar day that the time consumed in completing the Work exceeds the time allowed therefore. This amount shall in no event be considered as a penalty or otherwise than as the liquated and adjusted damages of the Owner because of the said delay and the
Contractor agrees that the said sum per day for each such day shall be deducted and retained out of the monies which may become due hereunder.

*(For amounts see Article 46 (Schedule of Requirements)*

**Article 13. Limitations and Consent**

1. The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this Contract or his right, title or interest in or to it or any part thereof, or his power to execute it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, unless the previous written consent of the Owner shall first be obtained thereto, and the giving of any such consent to a particular subcontract or assignment shall not dispense with the necessity of such consent to any further or other subcontracts or assignments. The Owner reserves the right to limit the total amounts of subcontracts to seventy percent (70%) of the total Contract price.

2. No assignment will receive approval unless the instrument of assignment contains a clause to the effect that it is agreed that the funds to be paid the assignee under the assignment are subject to a prior lien for services rendered or materials supplied for the performance of the Work called for in said Contract in favor of all persons, Contractors or corporations rendering such services or supplying such materials.

3. Before making any subcontract, the Contractor shall submit a written statement to the Owner giving the name and address of the proposed subcontractor, the portion of the Work and materials which he is to perform and furnish, and any other information tending to prove that the proposed subcontractor has the necessary facilities, skill, integrity, past experience, and financial resources, to perform the Work in accordance with the terms and conditions of this Contract.

4. If the Owner finds that the proposed subcontractor is qualified, he will notify the Contractor. The Contractor shall promptly, upon request, file with the Owner a confirmed copy of the subcontractor. The Owner may revoke his approval of any subcontractor when, in his opinion, such subcontractor evidences an unwillingness or inability to perform his Work in strict accordance with this Contract.

**Article 14. Responsibility**

The use of a subcontractor shall not relieve the Contractor of any of his responsibilities, duties, and liabilities hereunder. The Contractor shall be solely responsible to the Owner for the acts or defaults of his subcontractor and of such subcontractor’s officers, agents and employees, each of whom shall, for all purposes, be deemed to be the agent or employee of the Contractor. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the Owner.

**Article 15. Contract Security**
1. All Bonds shall be issued by a Surety Company authorized to do business in the State of New York as evidenced by the Surety Company’s most recent Certificate of Solvency under Section 1111 of the New York Insurance Law, a copy of which must be attached to the Bond OR issued by a Surety Company listed in the most recent copy of the Department of Treasury’s Listing of Approved Sureties (Department Circular 570). The amount of said Bond shall not exceed the limits set by the aforesaid Certificate of Solvency or Treasury Department Circular No. 3. All Bonds shall remain in effect for the duration of the Contract which includes the “Maintenance/Guarantee Period”.

2. If at any time the Owner shall become dissatisfied with any surety or sureties, or if for any other reason such Bonds shall cease to be adequate security for the Owner, the Contractor shall, within five (5) work days, after notice from the Owner to do so, substitute acceptable bonds issued by an acceptable surety, or in a form or sum as may be satisfactory to Owner. The premiums on such bonds shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new sureties have been qualified.

Article 16. Insurance Requirements

1. General

   a. Upon execution of this Contract, the Contractor must furnish those insurance policies as described below. Insurance certificates will be acceptable at date of Contractor’s signing, but policies must follow as soon as possible. Insurers must be licensed to conduct business in the State of New York and acceptable to Owner in all respects.

   b. All insurance policies, except Builders All Risk Insurance, must remain in effect until “End of the Contract Guarantee/Warranty Period”, and shall not be canceled except with at least ten (10) days written notice to the Owner.

      Limits of coverage are described in the Schedule of Requirements (Article 46 of this Agreement)

*(For amounts see Article 46 (Schedule of Requirements)*

2. Contractor’s Public Liability Insurance

   Contractor’s Public Liability Insurance, including completed operations, shall protect the Contractor and his subcontractor(s) from claims for bodily injury, including death, personal injury, and damage to property which may arise from operations under this Contract.

3. Worker’s Compensation Insurance

   Worker’s Compensation Insurance must be in accordance with the laws of The State of New York. Failure to comply with this provision shall void this Contract.

4. Owner’s Protective Public Liability Insurance
a. Owner’s Protective Public Liability Insurance shall protect the Owner, as named insured, and must hold harmless and defend the Owner against claims arising from the operations of the Contractor or his subcontractor(s).

b. This policy shall also protect, as additional insured, to the full limits of liability for each occurrence, such Owner subsidiaries, Municipalities, Municipal Subdivisions; and Fee Owners of properties as listed in the Article 46 (Schedule of Requirements).

NOTE: The Contractor shall have the option, in lieu of providing a separate Owner’s Protective Public Liability Insurance Policy, to add as additional insured the Owner, Owner Subsidiaries, Other Municipalities, Municipal Agencies, or Fee Owners of properties, to the Contractor’s General Liability Policy, provided that the scheduled minimum limits of liability as referred to in the “Schedule of Requirement” is increased by the amount required for each additional insured.

5. Builder’s All Risk Insurance

Contractor’s Builder’s All Risk Insurance shall designate the Owner as an additional insured and shall protect the Owner during the performance of the Contract and must remain in effect until “Final Acceptance.”

Article 17. Monies Retained Against Claims and Liens

The Owner may withhold from the Contractor so much of any approved payments due him as may in the opinion of the Owner be necessary as security against (a) just claims of any persons supplying labor or materials for the Work then due and unpaid, (b) loss due to defective Work not remedied, or (c) loss due to injury or persons or damage to the Work or property of other Contractors, subcontractors or others caused by the act or neglect of the Contractor or of any of his subcontractors. The Owner shall have the right, but not obligation, to apply any such amounts so withheld in such manner as the Owner may deem proper to satisfy such claims or to secure such protection. Such application of such money shall be deemed payments for the account of the Contractor. It shall be the sole responsibility of the Contractor to satisfy or remove any liens placed in connection with this Agreement. Upon satisfaction or proper removal of a lien, the Owner, upon written demand by the Contractor, shall return the amount so withheld, without interest provided.

Article 18. Maintenance/Guarantee

1. The Contractor shall promptly repair, replace, restore or rebuild any imperfections that may arise and shall maintain satisfactory to the Owner all his work for a period of one year from that date of final acceptance of the Contract, except where other periods of maintenance and guarantee are provided for. The Contractor shall, for this period, indemnify and save harmless Owner, their officers, and agents from any injury done to property or persons as a direct or alleged result of imperfections in his work and shall immediately assume and take charge of the defense of such action or suits in like manner and to all intents and purposes as if said actions and suits had been brought directly against the Contractor.
2. As security for faithful performance by the Contractor of his obligations hereunder, the Owner shall retain from the final payment the sum fixed as retainage in the Agreement. The sums shall be repaid to the Contractor without interest within thirty days after certification by the Owner that the Contractor has faithfully performed all his obligations hereunder.

3. If the Contractor shall fail to repair, replace, rebuild or restore such defective or damaged Work promptly after receiving notice given by the Owner not later than ten (10) days subsequent to the expiration of the one-year period, the Owner shall have the right to have the Work done by others and to deduct the cost thereof from the amount retained hereunder. The balance, if any shall be returned to the Contractor without interest. If the amount so retained be insufficient to cover the cost of such Work, the Contractor shall be liable to pay such deficiency on demand by the Owner.

**Article 19. Owner’s Right to make Changes**

1. The Owner reserves the right to make such additions, deductions or changes in this Contract from time to time as it deems necessary and in manner not materially affecting the substance thereof, in order to carry out and complete more fully and perfectly the Work herein agreed to be done and performed. This Contract shall in no way be invalidated by any such additions, deductions or changes and no claim shall be made by the Contractor for any loss of anticipated profits thereby.

2. Any material to be furnished or Work necessary to be done other than that specified in this Agreement shall be covered by supplemental written Contract or order of the Owner and no claim shall be made by the Contractor for any such Work performed or material furnished before such supplemental Contract shall have been approved or order issued by the Owner.

3. Construction conditions may require that minor changes be made in the location and installation of the Work and equipment to be furnished and other Work to be performed hereunder and the Contractor, when ordered by Architect/CM, shall make such adjustments and changes in said locations and Work as may be necessary without additional cost to the Owner, provided such adjustments and changes do not alter the character, quantity or cost of the Work as a whole, and provided further that plans and specifications showing such adjustments and changes are furnished to the Contractor by the Owner within a reasonable time before any Work involving such adjustments and changes is begun. The Architect/CM shall be sole judge of what constitutes a minor change for which no additional compensation shall be allowed.

**Article 20. Extra Work/Change Orders**

1. NHCC reserves the right to order Extra Work through Change Orders, which orders for Extra Work shall be valid only if issued in writing and signed by the President of NHCC and approved by the NHCC Chief Financial Officer. Extra Work so ordered must be performed by the Contractor.
2. The amount of compensation to be paid to the Contractor for any Extra Work as so ordered shall be determined as follows:

(a) By such applicable unit prices, if any, as are set forth in the Contract, or

(b) If no such unit prices are so set forth, then by a lump sum or unit prices mutually agreed upon by the Commissioner and the Contractor, or

(c) If no such unit prices are so set forth and if the parties cannot agree upon a lump sum, then the cost will be determined by the actual cost of labor and materials plus overhead and profit, cost to be determined as the Extra Work progresses in the manner specified in Paragraph d. below

(d) The following subparagraphs (a) through (e) are applicable for calculating the fair value of the Extra Work performed as defined in the above Paragraphs 2(b) and 2(c).

(1) Overhead shall be defined as an allowance to compensate for all costs, charges and expenses, direct or indirect, except for the actual cost of labor and material as defined by Paragraph (b). Overhead shall be considered to include, but not limited to insurance (other than as mentioned in Paragraph (b), Bond or Bonds, field and office supervisors and assistants above the level of foreman, use of small tools and minor equipment, incidental job burdens, general office expense, etc.

(2) Actual cost of labor and material shall be defined as the amount paid for the following items, to the extent determined reasonable and necessary:

**Item 1** - Cost of materials delivered to the job Site for incorporation into the Contract Work.

**Item 2** - Wages paid to workmen and foremen, and wage supplements paid to labor organizations in accordance with current labor agreements.

**Item 3** - Premiums or taxes paid by the Contractor for workmen’s compensation insurance, public liability and property damage insurance, employment insurance, FICA tax and other payroll taxes as required by law, net of actual and anticipated refunds and rebates.

**Item 4** - Sales taxes paid as required by law.

**Item 5** - Allowance for use of construction equipment (exclusive of hand tools and minor equipment), as approved for use by the Architect/CM. The rate on self-owned equipment used for periods of under one week will be Associated Equipment Distributor's published monthly rate divided by twenty-two (22) days to establish a daily rate and divided again by eight (8) hours to establish an hourly rate. Equipment used for periods of five (5) days or more will be billed at a daily rate equal to forty-five percent (45%) of the published monthly rate divided by twenty-two (22) days. In the alternative, the Architect/CM may approve for reimbursement a rate representing the allocable costs of ownership. Self-owned equipment is defined to include equipment rented from controlled or affiliated companies. Rented equipment will be paid for at the actual rental cost. Gasoline, oil and grease required
for operation and maintenance will be paid for at the actual cost. When, in the opinion of the Contractor, and as approved by the Architect/CM, suitable equipment is not available on the Site, the moving of said equipment to and from the Site will be paid for at actual cost.

**Item 6** - When the material furnished under Item 1 is used material, its value shall be pro-rated to the value of new material, but shall not exceed the materials initial cost. When, in the opinion of the Architect/CM, the salvage value of salvageable material furnished under Item 1 exceeds the cost of salvage, a suitable credit should be given to NHCC.

3. Regardless of the method used to determine the value of any changes, the Contractor will be required to submit evidence satisfactory to the Owner to substantiate each and every item that constitutes his proposal of the value of the change. The amounts allowed for overhead and profit shall not exceed the applicable percentages as established in the following paragraphs.

4. The amount of compensation for Extra Work determined as prescribed in this Article shall be construed to include the total cost for Extra Work, both direct and indirect.

4. The Contractor shall, upon request, furnish satisfactory proof of all labor performed, materials furnished and equipment used in the performance of Extra Work.

**Article 21. Disputed Work**

1. If the Contractor is of the opinion that any Work required, necessitated or ordered violates the terms provisions of this Contract, he must promptly notify the Owner in writing of his contentions with respect thereto and request a final determination thereon. If the Owner determines that the Work in question is Contract Work and not Extra Work and that at the order complained of is proper, he will direct the Contractor to proceed and the Contractor must promptly comply. In order, however, to reserve his right claim compensation for such Work or damages resulting from such compliance, the Contractor shall, within five (5) days after receiving notice of the Owner’s determination and direction, notify the Owner in writing that the Work is being performed, or that the determination and direction is being complied with, under protest. Failure of the Contractor to notify shall be deemed as a waiver of claim for extra compensation or damages therefore.

2. If the Contractor should fail or refuse to proceed with the performance of the Work in question after having been directed to do so, the Owner may declare the Contractor in default and notify the Contractor’s surety company to have the disputed Work commenced and completed under the terms of their performance bond; or, the Owner may without further notice have the disputed Work done by others and deduct the cost thereof from monies due hereunder, including any and all related costs incurred by reason of the Contractor’s failure or refusal to perform the Work.

3. Before final acceptance by the Owner, all matters of dispute shall be resolved to the mutual satisfaction of the parties hereto. Determinations and decisions, in case any question shall arise, shall constitute a condition precedent to the right of the Contractor to receive any money therefore, until the matter in question has been resolved.
Article 22. Omitted Work

If any Contract Work in a lump sum Contract or, if the whole or any part of a lump sum item in a unit price Contract, is omitted by the Owner in accordance with Article 31 (Prices), the Contract price shall be reduced by the fair and reasonable estimated cost to the Owner of such omitted Work. If any Contract Work in a unit price Contract is so omitted by the Owner, no payment will be made therefore.

Article 23. The Architect/CM

1. The Architect/CM, in addition to those matters elsewhere herein expressly made subject to his determination, direction or approval, shall observe the performance of the Work and shall have the power, subject to review by the Owner, to recommend:

   a. The amount, kind, quality, sequence, and location of the Work to be paid for hereunder;

   b. Resolution of all questions in relation to the Work and interpretation of the Drawings, Specifications and Addenda;

   c. How this Contractor shall cooperate with the Work of any other contractors engaged simultaneously on this project;

   d. Minor changes in the Work as he deems necessary, provided such changes do not result in a net increase in the cost to the Owner or to the Contractor of the Work to be done under the Contract; and

   e. Amplification of the Drawings, adding explanatory information and furnishing additional Specifications and Drawings consistent with the intent of the Contract Documents.

2. The Architect/CM shall not have the power to issue an Extra Work order or approve any Change Orders without the express written approval of the Owner. The performance of such Work on the order of the Architect/CM without previously obtaining written confirmation thereof from the Owner shall constitute Contractor's waiver of any right to extra compensation therefore. The Contractor is warned that the Architect/CM has no power to change the terms and conditions of this Contract.

Article 24. No Estoppel

The Owner shall not, nor shall any department, officer, agent, or employee thereof, be bound, precluded, or estopped by any determination, decision, acceptance, return, certificate or payment made or given under or in connection with this Contract by the Owner or other officer, agent or employee, of the Owner, from any time, either before or after final completion and acceptance of the Work and payment therefore:

1. Showing the true and correct classification, amount, quality or character of the Work done, or that any such determination, decision, acceptance, return, certificate or payment is untrue,
incorrect, or improperly made in any particular, or that the Work or any part thereof does not in fact conform to the requirements of the Contract Documents, and

2. From demanding and recovering from the Contractor any overpayment made to him or such damages as it may sustain by reason of his failure to comply with the requirements of the Contract Documents, or both.

Article 25. No Waiver of Rights

Neither the inspection by the Owner nor by any of their employees, nor by any order, measurements or certificate of the Owner, nor by any order of the Owner for payment of money, nor any money, nor any payment for or acceptance of the whole or any part of the Work by Owner, nor any extension of time nor any possession by the Owner or its employees shall operate as a waiver of any provisions of this Contract, nor any power herein provided, nor shall any waiver of any breach of this Contract be held as a waiver of any other subsequent breach. Any remedy provided in this Contract shall be taken and construed as cumulative; namely, in addition to each and every other form of suit, action or legal proceeding. The Owner shall also be entitled as of right to an injunction against any breach of the provisions of this Contract.

Article 26. Character and Competency

The Contractor and his subcontractors shall employ, upon all parts of the Work herein contracted, only competent, skillful and trustworthy men or women. Should the Architect/CM at any time give notice in writing to the Contractor or his duly authorized representative on the Work, that any employee in their opinion is incompetent, unfaithful, disorderly, careless, unobservant of instructions, or in any way a detriment to the satisfactory progress of the Work, such employee shall immediately be dismissed and not again allowed to perform the any part of the Work.

Article 27. Superintendent

The Contractor shall give his personal supervision to the faithful prosecution of the Work and in case of his absence shall have a competent, experienced and reliable English-speaking foreman or superintendent, acceptable to the Owner, on the site who shall follow without delay all instructions of the Architect/CM in the prosecution and completion of the Work and every part thereof, in full authority to supply men and women, material and labor, immediately. He shall keep on hand at all times copies of the Contract Documents.

Article 28. Payroll Reports

The Contractor and each subcontractor shall furnish to the Owner on demand a verified copy of his payroll and also any other information required by to satisfy them that the provisions of the Labor Law as to the hours of employment and rates of wages are being observed.

Article 29. Labor Laws and Notice of Employees’ Rights
An updated New York State Schedule of Prevailing Hourly Wage Rates for this Contract has
been applied for and should be attached. If the updated schedule has not been received at the
time of bid, they will be attached and made part of this Agreement prior to execution of
Contract. Until the revised Wage Rate Schedules are made part of this Contract, the
Prevailing Wage Rates apply.

1. All persons employed to perform any work under this contract, must be provided with major
medical and hospitalization benefits for the duration of this contract. Such benefits may be
provided through a monthly lump-sum payment to the health care insurer of the employee's
choice. Nothing herein shall be deemed to require the establishment or maintenance of an
employee benefit plan.

2. No apprentice employed by the Contractor or any of his Subcontractors shall be permitted to
perform any work required under this contract unless said apprentice is individually enrolled
in, or a graduate of, a New York State approved apprentice training program registered with
the Commissioner of Labor, and in conformity with provisions of Article 23 of the New York
State Labor Law.

3. The Contractor must pay all wages and supplements required by law. Cash payments in lieu
of fringe benefit supplements may be made at the option of the contractor, but any such cash
payments must be made by check draft or order payable to the employee. Records of such
cash payment must be made promptly available for inspection upon request for the Owner.

4. Posting of Notices

a. Every Contractor who is a party to a Public Works Contract with NHCC shall, on behalf
of its employees, Subcontractors, employees of Subcontractors and independent
contractors of Subcontractors, acknowledge and agree to establish and maintain a Bulletin
Board at or near the established job site, Management Office or at such site as the Owner
directs for the conspicuous posting of Notices including the New York State Department
of Labor Schedules of prevailing Wages and Supplements applicable to the Project,
Worker's Compensation Law Notices, and all other notices which are required by law and
such notices as the Owner may require the Contractor to post at the site. To the extent
practicable, notice must be posted in such a manner so that the general public may view
same at the entrance to the job site.

b. Such posting shall be secure from deterioration and/or obliteration by the elements, and
acts of vandalism.

c. Notices shall be maintained in a legible manner and shall be replaced if damaged, defaced,
rendered illegible or removed for any reason.

d. The posting of such notices shall be undertaken prior to commencement of Work at the
site, if practical and feasible, and shall be maintained until the project has been
substantially completed.
e. Said notice shall include the telephone number and address of the New York State Department of Labor and NHCC Planning Department.

f. For multiple prime Contracts, each Contractor is required to provide the above, and identify the Contract to which it pertains. Nothing herein shall be construed to relieve the Contractor from posting requirements otherwise required by law.

2. Providing Notice to Employees

a. The Contractor shall, on behalf of its employees, Subcontractors, employees of Subcontractors and independent Contractors of Subcontractors, provide written notice to each employee that he or she is entitled to receive the prevailing wage and supplements for the occupation for which he or she has been hired. Such written notice shall be given to the employee at or before such individual commences Work at the Project site.

b. The Contractor shall obtain from each employee a written acknowledgment that the employee has received a copy of such notice and is receiving the prevailing wage rate. For the purposes of this section, an employee includes, in addition to those immediately under the hire and/or supervision of the Contractor, employees and independent contractors of Subcontractors engaged in Work at the Project site. The written acknowledgments of the employees required herein shall accompany each month’s partial payment request.

3. Payroll Records

a. The Contractor shall, on behalf of its employees, Subcontractors, employees of Subcontractors and independent contractors of Subcontractors, maintain at the job site (or such place designated by the Owner) original payrolls employee attendance records and/or transcripts thereof as are required to be maintained pursuant Section 220 of the New York State Labor Law and shall maintain the written acknowledgments of the employees as required above with the payrolls and transcripts.

b. The Contractor shall, on behalf of its employees, Subcontractors, employees of Subcontractors and independent contractors of Subcontractors, provide to the Architect/CM (and any other individuals designated by the Owner) upon application for payment an employment attendance sheet for all employees, including employees of Subcontractors, for each day on which Work is performed on the site, upon a form acceptable to the Owner, including job classification, hours of employment, wage rate and supplements payable and employer. A current attendance record shall be maintained at a location designated by the Owner.

c. Every Contractor on a Public Works Contract to which the Owner is a party shall, on behalf of its employees, Subcontractors, employees of Subcontractors and independent contractors of Subcontractors, submit a transcript of its original payroll record for all work performed by such parties to the Owner within thirty (30) days after the issuance of its first payroll, and every thirty days thereafter. Submissions shall be in such a form as to comply with Section 220 of the New York State Labor Law.
d. Upon receipt of a copy of the prevailing rate schedule of wages and supplements specified in the public improvement Contract, or of a subsequently issued prevailing rate schedule, every Contractor and Subcontractor shall provide a verified statement attesting that the Contractor and Subcontractor has received and reviewed such schedule of wages and supplements, or subsequently issued schedule, and agrees that it will pay the applicable prevailing wages and will pay or provide the supplements specified therein. Such verified statement shall be filed with the Owner.

e. Before the Contractor may request a progress payment for any item of Work performed by a Subcontractor, the Contractor shall furnish the Owner with a copy of that Subcontractor’s verified statement required by New York Labor Law Section 220-a. Before issuance of the final payment, the Contractor shall furnish the Owner with the original certifications and verified statements required by New York Labor Law Section 220-a.

4. The Contractor shall ensure that all employees on the job site shall have received appropriate training and possess all required state and County licenses for specialty, craft, skill trade or other professional or licensed trades.

5. No Contractor, Subcontractor, nor any person acting on its behalf should in any manner discriminate because of race, creed, color, religion, sex, national origin, age, marital status, or disability, against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.

Article 30. Prevention of Delay

The Contractor and his Subcontractors shall not employ any labor or means whose employment or utilization during the course of this Contract, may tend to, or in any way cause, or result in, strikes, work stoppages, delays, suspension of work or similar troubles by workmen employed by the Contractor or his Subcontractors, or by any of the trades working in or about the job sites where work is being performed under this Contract, or any other Contract on the job site. Any violation of this requirement by the Contractor may, upon written determination of the Owner, be considered as proper and sufficient cause for canceling and terminating this Contract without any penalty to the Owner and the Owner shall be entitled to recover any damages from the Contractor that may have been caused by such violation.

Article 31. Prices

For the Contractor’s complete performance of the Work, the Owner will pay, and the Contractor agrees to accept, subject to the terms and conditions hereof, the lump sum price or unit prices at which this Contract was awarded, plus the amount required to be paid for any Extra Work ordered by the Owner under this Agreement, less credit for any Work omitted.

Article 32. Submission of Bid Breakdown

Within fifteen (15) days after his execution of this Contract, or when directed by the Owner, the Contractor shall submit a written breakdown of his bid price, or of lump sums bid for
items of the Contract, showing the various operations to be performed under the Contract, as described in the progress schedule required under Article 8 (Progress Schedule) hereof, and the value of each of such operations, the total of such items to equal the lump sum price bid. The Contractor shall also submit such other information relating to the bid price as may be required or reasonably requested by the Owner, and shall revise the bid breakdown as directed. Thereafter, the breakdown may be used for checking the Contractor's applications for partial payments hereunder, but shall not be binding upon the Owner, for any purpose whatsoever.

Article 33. Partial Payments

1. On or about the first of each month, the Contractor shall make an estimate of the amount and the fair value of the Work done and may apply for partial payment therefore. The Contractor shall revise the estimate as the Owner and/or Architect/CM may direct. Whenever the monthly estimate of the Contractor, as approved by the Owner, shows that the value of the Work completed during the previous month exceeds One Thousand ($1,000.00) Dollars in amount, the Owner will issue a certificate for such Work. Such certificate will authorize the payment of ninety-five percent (95%) of the value of the Work completed. The Owner will thereupon cause the amount therein to be paid to the Contractor.

2. The Owner reserves the right, but not obligation, to reduce the percentage withheld from partial payments under the following conditions and in the following manner: After fifty (50%) percent of the Contract Work has been completed and if the Contractor has demonstrated to the satisfaction of the Owner his ability to accomplish the Work within the time limitations of his progress schedule, then, upon the approval of the Owner, certificates for partial payments may authorize the payment of one hundred (100%) percent of the value of that Work included in such certificates as completed since the period of time covered by the last previous partial payment. However, should the Contractor thereafter fail to maintain the progress of the Work within the said time limitations of the progress schedule, then the retained percentage of five percent (5%) may be reinstated by the Owner, in which event partial payments will be authorized only in such amounts as will permit the Owner to retain five (5%) percent of the value of all Work completed to the date of any partial payment.

3. Before the above retentionage reduction shall become operative, the Contractor shall deliver to the Owner a statement certifying that all claims or liabilities arising from the 50% completed Work, including all charges for Extra Work, Change Orders, additional time or credits have been presented to the Owner, and further, releasing the Owner from any and all other additional costs except as set forth in said claims as of the date of said statement. All such claims, charges or credits shall be described in sufficient detail so as to be easily identified.

4. No partial payment will be made for any materials before they are incorporated in the Work, except the payment may be made for materials delivered to the site or off-site and suitably stored and secured when such materials are in short and/or critical supply or have been specially fabricated for the project, all as determined by the Owner in writing.

5. Before any payments will be made under this Contract, the Contractor and the Subcontractors performing any part of the Work called for by this Contract must file with (person to be named later), in the NHCC Office of Planning, verified statements provided for in Article 8 of
the New York State Labor Law, as amended, certifying the amounts then due and owing from the Contractor and Subcontractor filing such statements to any and all laborers for daily or weekly wages on account, setting forth therein the names of the persons whose wages are unpaid and the amount due to each respectively. The Contractor shall set forth in his statements the name of his Subcontractors. If the Contractor or Subcontractor has no Subcontractor, he shall so state in his statement if there is nothing due and accrued to any laborer for daily or weekly wages on account of labor performed upon the Work under this Contract and all Subcontractors before any payments are made under this Contract.

6. The filing of payrolls in a manner consistent with New York State Labor Law 220(3)(a) is a condition precedent to payment of any sums due and owing to any Contractor, Subcontractor or other person or entity for Work done upon the project.

Article 34. Final Payment

1. Within thirty (30) days after receiving notice from the Contractor of completion of the Work and submission of satisfactory evidence of having repaired any and all damage to public or privately owned properties resulting from, but not a part of, the Work under this Agreement, the Owner will cause a final inspection to be made for approval of all the Work done under this Contract. If, upon such inspection, the Owner determines that no further Work is to be done, he will issue a Certificate of Completion to the Contractor for the Work done under this Contract.

2. As a condition precedent to receiving final payment therefore, the Contractor shall submit verified statements similar to those required under Article 33 (Partial Payments) hereof, and shall also submit proof of title to the materials and equipment covered by the Contract. The Contractor shall also, prior to the issuance of final payment, supply to the Owner affidavits and certificates for labor, material and equipment (where applicable).

3. The Owner will, not later than sixty (60) days after the final acceptance of the Work done under this Contract, pay the Contractor the entire sum so found due there under after deduction of the previous payments and all percentages and amounts to be kept and retained under provisions of this Contract. All prior partial payments being merely estimates made to enable the Contractor to prosecute the Work more advantageously, shall be subject to correction in the final estimate and payment.

Article 35. Acceptance of Final Payment

The acceptance by the Contractor or by anyone claiming by or through him, of the final payment shall operate as and shall be a release to the Owner and every officer and agent thereof, from any and all claims and all liability to the Contractor for anything done or furnished in connection with this Work or project and for any act or neglect of the Owner or of any others relating to or affecting the Work. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this Contract or the Contractor's Bonds.

Article 36. Owner's Right and Notice
IT IS MUTUALLY AGREED THAT,

1. if the Contractor fails to begin Work when notified to do so by Owner; or
2. if the Contractor becomes insolvent or,
3. if a petition of bankruptcy is filed by or against the Contractor, or
4. if the Work to be done under this Contract shall be abandoned or,
5. if this Contract or any part, thereof shall be assigned without the consent of the Owner being first obtained in writing or,
6. if this Contract or any right, monies or claim there under shall be assigned by the Contractor otherwise than as herein specified, or,
7. if, at any time, the Owner shall be of the opinion that the conditions herein specified as to the rate of progress are not fulfilled or,
8. that the Work or any part thereof is unnecessarily or unreasonably delayed, or,
9. that the Contractor is not or has not been executing the Contract or performing Work in good faith or,
10. that the Contractor is violating any of the provisions of this Contract;

the Owner and without prejudice to any other rights or remedy of the Owner, shall have the right to declare the Contractor in default and so notify the Contractor by a written notice, setting forth the ground or grounds upon which such default is declared and that the Contractor shall discontinue the Work, either as to a portion of the same or the whole thereof.

Article 37.  Contractor’s Duty

Upon receipt of the notice provided in Article 36 (Owner’s Right and Notice) above, the Contractor shall immediately discontinue all further operations on the Work or such part thereof; and shall immediately quit the site or such part thereof, leaving untouched all plant, materials, equipment, tools and supplies.

Article 38.  Completion of the Work

1. The Owner, after declaring the Contractor in default as provided in Article 36 (Owner’s Right and Notice in case of Default) above, may then have the Work completed by such means and in such manner, by Contract with or without public letting, or otherwise, as he may deem advisable, utilizing for such purpose such of the Contractor’s plant, materials, equipment, tools and supplies remaining on the site, as well as such subcontractors, as he may deem advisable.

2. The expense of such completion, including the cost of relenting, shall be deducted and paid by the Owner out of the monies due or to become due to the Contractor under this Contract, or any part thereof; and in case such expense is more than the sum remaining unpaid of the original Contract price, the Contractor and his sureties shall pay the amount of such deficiency to the Owner.

Article 39.  Contractor’s Warranties

In consideration of, and to induce the award of this Contract to him, the Contractor represents and warrants:
1. That he is not in arrears to the Owner upon debt or Contract, and that he is not a defaulter, as surety, Contractor or otherwise.
2. That he is financially solvent and sufficiently experienced and competent to perform the Work.
3. That the Work can be performed as called for by the Contract that the Plans and Drawings and the Specifications are in all respects suitable and adequate for the Work.
4. That the facts stated in his proposal and information given by him are true and correct in all respects.
5. That he is fully informed regarding all the conditions affecting the Work to be done and labor and materials to be furnished for the completion of this Contract and that his information was secured by personal investigation and research.

**Article 40. Claims for Damages**

If the Contractor shall claim compensation for any damage sustained, other than for extra or disputed Work covered by Articles 20 and 21 (Extra Work/Change Orders and Disputed Work) hereof respectively, by reason of any act or omission of the Owner, its agents or of any persons, he shall within five (5) days after sustaining such damage, make and deliver to the Owner a written statement of the nature of the damage sustained and of the basis of the claim against the Owner. On or before the fifteenth (15th) of the month succeeding that in which any damage shall have been sustained, the Contractor shall make and deliver to the Owner an itemized statement of the details and amount of such damage duly verified by the Contractor. Unless such statement shall be made and delivered within the times aforesaid, it is stipulated that all claims for such compensation shall be forfeited and invalidated and the Contractor shall not be entitled to payment on account of such claims.

**Article 41. Patented Devices, Material and Processes**

It is mutually understood and agreed that Contract prices shall include all royalties and cost arising from patents, trademarks, and copyrights in any way involved in the Work. Whenever the Contractor is required or desires to use any design, article, device, material, equipment, appliance or process covered by letters patent or copyright, the Contractor shall indemnify and save harmless the Owner from any and all claims for infringement by reason of the use of any such patented design, device, article, tool, material, equipment, appliance or process, to be performed under the Contract, and shall indemnify the said Owner for any costs, expenses, and damages which it may be obliged to pay, by reason of any such infringement, at any time during the prosecution or after the completion of the Work.

**Article 42. Hold-Harmless**

1. The Contractor shall defend, indemnify, protect and save harmless, NHCC, their officers, agents and employees, from and against any and all losses, damages, detriment, suits, claims, costs and expenses for injuries (including death) to persons or damage to property arising out of or in connection with the performance of the Work hereunder and caused by or resulting from the carelessness or negligence of the Contractor or his subcontractors.
2. The obligation of the Contractor to indemnify and save harmless the NHCC as herein above set forth is absolute and not dependent upon any question of negligence on the part of the Contractor, the subcontractor, NHCC or their respective agents, servants or employees. The approval by the Owner of the methods of doing the Work or the failure of the Owner to call attention to improper or in-adequate methods or to require a change in methods or to direct the Contractor to take any particular precautions or to refrain from doing any particular thing shall not excuse the Contractor in case of any such injury to person or damage to property.

3. The Contractor shall take out and maintain during the life of this Contract a liability insurance policy and renewals thereof, issued by an insurance company acceptable to Owner, insuring the Contractor at all times during the life of this Contract against loss by reason of his Contractual liability under this Article with limits of not less than $____________ for injuries to persons (including death) and not less than $____________ for damage to property. A certificate of the issuance of such insurance policy shall be delivered to Owner upon execution of this Agreement and such certificate shall contain an agreement by the insurance company issuing the policy that the policy will not be canceled without ten (10) days prior notice to the Owner. At least two weeks prior to the expiration of the original policy or any renewal thereof a new certificate of the renewal of such insurance, containing an agreement by the insurance company that the insurance will not be canceled without ten (10) days prior notice to Owner shall be delivered to the Owner.

*(For amounts see Article 46 (Schedule of Requirements))*

**Article 43. No Claims against Individuals**

No claim whatsoever shall be made by the Contractor against any officer, agent, or employee of NHCC for, on account of, or by reason of anything done or omitted to be done in connection with this Contract.

**Article 44. Unlawful Provisions Deemed Stricken Out**

If this Contract contains any unlawful provision not an essential part of the Contract and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Contract without affecting the binding force of the remainder.

**Article 45. Books and Records**

The Contractor shall maintain full and complete books and records of accounts in accordance with accepted accounting practices. Such books and records shall be retained for a period of six (6) years from the date the Project is completed and shall at all times be available for audit and inspection by the Owner or its duly designated representatives.

**Article 46. Schedule of Requirements**

1. Insurance – Limits of liability:
a. Contractor's Public Liability Insurance and Owner's Protective Public Liability Insurance shall be equal to the following minimum limits of liability:

1) Minimum Limits of Liability, for each occurrence.
   A Combined Single Limit of one million dollars ($1,000,000.00), and a
   General Aggregate of two million dollars ($2,000,000.00), and an
   Umbrella Insurance Policy for Comprehensive and General Liability
   Insurance, naming Contractor as the insured and naming NHCC as an
   additional insured.; including but nor limited to the torts and negligence of
   Contractor's personnel, with a combined Minimum Single Limit of five
   million ($5,000,000.00) for bodily injury and property damage for any one
   occurrence.

b. Builder's Risk Insurance:
   Shall be for the full amount of the Contract Price.

2. NASSAU HEALTH CARE CORPORATION must be named as additional insured to
   be protected to the full limits of liability.

3. Liquidated Damages $N/A per day,

4. Time of completion 240 consecutive calendar days.

5. Amount retained for maintenance - Five (5%) Percent of the Contract Price.
   (See Article 18 (Maintenance/Guarantee))

6. Substitutions may be proposed during a thirty (30) calendar day period starting with
   the date stipulated in accordance with Article 7 (Time and Start of Completion).

Article 47. Conflicting Information

In the case of conflicting information within the plans and specifications as to the type of
materials of workmanship to be provided, the Contractor agrees that he will accept the
decision of the Architect/CM as to which was intended or which is in the best interest of the
Owner.

Article 48. All Legal Provisions Included; Separability; Supremacy, Construction and
Compliance with Law

1. Every provision of Law required to be inserted into or referenced by this Agreement is
   required to be part of this Agreement. If any such provision is not inserted or is not inserted
   in correct form then: (a) such provision shall be deemed inserted into this Agreement for
   purposes of interpretation, and (b) upon the application of either party this Agreement shall be
formally amended to comply strictly with the Law, without prejudice to the rights of either party.

2. In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provision shall not in any way be affected or impaired thereby.

3. Unless the application of this subsection will cause a provision by Law to be excluded from this Agreement, in the event of any conflict between the terms set forth above the signature page of this Terms and Conditions and those contained elsewhere in the Agreement or any schedule, exhibit, appendix, attachment or document referenced by the Agreement, the terms and conditions set forth above the signature page of this Terms and Conditions shall control. To the extent possible, all terms of this Agreement should be read together as not conflicting.

4. Each party has cooperated in the negotiation and preparation of this Agreement. Therefore, in the event that construction of this Agreement occurs, it shall not be construed against either party as drafter.

5. The Contractor shall comply with any and all applicable Federal, State and local Laws, including, but not limited to those relating to conflicts of interest, discrimination, a prevailing wage, disclosure of information, and vendor registration, in connection with its performance under this Agreement. As used in this Agreement the word “Law” includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted.

6. The parties acknowledge and agree that all records, information, and data (“Information”) acquired in connection with performance or administration of this Agreement shall be used and disclosed solely for the purpose of performance and administration of the Contract or as required by Law. The Contractor acknowledges that Contractor Information in the NHCC’s possession may be subject to disclosure under Article 6 of the New York State Public Officer’s Law (“Freedom of Information Law” or “FOIL”). In the event that such a request for disclosure is made, the NHCC shall make reasonable efforts to notify the Contractor of such request prior to disclosure of the Information so that the Contractor may take such action as it deems appropriate.

7. Minimum Service Standards: Regardless of whether required by Law:

a. The Contractor shall, and shall cause Contractor Agents to, conduct its, his or her activities in connection with this Agreement so as not to endanger or harm any Person or property.

b. The Contractor shall deliver services under this Agreement in a professional manner consistent with the best practices of the industry in which the Contractor operates. The Contractor shall make all actions necessary or appropriate to meet the obligation described in the immediately preceding sentence, including obtaining and maintaining, and causing all Contractor Agents to obtain and maintain, all licenses, certifications, and approvals (collectively, “Approvals”)
necessary or appropriate in connection with the performance of services under this Agreement.

Article 49. Work Performance Liability

The Contractor is and shall remain primarily liable for the successful completion of all Work in accordance this Agreement irrespective of whether the Contractor is using a Contractor Agent to perform some or all of the Work contemplated by this Agreement, and irrespective of whether the use of such Contractor Agent has been approved by the County.

Article 50. Consent to Jurisdiction and Venue; Governing Law; Jury Trial Waiver

1. Unless otherwise specified in this Agreement or required by Law, exclusive original jurisdiction for all claims or actions with respect to this Agreement shall be in the Supreme Court in Nassau County in New York State and the parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. This Agreement is intended as a contract under, and shall be governed and construed in accordance with, the Laws of New York State, without regard to the conflict of laws provisions thereof.

2. THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

Article 51. Entire Agreement

This Agreement represents the full and entire understanding and agreement between the parties with regard to the subject matter hereof and supersedes all prior agreements (whether written or oral) of the parties relating to the subject matter of this Agreement.

Article 52. Joint Venture

1. If the Contractor is comprised of more than one legal entity or any group of partners or joint venturers associated for the purpose of undertaking this Agreement, each such entity acknowledges and hereby affirmatively represents and agrees that each has the power to bind the Contractor and each of the others hereunder; and as such, each acts both as principal and agent of the Contractor and of each of the others hereunder. Each further acknowledges and agrees that all such entities, partners or joint venturers associated for the purposes of undertaking this Agreement shall be jointly and severally liable to third parties, including but not limited to the County, for the acts or omissions of the Contractor or any other entity, partner or joint venturer hereunder.

2. If the Contractor is comprised of more than one legal entity or any group of partners or joint venturers associated for the purposes of undertaking this agreement, each such entity acknowledges and hereby affirmatively represents and agrees that the respective rights, duties and liabilities of each hereunder shall be governed by the laws of the State of New York, including but not limited to the New York Partnership Law.

Article 53. Executory Clause
Notwithstanding any other provision of this Agreement:

(a) **Approval and Execution.** NHCC shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all NHCC approvals have been obtained, including, if required, approval by the NHCC Board of Directors, and (ii) this Agreement has been executed by the President or his duly designated representative.

(b) **Availability of Funds.** NHCC have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person beyond funds appropriated or otherwise lawfully available for this Agreement, and, if any portion of the funds for this Agreement are from the state and/or federal governments, then beyond funds available to NHCC from the state and/or federal governments.

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IN WITNESS WHEREOF, NHCC and CONTRACTOR have executed this Agreement and agree to be bound by all the terms and conditions set forth herein as of the date first-above written.

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STATE OF NEW YORK

)ss.:  
COUNTRY OF NASSAU

On the ___ day of ___________ in the year 20___ before me personally came ________________________ to me personally known, who, being by me duly sworn, did depose and say that he or she resides in the County of ____________; that he or she is the ________________ of Nassau Health Care Corporation, the New York State Health Care Corporation described and that he or she signed his or her name thereto pursuant to New York State Public Authorities Law under the authority granted of the board of directors of said corporation.

NOTARY PUBLIC __________________________

STATE OF NEW YORK

)ss.:  
COUNTRY OF NASSAU

On the ___ day of ___________ in the year 20___ before me personally came ________________________ to me personally known, who, being by me duly sworn, did depose and say that he or she resides in the County of ____________; that he or she is the ________________ of ________________, the corporation described herein and which executed the above instrument; and that he or she signed his or her name thereto by authority of the board of directors of said corporation.

NOTARY PUBLIC __________________________