

Nassau County Sheltering & Temporary Essential Power (STEP) Program

Instructions to Bidders

The bid prices for each particular bid item shall include all material, labor and mobilization costs.

1. Sealed Bids: Are to be received at the Office of Emergency Management (OEM):

CDM Smith-LiRo JV
Field Office at OEM
510 Gruman Road West
Bethpage, NY 11714

Attention: Jeanette Horsby or John Boyer

No later than 8:00 pm on November 28, 2012

2. It is the intent of this project to provide temporary power, heat and hot water to residential homes in the areas adversely effected by Hurricane Sandy so as to allow sheltering within these homes.
3. The contractor is notified that these residential homes are without power, as such the contractor must provide any temporary power and lighting needed to perform the work, the cost of which shall be included in the unit prices.
4. The Contractor shall be responsible for clearing of the work areas as necessary for the safe performance of the work. The cost for this work, shall be included in the cost of the bid items.
5. Electricians shall be licensed and insured to perform work within at least one of the jurisdictions of Nassau County.
6. Plumbers shall be licensed and insured to perform work within at least one of the jurisdictions of Nassau County.
7. In general the work at the residential homes shall be performed during both weekday and weekend hours. No differential shall be provided for work on weekends or weekdays.
8. Bid must provide complete accurate and clear information. Each bid shall be submitted on the bid form. A bid submitted on any other but this form may be rejected. All blank spaces for bid prices must be filled in.
9. Bid forms shall be completed in ink or by typewriter. Bidders are instructed to respond to all of the pricing, commercial and technical data requested; leave no spaces blank. If data requested is not applicable, enter "NA". The bid price shall be stated in figures and words;

in the event of a discrepancy, the "words" will govern.

10. Bids by corporations shall be executed in the corporate name by a duly authorized officer of the company.
11. Four (4) copies of the bid shall be submitted in a sealed, opaque envelope bearing on the outside the name of the bidder, his address and the Project Title for which the bid is being submitted.
12. Sealed bids for the Work of this contract will be received at the time and place as specified above. CDM Smith-LiRo JV may reject as non-responsive any bid not prepared and submitted in accordance with the provisions hereof.
13. Contractor is notified of the standard form of agreement provided as part of the bid documents. **The contractor shall submit with their bid a copy of their insurance certificate with the limits and requirements outlined in the attached agreement.** The bidder shall be prepared to execute the attached agreement within a 24 hour period.
14. Bids will be opened at 8 pm at the location identified above. Bids may not be withdrawn for 120 calendar days after receipt. The successful bidder shall be notified within 7 days after receipt.
15. Random oral, written or faxed modifications to the bid will not be considered. Modifying or qualifying statements of any kind shall be on a separate sheet and submitted in the same envelope with the bid.
16. CDM Smith-LiRo JV reserves the right to reject or accept any and/or all bids and to enter into contract with any bidder.
17. The Contractor is to be responsible for all required filings, the cost of which shall be included in their bid price.
18. All materials incorporated into the work are exempt of all County, State and Federal sales taxes.
19. Multiple awards shall be issued for this work, with the first awards being made to the lowest responsible bidder(s). Based upon the volume of work, additional bidders from lowest bid to highest bid, shall be contracted with to perform the work within the project timeframe. The total number of contracts to be awarded is not known and not all bidders may receive a contract under this work. If awarded a contract, there is no guarantee as to the amount of work that may be assigned to that contractor.
20. The bid form includes individual unit price items with maximum bid prices identified. All bid prices shall be vetted to determine whether they are fair and reasonable, and the CDM Smith-LiRo JV reserves the right to reject any bids for being skewed or unbalanced.

END OF SECTION

**BID FORM
FOR
Nassau County Sheltering & Temporary Essential Power (STEP) Program**

The undersigned declares that the only persons or parties interested in this Bid as principals are as stated; that the Bid is made without any collusion with other persons, firms, or corporations; that the Bidder has informed itself fully in regard to all conditions pertaining to the Work and the place where it is to be performed; and that with this representation, the undersigned makes this Bid. These prices shall cover all expenses incurred in performing the Work set forth in the Bid documents and subsequent contract, if awarded and executed, this Bid document and Form becoming a part of any such contract.

All bids shall remain open for one hundred and twenty (120) days, after the actual date of the opening of the Bids.

The undersigned hereby agrees to all obligations and terms contained in the Bid documents and that the Contract Time shall commence subsequent to contract execution and upon the delivery of the written notice to proceed and agrees to fully complete the Work within 90 Calendar Days of said notice to proceed and in accordance with the terms as stated in such contract.

In accordance with the above understanding, the undersigned proposes to perform the Work, furnish all materials and complete the Work in its entirety at the prices listed as follows:

By submitting this Bid Form, the Bidder certifies that he has visited the project site, is aware of the existing conditions, which will affect the work, reviewed the contract documents and has reflected this totally in his bid price.

Contractor's Bid Price Assumptions (If any):

1. Furnish and install services panel, weather head, and service cable:

a. 100 AMP \$_____ (\$1,600 maximum)

_____ dollars and _____ cents (in words)

b. 150 AMP \$_____ (\$1,900 maximum)

_____ dollars and _____ cents (in words)

c. 200 AMP \$_____ (\$2,300 maximum)

_____ dollars and _____ cents (in words)

Individual pricing:

Furnish and install weather head: \$_____

_____ dollars and _____ cents (in words)

Furnish and install service cable from weather head to meter: \$_____

_____ dollars and _____ cents (in words)

Furnish and install meter socket and box: \$_____

_____ dollars and _____ cents (in words)

Furnish and install 100 amp panel: \$_____

_____ dollars and _____ cents (in words)

Furnish and install 150 amp panel: \$_____

_____ dollars and _____ cents (in words)

Furnish and install 200 amp panel: \$_____

_____ dollars and _____ cents (in words)

2. Furnish and install four (4) services breakers and devices to four (4) rooms, maximum 15 amp:

\$_____ (\$1,500 maximum)

_____ dollars and _____ cents (in words)

3. Furnish and install up four (4) 8 foot sections of electric baseboard heat with 20 amp breakers:

\$ _____ (\$1,800 maximum)

_____ dollars and _____ cents (in words)

Individual pricing:

Unit price to furnish and install one up to 48 inch baseboard heater:

\$ _____

_____ dollars and _____ cents (in words)

Unit price to furnish and install one greater than 48 inch to 96 inch baseboard heater:

\$ _____

_____ dollars and _____ cents (in words)

4. Furnish and install 20 gallon hot water heater, including all piping and electrical connections:

\$ _____ (\$1,000 maximum)

_____ dollars and _____ cents (in words)

5. Furnish and install 30 gallon hot water heater, including all piping and electrical connections:

\$ _____

_____ dollars and _____ cents (in words)

6. Furnish and install 1 sheet of 4-ft x 8-ft x 3/8-in plywood:

\$ _____ (\$22.00 maximum)

_____ dollars and _____ cents (in words)

7. Furnish and install 2 sheets of 4-ft x 8-ft x 3/8-in plywood:

\$ _____ (\$44.00 maximum)

_____ dollars and _____ cents (in words)

8. Furnish and install 1 sheet of 4-ft x 8-ft x 1/2-in wallboard:

\$ _____ (\$20.00 maximum)

_____ dollars and _____ cents (in words)

9. Furnish and install 2 sheets of 4-ft x 8-ft x 1/2-in wallboard:

\$ _____ (\$40.00 maximum)

_____ dollars and _____ cents (in words)

Below, identify licenses (Electrical and Plumbing) held by your firm for Nassau County jurisdictions:

Electrical _____

Plumbing _____

Identify number of crews available that can be deployed simultaneously: _____

Amounts shall be shown in both words and figures, where indicated. In case of discrepancy, the amount shown in words will govern.

The above prices shall include all labor, materials, bailing, shoring, removal, overhead, profit, insurance and incidentals required to complete the Work.

The undersigned hereby acknowledges and agrees, that should this Bid be accepted, it will enter/sign the proposed Subcontract Agreement, as contained herein these documents.

Bidder shall submit with their bid an insurance certificate with the limits and requirements shown in the attached agreement.

The undersigned hereby certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this section, the word "person" shall mean any natural person, joint venture, partnership, corporation, or other business or legal entity.

Social Security Number
or Federal Identification Number

Signature of Individual or
Corporate Name

Corporate Officer
(if applicable)

Notice of acceptance should be mailed, telegraphed or delivered to the (undersigned Bidder at the following address)

(Name)

By: _____
(Title)

(Business Address)

(City and State)

Date: _____

SUBCONTRACT

THIS SUBCONTRACT (the ‘Agreement’) is made this ___ day of _____ 20__ by and between _____ with offices at 3 Aerial Way, Syosset, NY 11791 (the “CM”), and _____ a with offices at _____ (the “SUBCONTRACTOR”).

WHEREAS, Nassau County (the “County”) has instituted a residential housing repair program to assist Nassau County residents repair damage to their homes caused by the recent storm (the “Program”); and

WHEREAS, in accordance with the Agreement between the CM and the County (the “Prime Agreement”) the CM desires to retain SUBCONTRACTOR to perform certain labor and/or provide certain materials (the “Work”); and

WHEREAS, the SUBCONTRACTOR desires to perform the Work in accordance with the terms of this Agreement and the Prime Agreement.

NOW, THEREFORE; in consideration of the premises, and the mutual covenants contained herein, the parties hereby agree as follows:

ARTICLE 1 – THE WORK

- 1.1. The SUBCONTRACTOR agrees to furnish all materials and perform all work as may be required by this Agreement and any written or verbal directions (“Work Orders”) issued or provided hereunder by an authorized representative of the CM (the ‘Subcontract Documents’);
- 1.2 SUBCONTRACTOR shall be bound to the terms and conditions of the Prime Agreement (including all Appendices thereto) and hereby assumes toward the CM the same obligations and responsibilities that the CM assumes toward the County in the Prime Agreement, and shall be bound by all decisions, rulings and interpretations of the County and its authorized representatives.
- 1.3 All Work will be performed in accordance with the terms of the Subcontract Documents and Prime Agreement. The SUBCONTRACTOR must notify the CM, in writing, before performing any work under a Work Order, which in the SUBCONTRACTOR’s opinion is not included in the Scope of Work.
- 1.4 Work will be requested pursuant to this Subcontract as required by the CM, according to the CM’s discretion. There is no guarantee that any Work will be required under this Agreement. Subcontractor agrees to prepare a Subcontractor Cost Proposal, as soon as possible, upon the request of the CM. Should the CM accept the Subcontractor’s Cost Proposal, a Work Order will be issued by the CM to the Subcontractor.
- 1.5 Unless otherwise provided for in the Subcontract Documents, the means and methods of construction are such as the SUBCONTRACTOR may choose, subject however to the CM’s right to reject the means and methods of the SUBCONTRACTOR which: (a) constitute a risk of bodily injury or, (b) will not produce work in accordance with the Subcontract Documents. The CM’s

approval of the SUBCONTRACTOR's means and methods of construction, or the CM's failure to exercise its right to reject such means and methods, shall not relieve the SUBCONTRACTOR of its obligation to accomplish the result intended by the Subcontract Documents; nor should the exercise of such right to reject or the failure to exercise such right to reject, create a cause of action for damages.

- 1.6 The SUBCONTRACTOR shall be solely responsible and liable for the means and methods of construction of the Work, all safety standards, programs and plans, as well as the prevention of accidents to workmen and other persons engaged upon or in the vicinity the Work. The SUBCONTRACTOR shall comply with all federal, state and local laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning safety, including the Federal Occupational Safety and Health Act of 1970, as amended from time to time, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder, and with the safety standards established during the progress of the Work. The SUBCONTRACTOR shall defend, indemnify and hold the CM and the County harmless from and against any and all claims, damages, losses, liability, costs and expenses (including attorneys' fees) arising out of or connected with the means and methods of construction and/or the safety standards, plans and programs utilized by the SUBCONTRACTOR, its employees or sub-subcontractors in performing the Work.
- 1.7 In the event of any conflict or inconsistency between any of the Subcontract Documents forming this Agreement, the more stringent standard shall govern. The CM's interpretation shall be final, conclusive and binding on the SUBCONTRACTOR.

ARTICLE 2 – TIME PROVISIONS

- 2.1. The SUBCONTRACTOR must complete the Work within the time fixed in the Subcontract Documents.
- 2.2. SUBCONTRACTOR shall commence Work upon receipt of written or verbal notice from the CM.
- 2.3. Time being of the essence for all Work performed under this Agreement, the SUBCONTRACTOR shall prosecute the Work diligently, using such means and methods of construction as will assure its completion not later than the date specified in the applicable Work Order.
- 2.4. Subcontractor shall promptly repair, maintain and correct any defective or damaged Work when directed to do so by the CM and/or the County.

ARTICLE 3 – PAYMENT TERMS

- 3.1 For the SUBCONTRACTOR's complete performance of the Work under a Work Order, the CM agrees to pay and the SUBCONTRACTOR agrees to accept payment, on a time and material basis, as detailed in the applicable Work Order.
- 3.2 The SUBCONTRACTOR shall submit to the CM, monthly, a requisition for payment in a form acceptable to the CM and the County, which shall include a Release of Liens in a form acceptable to

the CM. Each requisition shall invoice monthly including all Work satisfactorily completed within the preceding 30-day period. Work performed more than 60 days before requisitioned will be paid at the discretion of the CM.

- 3.3 Partial Payments may be made, pursuant to the Prime Agreement, for materials, fixtures and equipment in advance of their actual incorporation in the work, as the CM may approve.
- 3.4 Payment to the Subcontractor from the CM for the satisfactory work included in each payment requisition shall be made within ten (10) days after the CM's receipt of payment for such satisfactory work from the County, less any and all deductions for retainage or other deductions authorized to be made by the CM under the terms of this Agreement, the Prime Agreement or by applicable law. CM's receipt of payment from the County shall be a condition precedent to payment being made from CM to SUBCONTRACTOR.
- 3.5 Final Payment, as defined in the Prime Agreement, shall include all monies earned to date by the SUBCONTRACTOR, on each Work Order, and not yet paid by the CM, including all monies previously retained in accordance with any retainage provisions included herein or elsewhere in the Subcontract Documents. The acceptance by the SUBCONTRACTOR of the Final Payment shall constitute and operate as a release to the CM and the County for anything therefore done or furnished for or relating to or arising out of this Agreement and the Work performed hereunder. In furtherance of this provision the SUBCONTRACTOR shall execute a Release of Liens as a condition precedent to, and as consideration for, receipt of the Final Payment. Final Payment for each Work Order will be contingent upon acceptance of the finished work by the County or the County's authorized agent.
- 3.6 The SUBCONTRACTOR shall not sell, assign or pledge its right to receive payment for Work performed under this Agreement.

ARTICLE 4 – INSURANCE; INDEMNITY

- 4.1 SUBCONTRACTOR shall purchase and maintain in full force and effect throughout the term of this Agreement, at no cost or expense to CM or the County, the types and amounts of insurance as detailed below.
 - A. Workers' Compensation & Disability Benefits, in accordance with laws of the State of New York and Employers' Liability Insurance with a policy limit of at least \$ 1,000,000.
 - B. Commercial General Liability Insurance, including completed operations, contractual liability insurance against the liability assumed hereinabove, and including contractors' protective liability insurance if SUBCONTRACTOR sublets to another all or any portion of the Services with minimum limits of \$ 2,000,000.00 per occurrence/\$4,000,000.00 aggregate.
 - C. Umbrella/Excess Liability Insurance with a policy limit of \$2,000,000 combined single limit per occurrence and in the aggregate, on a "per project" basis, excess of primary general, automobile and employer's primary liability limits.

D. Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the Work, with the following minimum limits:

Bodily Injury (including death) and Property Damage	\$1,000,000.00 per accident
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E. To the extent a SUBCONTRACTOR's Work involves the transportation of hazardous materials, Hazardous Material Transportation Liability Insurance with a policy limit of at least \$5,000,000.00.

4.2 The above policies shall be in form and substance satisfactory to the County and CM. Any deductibles or self-insured retentions in excess of \$100,000 will require the prior approval of the CM and the County.

4.3 Additional Insureds: For General Liability Insurance, Umbrella/Excess Liability Insurance and Automobile Liability Insurance the following entities shall be named as additional insureds (collectively, the "Additional Insureds"):

- LiRo Engineers Inc.;
- Camp Dresser McKee & Smith;
- CDM Smith-LiRo Joint Venture
- Nassau County;
- All other parties required to be named as additional insureds in the Prime Agreement; and
- Their respective affiliates, subsidiaries, members, employees, agents and representatives.

4.4 SUBCONTRACTOR shall:

4.4.1. By specific endorsement to its Commercial General Liability policy, cause the coverage afforded to the Additional Insureds hereunder to be primary to and non-contributory with any other valid and collectible insurance purchased and maintained by the Additional Insureds.

4.4.2. By specific endorsement to its Commercial General Liability and umbrella/excess liability policy, if applicable, cause the coverage afforded the Additional Insureds hereunder to be first tier umbrella/excess coverage above the primary coverage afforded to the Additional Insureds and non-contributory with or excess to any other valid and collectible insurance purchased and maintained by the Additional Insureds, whether provided on a primary or excess basis.

4.4.3. By specific endorsement to its Commercial General Liability and umbrella/excess liability policies, if applicable, cause the coverage afforded thereunder to include blanket written contractual liability.

4.4.4. By specific endorsement to its Commercial General Liability and umbrella/excess

liability policies, if applicable, provide that defense costs are not to be considered as damages so as to erode the policy limits set forth herein.

- 4.5 Before commencing the Services, SUBCONTRACTOR shall furnish certificates of insurance, satisfactory to CM and the County, from each insurance company showing that the above insurance is in force, stating policy numbers, dates of expiration, and limits of liability thereunder, and further providing that the insurance will not be canceled or changed until the expiration of at least thirty (30) days after written notice of such cancellation or change has been mailed to and received by CM. SUBCONTRACTOR shall promptly furnish certified copies of all policies of insurance, including endorsements, to CM upon request.
- 4.6 Each policy of insurance shall be endorsed to warrant that the insurance carrier waives any and all rights of subrogation against the Additional Insureds.
- 4.7 SUBCONTRACTOR assumes responsibility and liability for any and all damage or injury of any kind or nature whatever (including death) to all persons, whether employees of SUBCONTRACTOR or otherwise, and to all property caused by, resulting from, arising out of or occurring in connection with the performance of the Services. To the fullest extent permitted by law, SUBCONTRACTOR shall defend, indemnify and save harmless CM the County, the Additional Insureds, and their respective affiliates, subsidiaries, shareholders, directors, officers employees and agents (collectively, the "INDEMNITEES") from and against any and all losses, damages, detriment, suits, claims, costs and expenses, including but not limited to reasonable attorneys' fees, for personal injuries (including death) and/or damage to property arising out of or in any way connected with the Services or this Agreement which is directly or indirectly caused by or resulting from, in whole or in part, the actions, errors, omissions, negligence, alleged negligence, willful misconduct, breach of contract and/or violation of law of SUBCONTRACTOR, its employees, and/or any subcontractors retained by SUBCONTRACTOR.
- 4.8 SUBCONTRACTOR shall be solely responsible and liable for the means and methods of performing the Services, all safety programs and plans, as well as the prevention of accidents in connection with its Services. SUBCONTRACTOR shall comply with all federal, state and local laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning safety, including the U.S. Occupational Safety and Health Act of 1970, as amended, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder, and with the safety standards established during the progress of the Services. To the fullest extent permitted by law, SUBCONTRACTOR shall defend, indemnify and hold the INDEMNITEES harmless from and against any and all claims, damages, liability, costs and expenses (including attorneys' fees) arising out of or connected with the means and methods and/or the safety plans and programs utilized by SUBCONTRACTOR, its employees and/or subcontractors in performing the Services.

- 4.9 SUBCONTRACTOR assumes exclusive liability for and shall defend, indemnify, and hold the INDEMNITEES harmless from and against the payment of: (i) all contributions, taxes or premiums (including interest and penalties thereon) which may be payable under any and all federal, state and local tax withholding laws measured upon the payroll of, or required to be withheld from, SUBCONTRACTOR's or its SUBCONTRACTORS' employees engaged in the Services; (ii) all sales, use, personal property and other taxes (including interest and penalties thereon) required to be paid or collected by SUBCONTRACTOR or its SUBCONTRACTORS in connection with the performance of the Services; and (iii) all pension, welfare, vacation, annuity and other union benefit contributions payable under or in connection with labor agreements with respect to all persons engaged in the Services.

ARTICLE 5 – PROTECTION OF WORK, PERSONS AND PROPERTY

- 5.1 During the performance of the Work, and up to the date of final acceptance, SUBCONTRACTOR shall be under an absolute obligation to protect the finished and unfinished Work against any damage, loss, injury, theft and/or vandalism and in the event of such damage, loss, injury, theft and/or vandalism, SUBCONTRACTOR shall promptly replace or repair such Work, at SUBCONTRACTOR's sole cost and expense, as directed by CM. The obligation to deliver finished Work in strict accordance with this Agreement prior to final acceptance shall be absolute and shall not be affected by the CM's approval of or failure to prohibit means and methods of construction used by SUBCONTRACTOR.
- 5.2 During the performance of the Work and up to the date of Final Acceptance, SUBCONTRACTOR shall take all reasonable precautions to protect the persons and property of the CM, the County and of others from damage, loss or injury resulting from SUBCONTRACTOR's or its sub-contractor's operations under this Agreement.

ARTICLE 6 – COORDINATION WITH OTHER CONTRACTORS

- 6.1 During the progress of the Work, other contractors may be engaged in performing other work or may be awarded other contracts for additional work on the project. In that event, SUBCONTRACTOR shall coordinate the Work to be done hereunder with the work of such other contractors and SUBCONTRACTOR shall fully cooperate with such other contractors and carefully fit its own Work to that provided under other contracts as may be directed by the CM. SUBCONTRACTOR shall not commit or permit any act, or failure to act, which will interfere with the performance of work by any other contractor.
- 6.2 If the CM shall determine that SUBCONTRACTOR is failing to coordinate its Work with the work of other contractors, then the CM shall have the right to withhold any payments otherwise due hereunder until the CM's directions are complied with by the SUBCONTRACTOR.
- 6.3 If SUBCONTRACTOR notifies the CM in writing that another contractor on the project is failing to coordinate its work with the Work of SUBCONTRACTOR as directed, the CM will promptly investigate the charge. If the charge has merit, as determined by the CM, the CM shall take all necessary and appropriate steps, within its authority, to rectify the situation. The CM shall not,

however, be liable for any damages suffered by the SUBCONTRACTOR by reason of other contractor's failure to promptly comply with the directions so issued by the CM, or by reason of another contractor's default in performance, it being understood that the CM does not guarantee the responsibility or continued efficiency of any contractor. SUBCONTRACTOR expressly agrees that it shall make no claim against the CM or the County for damages arising out of or in any way connected with any directions issued by the CM pursuant to this Article (including, but not limited to, the failure of any other contractor to comply or promptly comply with such directions), or the failure to the CM to coordinate such other work, or the default in the performance of any other contractor.

- 6.4 Should SUBCONTRACTOR sustain any damage through any act or omission of any other contractor having a contract with the CM and/or the County for the performance of work upon the site or of Work which may be necessary to be performed for the proper prosecution of the Work to be performed hereunder, or through any act or omission of a subcontractor of such contract, the SUBCONTRACTOR shall have no claim against the CM or the County for such damage, but shall have the right to pursue such other contractor for such damage.
- 6.5 Should any other contractor having or who shall hereafter have a contract with the CM or the County for the performance of work upon the site sustain any damage through any act or omission of the SUBCONTRACTOR, the SUBCONTRACTOR agrees to reimburse such other contractor for all such damages and to defend at SUBCONTRACTOR's own expense any suit based upon such claim. If any judgment or claims against the CM or the County shall be allowed, the SUBCONTRACTOR shall pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith (including attorneys' fee) and agrees to defend, indemnify and hold the CM, and the County harmless from all such claims to the fullest extent permitted by law.
- 6.6 The CM's and the County's right to indemnification hereunder shall in no way be diminished, waived or discharged by the exercise of any other remedy provided for by contract, in equity or by law.

ARTICLE 7 – MONEY RETAINED AGAINST CLAIMS; LIENS

- 7.1 If any claims shall be made by any person, firm or corporation (including other contractors or the project) against the CM and/or the County or against the SUBCONTRACTOR, the CM and/or the County: (i) for an alleged loss, damage or injury to persons (including death) or property, plus the costs of defending the CM and the County, which in the opinion of the CM, may not be covered by and/or paid by an insurance company (for any reason whatsoever), or, which, together with previously filed claims, is in excess of the amount payable under such policies; or (ii) for an infringement of copyrights, patents or use of patented articles, tools, etc., as referred to in this Agreement; or (iii) for damage claimed to have been caused directly or indirectly by the failure of the SUBCONTRACTOR to perform the Work in strict accordance with this Agreement; or (iv) for an alleged nonpayment claim made by any persons claiming to have performed any labor or furnished any material toward the performance or completion of this Agreement, as verified by the CM; then the amount of such claim, or so much thereof as the CM may deem necessary, may be withheld by the CM, as security against such claim, from any money due hereunder, until such time as the commencement of an action thereon would be barred by law or until final adjudication of

such action by a court of competent jurisdiction. The CM, in its discretion, may permit the SUBCONTRACTOR to substitute other satisfactory security in lieu of the monies so withheld.

7.2 If an action on such claim is timely commenced and the liability of the CM, the County, or the SUBCONTRACTOR, or any or all of them, shall have been established therein by a final judgment of a Court of competent jurisdiction, or if such claim shall have been admitted by SUBCONTRACTOR to be valid, the CM may, in its discretion, pay such judgment or admitted claim out of the monies retained by the CM under the provisions of this Article, and return the balance, if any, without interest, to SUBCONTRACTOR.

ARTICLE 8 – Reserved

ARTICLE 9 – Reserved

ARTICLE 10 – TERMINATION

10.1 CM shall have the right to terminate this Agreement or any Work Order issued hereunder in the event that SUBCONTRACTOR should, at any time (i) fail or refuse to supply a sufficient number of skilled persons to perform the Work, (ii) fail to prosecute the Work with promptness and diligence, (iii) cause, by any act or omission, the stoppage, obstruction, hindrance or delay of or interference with or damage to the Project, (iv) be in breach of any of the terms and provisions of this Agreement or the Prime Agreement, (v) perform Work that is determined by CM or the County as not being performed in accordance with this Agreement, or applicable laws and/or regulations, (vi) file a petition in bankruptcy or for an arrangement or reorganization or have such a petition filed against it, (vii) become insolvent, be adjudicated as bankrupt or enter into liquidation or dissolution, either voluntarily or involuntarily or under a court order, (viii) make a general assignment for the benefit of creditors, or otherwise acknowledge insolvency, (ix) assign, transfer, convey or otherwise dispose of its interest in this Agreement without CM's prior, written consent, or (x) fail to comply with any applicable federal, state or local laws, rules, regulations or orders. CM shall provide written notice to SUBCONTRACTOR of any alleged default under clauses (i), (ii), (iii), (iv), (v) and (x) above, and if SUBCONTRACTOR does not cure such default within seven (7) days after receipt of such notice, CM may terminate this Agreement. It is understood and agreed that CM shall have the right to immediately terminate this Agreement, and no cure period shall apply, for the events of default contemplated by clauses (vi), (vii), (viii) and (ix) in this Section.

In the event CM terminates this Agreement in accordance with this Section 10.1, SUBCONTRACTOR shall not be entitled to receive any further payment under this Agreement until the Work shall be wholly completed to the satisfaction of CM and the County, at which time, if the unpaid balance of the amount to be paid under this Agreement is less than the costs and expenses incurred to complete the Work, SUBCONTRACTOR shall immediately pay the difference to CM. Such costs and expenses shall include not only the cost of completing the Services to the satisfaction of CM and the County, but also all losses, damages, costs and expenses, including attorneys' fees incurred by reason of or resulting from SUBCONTRACTOR's default. If the unpaid balance of the amount to be paid under this Agreement exceeds such costs and expenses, SUBCONTRACTOR shall be compensated only

for those Services properly performed up to the date of termination upon the completion of the Project.

- 10.2 CM may terminate this Agreement, upon seven (7) days notice to SUBCONTRACTOR, for any reason, including for the convenience of CM. In the event of such termination, SUBCONTRACTOR shall be compensated for all expenses rightfully incurred and compensable pursuant to this Agreement. In no event shall CM be liable to SUBCONTRACTOR for any damage directly or indirectly resulting from such termination, including lost profits on Work not performed.

ARTICLE 11 – MISCELLANEOUS PROVISIONS

- 11.1 Unless otherwise agreed upon between the parties, the SUBCONTRACTOR shall pay for all materials and labor used in, or in connection with, the performance of this Agreement and furnish satisfactory evidence, when requested by the CM, to verify compliance with the above requirements.
- 11.2 Regarding safety and the condition of the Work and the worksite, the SUBCONTRACTOR shall:
- 11.2.1 Take all necessary precautions to properly protect (a) persons performing the work on the jobsite and any third-parties, (b) the Work, (c) the work of other contractors and subcontractors and (d) the property of others including the County.
- 11.2.2 Keep the premises clean at all times of debris arising out of the performance of this Agreement.
- 11.2.3 Comply with all statutory and/or contractual safety requirements applying to the Work and/or initiated by the CM or the County.
- 11.2.4 Report immediately to the CM any accident and/or injury occurring on the project.
- 11.3 The SUBCONTRACTOR guarantees its Work against all defects or materials and/or workmanship as called for in the plans, specifications and addenda, or if no guarantee is called for then for a period of one year from the date of final acceptance by the County.
- 11.4 In the event that the SUBCONTRACTOR fails to (a) prosecute the Work diligently and properly or (b) perform any provision of this Agreement, then the CM, after three (3) day's written notice to the SUBCONTRACTOR, may without prejudice to any other remedy the CM may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Subcontractor.
- 11.5 The SUBCONTRACTOR agrees to comply with all Federal, State and local laws and ordinances applying to the Work, the building and/or structure and to comply and give adequate notices

relating to the Work to proper authorities and to secure and pay for all necessary licenses or permits to carry on the Work as described in the Subcontract Documents.

- 11.6 SUBCONTRACTOR shall comply with all applicable laws and standards.
- 11.7 SUBCONTRACTOR shall comply with all Federal, State and local tax laws, Social Security laws and Unemployment compensation laws and Workmen's Compensation laws insofar as applicable to the performance of the Work or this Agreement.
- 11.8 In the event of any inconsistency between this Agreement and the Prime Agreement, the Prime Agreement shall govern.
- 11.9 Should any provision of this Agreement be deemed invalid or unenforceable by a court of competent jurisdiction, such provision shall be severed from this Agreement, and the remaining valid and enforceable provisions shall remain intact.
- 11.10 This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflicts of laws principles.
- 11.11 In the event that the Prime Agreement between the CM and the County is terminated with or without cause, the SUBCONTRACTOR agrees that at the sole and exclusive option of the County this Agreement shall be assigned to the County or to another construction management firm designated by the County.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CM

By: _____

Name: _____

Title: _____

Subcontractor

By: _____

Name: _____

Title: _____