

## **MASTER AGREEMENT (Short Form)**

This Master Agreement ("Contract"), made this day of \_\_\_\_\_, 20\_\_\_\_  
by and between the ORCHARD PARK FIRE DISTRICT  
(hereinafter "Owner"), with an office and principal place of  
business at 30 School Street, Orchard Park, NY 14127 and

(hereinafter "Contractor") with an office and principal place of  
business at \_\_\_\_\_  
(hereinafter collectively "Parties").

### **WITNESSETH:**

**WHEREAS**, Owner contemplates that from time to time it will enter into construction contracts with various Contractors for the performance of certain construction services with respect to certain projects (each "Project"); and

**WHEREAS**, Owner desires to enter into a master agreement with the Contractor whereby Owner at its discretion may from time to time contract with Contractor, and Contractor desires to perform said work at the prices and upon the terms and conditions hereinafter expressed;

**NOW, THEREFORE**, in consideration of the mutual agreements herein expressed, the Parties contract, covenant and agree as follows:

#### **1. Scope of the Contract**

The Owner and Contractor agree that this contract is a non-exclusive master agreement and that the Owner may from time to time authorize the Contractor to perform certain construction services ("Work") for the Owner pursuant to this Agreement but only upon the execution by Owner and Contractor of a work order ("Work Order") in a form attached hereto as **Exhibit A**. This Contract does not require either the Owner or Contractor to issue or accept any particular Work Order; however, if fully executed, each Work Order shall be governed by the terms and conditions of the Contract, as it may be amended by mutual agreement, and whether or not the Work Order specifically refers to it.

#### **2. Contractor's Work**

Contractor shall perform all work and shall furnish all supervision, labor, materials, plant, hoisting, scaffolding, tools, equipment, supplies and all other things necessary for the construction and completion of the work described in each individual Work Order, including work incidental thereto and reasonably inferable therefrom, in strict accordance and full compliance with the terms of this Contract, and to the satisfaction of the Owner (hereinafter "Work").

With respect to the Work covered by this Contract and any individual Work Order, and except as expressly modified herein, Subcontractor shall have all rights which Contractor has under the Contract Documents, and Subcontractor shall assume all obligations, risks and responsibilities which Contractor has assumed towards the Owner, and third parties as applicable, in the Contract Documents, and Subcontractor shall be bound to Contractor in the same manner and to the same extent that Contractor is bound to the Owner or said third parties. In case of a conflict between this Subcontract Agreement and the Contract Documents as incorporated herein, pursuant to each Work Order, the terms of the Work Order shall prevail.

#### **3. Payment**

Owner shall pay Contractor for performance of the Work, subject to additions and deductions by written change order, a liquidated sum which shall be calculated and agreed by the Parties in each individual Work Order.

#### **4. Indemnification and Contractor's Liability**

Contractor hereby assumes the entire responsibility and liability for all Work, supervision, labor and materials provided under any Work Order issued pursuant to this Contract, whether or not erected in place, and for all plant, scaffolding, tools, equipment, supplies and other things provided by Contractor until final acceptance of the entirety of the Work by Owner. In the event of any loss, damage or destruction thereof from any cause, Contractor shall be liable therefor, and shall repair, rebuild and make good said loss, damage or destruction at Contractor's cost, subject only to the extent that any net proceeds are payable under any builder's risk property insurance that may be maintained by Owner or Contractor, if any.

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Owner and their respective officers, directors, employees and agents ("Indemnified Parties") from and against all claims, damages, demands, losses, expenses, fines, causes of action, suits or other liabilities, (including all costs, reasonable attorneys' fees, consequential damages, and punitive damages), arising out of or resulting from, or alleged to arise out of or arise from, the performance of the Contractor's Work under the Contract, and any Work Order whether such claim, damage, demand, loss or expense is attributable to bodily injury, personal injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom; but only to the extent attributable to the negligence of the Contractor or any entity for which it is legally responsible or vicariously liable and; regardless of whether the claim is presented by an employee of Contractor. Such indemnity obligation shall not be in derogation or limitation of any other obligation or liability of the Contractor contained in this Contract or otherwise. This indemnification shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor under any workers' compensation acts, disability benefits acts or other employee benefits acts and includes any loss or injury suffered by an employee of the Contractor. This indemnification shall be in addition to any indemnity liability imposed by the Contract Documents, and shall survive the completion of the Work or the termination of the Contract.

Contractor's assumption of liability is independent from, and not limited in any manner by, the Contractor's insurance coverage obtained pursuant to Article 5 or otherwise.

#### **5. Contractor's Insurance**

Prior to commencing the Work, the Contractor shall procure, and thereafter maintain, at its own expense, until final acceptance of the Work or later as required by the terms of the Contract or any individual Work Order, insurance coverage required by the Contract Documents and this Contract. At a minimum, and subject to modification in individual Work Orders, the types of insurance and minimum policy limits specified shall be maintained in a form and from insurers acceptable to Contractor as set forth below. All insurers shall have at least an A- (excellent) rating by A.M. Best and be qualified to do business in the state where the project is located.

This insurance will provide a defense and indemnify the Owner, but only with respect to liability for bodily injury, property damage and personal and advertising injury caused in whole or in part by the Contractor's acts or omissions or the acts or omissions of those acting on the Contractor's behalf.

Proof of this insurance shall be provided to the Owner before the Work commences, as set forth below. To the extent that the Contractor subcontracts with any other entity or individual to perform all or part of the Contractor's Work, the Contractor shall require the other Sub-Contractors to furnish evidence of equivalent insurance coverage, in all respects, terms and conditions as set forth herein, prior to the commencement of work by the Sub-Contractor. In no event shall the failure to provide this proof, prior to the commencement of the Work, be deemed a waiver by the Contractor of Subcontractor's insurance obligations set forth herein.

In the event that the insurance company(ies) issuing the policy(ies) required by this exhibit deny coverage to the Contractor, or the Subcontractor will, upon demand by the Owner, defend and indemnify the Owner at the Contractor's or Subcontractor's expense.

**Commercial General Liability Insurance**

\$1,000,000 Each Occurrence Limit (Bodily Injury and Property Damage)  
\$2,000,000 General Aggregate per Project  
\$2,000,000 Products & Completed Operations Aggregate  
\$1,000,000 Personal and Advertising Injury Limit

**Businessor Commercial Automobile Liability Insurance**

\$1,000,000 combined single limit per accident

**Workers' Compensation and Employers' Liability Insurance**

\$100,000 Each Accident  
\$100,000 Each Employee for Injury by Disease  
\$500,000 Aggregate for Injury by Disease

**Excess or Umbrella Liability**

\$1,000,000 occurrence/aggregate

The Owner, along with their respective officers, agents and employees, shall be named as additional insureds for Ongoing Operations and Products/Completed Operations on the Contractor's and any Subcontractor's Commercial General Liability Policy, which must be primary and non-contributory with respect to the additional insureds. The Contractor shall continue to carry Completed Operations Liability Insurance for at least three (3) years after either ninety (90) days following Substantial Completion of the Work or final payment to the Contractor on any individual Project, whichever is later.

It is expressly understood by the parties to this Contract that it is the intent of the Parties that any insurance obtained by the Contractor is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the Subcontractor, the Sub-Subcontractor or any of their respective consultants, officers, agents, subcontractors, employees or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable caselaw.

**IN WITNESS WHEREOF**, the Parties, by their duly authorized representatives, have hereunto executed this Contract, on the day and year first above written.

**CONTRACTOR:**

**OWNER: BOARD OF FIRE COMMISSIONERS  
ORCHARD PARK FIRE DISTRICT**

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

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

Name:

Name:

Title:

Title:

Date:

Date:

**Release 10/2008**

To the fullest extent permitted by applicable state law, a Waiver of Subrogation Clause shall be added to the General Liability, Automobile and Workers Compensation policies in favor of the Owner, and this clause shall apply to the Owner's officers, agents and employees, with respect to all Projects during the policy term.

Prior to commencement of Work on any individual Project, Contractor shall submit a Certificate of Insurance in favor of the Owner and an Additional Insured Endorsement (in a form acceptable to the Owner) as required hereunder. The Certificate shall provide for thirty (30) days' notice to the Owner for cancellation or any change in coverage. Copies of insurance policies shall promptly be made available to the Owner upon request.

**6. Time of Performance**

Contractor will commence Work when directed by Owner and will proceed with the Work in a prompt and diligent manner in accordance with the Project Schedule attached to the individual Work Order, as such Schedule may be amended from time to time by the Owner. TIME IS OF THE ESSENCE. Subcontractor shall be entitled to additional compensation for compliance with Schedule amendments only to the extent, if any, that Contractor receives reimbursement from the Owner.

**7. Safety**

The Owner makes no representation with respect to the physical conditions or safety of any Project Site. The Contractor shall, at its own expense, preserve and protect from injury its employees engaged in the performance of the Work and all property and persons which may be affected by its operations in performing the Work. The prevention of accidents to workers engaged in the Work and others affected by the Work is the responsibility of the Contractor and shall comply with all federal, state, labor and local laws, regulations and codes concerning safety as shall be applicable to the Work and to the safety standards established by Owner during the progress of the Work. Contractor shall indemnify, defend and hold harmless the Owner and their respective officers, directors, agents and employees from any costs, expenses or liability (including attorneys' fees, fines or penalties) arising out of the Contractor's failure to comply with the aforesaid laws, regulations and codes.

**8. Clean-up**

The Contractor shall clean up the areas used for its Work on a daily basis and remove from each Project site, or to a specified location on the Project site as directed by the Owner, and in a manner that will not impede either the progress of the Project or of other trades, all rubbish, waste material, excess material and debris resulting from the Work.

**EXHIBIT A**  
**WORK ORDER FORM NO. \_\_\_\_\_**

Date:

Project:

Owner:

Dear \_\_\_\_\_ :

The ORCHARD PARK FIRE DISTRICT ("Owner") would like the ("Contractor") to perform certain construction services for the above identified Project in accordance with the scope of work as set forth below ("Work"). This Work Order is being issued in accordance with that certain Master Agreement dated as entered into between Owner and Contractor ("Master Agreement").

The Work must be completed in accordance with the following Project Schedule:

**Compensation:**

The Owner shall pay the Contractor, subject to the terms of this Work Order, the liquidated sum of \_\_\_\_\_ Dollars (\$) inclusive of any and all reimbursable expenses.

**Scope of Work:**

The following Work is required to be performed pursuant to this Work Order:

**Contract Documents:**

The Contract Documents include the following:

**OWNER: ORCHARD PARK FIRE DISTRICT**

**CONTRACTOR**

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

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

Name:

Name:

Title:

Title: