

CONTRACT DOCUMENTS
AND
TECHNICAL SPECIFICATIONS

TOWN of POUND RIDGE
VILLAGE GREEN

August 2021

Town Supervisor

Kevin Hansan

Town Board Members

Alison Boak, Carla Brand, Diane Briggs, Dan Paschkes

Village Clerk

Erin Trostle

Superintendent of Recreation and Parks

David Goldberg

 **Pitingaro & Doetsch**
Consulting Engineers

15 Industrial Drive, Suite 2 Middletown, NY 10941
845.703.8140

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Village Green Project

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ADVERTISEMENT FOR BIDS

Receipt of Bids: Separate sealed bids on forms prepared by the Engineer will be received by the Town of Pound Ridge until **1:00 p.m. on August 31, 2021** for the **Town of Pound Ridge Village Green Project** in accordance with Drawings and Specifications prepared by Louis Fusco Landscape Architects, and Drawings, Specifications and other Contract Documents prepared by Pitingaro & Doetsch Consulting Engineers P.C.

The project consists of the following:

1. Coordination with the Town Supervisor, Town Engineer or other assigned representative.
2. Secure any and all Town of Pound Ridge permits.
3. Furnish and install construction/silt fencing and all necessary erosion control measures.
4. Mark out featured areas to map out construction and sequencing.
5. Furnish and install drainage structure, piping, stone, and structural fill.
6. Furnish and install irrigation piping.
7. Furnish and install connection to new electric service and appurtenances including but not limited to:
 - a. Electrical Conduit Underground To Lighting and Receptacle Locations
 - b. All Required Light Bases
 - c. Under Seat or Down Lighting
 - d. Receptacles
 - e. Post Mounted Lighting
8. Furnish and install quarried granite slab stone retaining walls.
9. Furnish and install concrete with appropriate reinforcement and stone veneer for concrete features:
 - a. Stage Step
 - b. Retaining/Sitting Walls
 - c. Planter Wall
 - d. Plaza Steps & Ramp
 - e. Sidewalk With Brick Edge and Ramp
 - f. Bench Landings Along Sidewalk
10. Prepare ground with structural fill, and furnish and install pavers and “unified bluestone dry set with polymer joints” for both the plaza and event stage areas.
11. Furnish and install inner fence along rear perimeter of park and gate entrance/exit to parking area.
12. Furnish and install boulder wall at the rear perimeter of the site behind fencing.
13. Furnish and install featured landscaping, and seed or turf grassed areas.
14. Furnish and install removable/wheeled planters on stage with associated plantings.
15. Furnish and install wood bench seats.
16. Furnish and install the plaza area with table and chair sets.
17. Furnish and install benches along walking path through tree grove at the front of the park.
18. Furnish and install 6-foot-high privacy fence around the rear and sides of the green.
19. The Contractor shall provide all labor, supervision, materials, equipment, tools, utilities, and incidentals necessary to complete the Work as specified in the Technical Specifications and as shown on the Plans.

Pre-Bid Meeting will be held at 11:00 a.m. on August 17, 2021 at the Pound Ridge Town House, 179 Westchester Avenue, Pound Ridge, NY 10576.

Bids will be publicly opened and read aloud at 1:00 p.m. on August 31, 2021 at the Pound Ridge Town House, 179 Westchester Avenue, Pound Ridge, NY 10576.

ADVERTISEMENT FOR BIDS

The information for Bidders, Drawings, Specifications and other Contract Documents may be reviewed at the Office of Pitingaro & Doetsch Consulting Engineers P.C., 15 Industrial Drive, Suite 2, Middletown, NY 10941 and may be obtained at Pitingaro & Doetsch Consulting Engineers P.C. or at the office of the Town of Pound Ridge Village Clerk, 179 Westchester Avenue, Pound Ridge, NY 10576 upon payment of **\$75.00** per set in favor of **Pitingaro & Doetsch Consulting Engineers P.C.** If documents are requested by mail, provide your Federal Express/UPS number or add **\$50.00** per set. **All checks shall be drawn payable to Pitingaro & Doetsch Consulting Engineers P.C. and mailed via first class mail to 15 Industrial Drive, Suite 2, Middletown, NY 10941----** OR --- these documents may be sent electronically for **\$25.00** upon an email request to Linda Kump at lkump@panddengineers.com.

Each bid shall be accompanied by an acceptable form of Bid Guarantee in an amount equal to at least 5% of the amount of the Bid, payable to the Town of Pound Ridge as a guarantee that if the Bid is accepted, the Bidder will execute the Contract and file acceptable Performance and Payment Bonds within ten (10) days after the award of the Contract.

OWNERS RIGHTS RESERVED

The Town of Pound Ridge hereinafter called the Owner, reserves the right to reject any or all Bids and to waive any formality or technicality in any Bid in the interest of the Owner.

STATEMENT OF NON-COLLUSION

Bidders are required to execute a non-collusion bidding certificate pursuant to Section 103d of the General Municipal Law of the State of New York.

Attention of bidders is particularly called to the requirements relating to conditions of employment to be observed and minimum wage rates to be paid under the contract, Segregated Facilities, Section 109, and Executive Order 11246. Bidders are also required to comply with the provisions of Sections 291-299 of the Executive Law of the State of New York and all other applicable laws and regulations.

The Town of Pound Ridge hereby notifies all bidders that it will affirmatively insure that in regard to any Contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex or national origin in consideration for an award.

BY ORDER OF THE TOWN OF POUND RIDGE

By: **Kevin Hansan, Town Supervisor** Date: _____

Pitingaro & Doetsch Consulting Engineers, P.C.
15 Industrial Drive, Suite 2
Middletown, NY 10941
845.703.8140 845.703.8143 (f)

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

INFORMATION FOR BIDDERS

1. Title of the Project

Town of Pound Ridge Village Green Project, Town of Pound Ridge, Westchester County NY.

2. Receipt and Opening of Bids

Town of Pound Ridge, Westchester County, New York (herein called the "Owner") invites bids on the form attached hereto, all blanks of which must be appropriately filled in. The envelopes containing the bids must be sealed, addressed to: Town of Pound Ridge, 179 Westchester Avenue, Pound Ridge, NY 10576, "Town of Pound Ridge Village Green" and must be actually received not later than the time and date specified in the Advertisement for Bids.

The project consists of the following:

1. Coordination with the Town Supervisor, Town Engineer or other assigned representative.
2. Secure any and all Town of Pound Ridge permits.
3. Furnish and install construction/silt fencing and all necessary erosion control measures.
4. Mark out featured areas to map out construction and sequencing.
5. Furnish and install drainage structure, piping, stone, and structural fill.
6. Furnish and install irrigation piping.
7. Furnish and install connection to new electric service and appurtenances including but not limited to:
 - a. Electrical Conduit Underground To Lighting and Receptacle Locations
 - b. All Required Light Bases
 - c. Under Seat or Down Lighting
 - d. Receptacles
 - e. Post Mounted Lighting
8. Furnish and install quarried granite slab stone retaining walls.
9. Furnish and install concrete with appropriate reinforcement and stone veneer for concrete features:
 - a. Stage Step
 - b. Retaining/Sitting Walls
 - c. Planter Wall
 - d. Plaza Steps & Ramp
 - e. Sidewalk With Brick Edge and Ramp
 - f. Bench Landings Along Sidewalk
10. Prepare ground with structural fill, and furnish and install pavers and "unified bluestone dry set with polymer joints" for both the plaza and event stage areas.
11. Furnish and install inner fence along rear perimeter of park and gate entrance/exit to parking area.
12. Furnish and install boulder wall at the rear perimeter of the site behind fencing.
13. Furnish and install featured landscaping, and seed or turf grassed areas.
14. Furnish and install removable/wheeled planters on stage with associated plantings.
15. Furnish and install wood bench seats.
16. Furnish and install the plaza area with table and chair sets.
17. Furnish and install benches along walking path through tree grove at the front of the park.
18. Furnish and install 6-foot-high privacy fence around the rear and sides of the green.
19. The Contractor shall provide all labor, supervision, materials, equipment, tools, utilities, and incidentals necessary to complete the Work as specified in the Technical Specifications and as shown on the Plans.

INFORMATION FOR BIDDERS

3. Preparation of Bid

Each bidder shall submit its bid on the prescribed Bid Form. A "bidder" is any individual, firm or corporation who submits a bid. All blank spaces in the bid for lump sum bidding or unit prices and extended totals thereof must be filled in, in ink, without erasures or overwriting and, except as otherwise expressly provided in the bidding documents, no change is to be made in the phraseology of the bid or in the items mentioned therein. All numerical values are to be written in both words and figures. Any discrepancy between the words and figures will be resolved in favor of the word description.

Each envelope containing a bid must bear on the outside the name and address of the bidder, and the name of the project for which the bid is submitted. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified above.

No bids will be accepted unless the Non-Collusive Bidding Certificate in this Specification is properly executed and submitted with the bid, as required by the General Municipal Law.

No bids will be accepted unless the bid security set forth in Paragraph 7 below is submitted in the form prescribed herein, as part of the sealed bid. Bids that are illegible or that contain omissions, alterations, additions or items not called for in the bidding documents may be rejected as informal or irregular. In the event any bidder modifies, limits or restricts all or any part of his bid in a manner other than that expressly provided for in the bidding documents, his bid will be rejected as informal.

Any bid may be considered informal or irregular, which does not contain prices in words and figures in all of the spaces provided or which is not accompanied by bid security in proper form. In case any price shown in words and its equivalent shown in figures do not agree, the written words shall be binding upon the bidder. If unit prices are required, and there is a discrepancy in the unit prices and extended totals, the unit prices shall be binding upon the bidder.

If the bid is made by a corporation, the names and places of residence of the president, secretary and treasurer shall be given; if by a partnership, the names and places of residence of the partners shall be given; if by a joint venture, the names and addresses of the members of the joint venture; if by an individual, his name and place of residence shall be given.

Permission will not be given to modify, explain, withdraw or cancel any bid or part thereof after the time designated in the bidding and Contract Documents for the opening of bids.

Unbalancing of bid prices for various items is not permitted and is a sufficient reason for rejecting the bid.

The Owner may consider informal or irregular any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or minor irregularities or reject any or all bids. Any bid may be withdrawn prior to the above-scheduled time for the opening of bids. Any bid received after the time and date specified shall not be considered. No bidder may withdraw a bid within 45 days after the actual date of the opening thereof.

INFORMATION FOR BIDDERS

4. Tax Exemption

The Contractor shall not include in the bid any sales and compensating use taxes of the State of New York or of any city or county in the State of New York for any materials, which are to be incorporated in the work. The Owner has a tax exemption number and forms, which will be made available to the successful bidder to the extent under the present applicable statutes. Nothing contained herein shall be interpreted as relieving bidders from any obligation to pay sales tax on applicable items under the then current Sales Tax Law.

5. Computation of Bid

In the spaces provided in the bid, bidders must submit a separate bid for all unit price and/or lump sum items. Bidders must submit a total bid, which should be computed by adding together the aforementioned unit price and/or lump sum items.

In the event any bidder makes a mathematical error on his bid by failing to compute his total bid as prescribed herein, the bid shall be determined by Pitingaro & Doetsch Consulting Engineers, P.C. (the "Engineer"), arrived at by a correct computation of all items specified in the bid therefore, at the lump sum and/or unit price, if any.

Any unit prices listed in the bid by the Owner are based upon the Engineer's appraisal of a fair cost of the work involved. Such listed prices will be binding upon both the bidder and the Owner.

All estimates of the quantities of the various items of work and materials set forth herein and in the specifications are an approximation only and are given solely for purposes of uniformity for the comparison of bids.

Bidders shall examine the drawings and specifications and exercise their own judgment as to the nature and amount of the work to be performed, in total. Bidders assume all risk of variance made in any computation or statement of amounts or quantities necessary to fully complete the work in strict compliance with the contract documents.

6. Bid Modification

Any bidder may modify his bid by written communication at any time prior to the scheduled closing time for receipt of bids, provided the original bid modification bearing the bidder's original signature is received by the Owner prior to the closing time. Any modification is to be submitted in a sealed envelope in the same manner as if it were the original bid submission.

7. Bid Security

Each bid must be accompanied by certified check of the bidder, or a bid bond prepared on the form of Bid Bond attached, duly executed by the bidder as principal and having as surety thereon a surety company authorized to do business in the State of New York and approved by the Owner and its attorney, in the amount of 5% of the bid.

Within ten (10) working days after the opening of bids, the Owner will return the bid security without interest to all but the apparent three (3) lowest bidders. Within ten (10) working days after the successful bidder has delivered the executed Agreement and required bonds, or within a maximum of forty-five (45) calendar days after the bid opening date, the Owner will return, without interest, the bid security of the remaining bidders. In the event that all bids are rejected, the Owner will return the bid security of all bidders whose checks have not been previously returned, at the time of such rejection.

INFORMATION FOR BIDDERS

The Owner reserves the right to deposit bid security drafts or checks, pending final disposal of them. Bid bonds, in a form and of a surety company satisfactory to the Owner, may be substituted for the draft or check of any bidder, five (5) calendar days after the opening of bids; provided, however, that in the case of the apparent three (3) lowest bidders they have complied with the provisions of the Information for Bidders.

8. Qualifications of Bidders

As part of his bid, each bidder shall submit a description of no less than five (5) similar projects successfully completed by said bidder within the last three (3) years. For the purposes of this paragraph, a similar project is deemed a contract of similar work in an amount of not less than 50% of the amount of the bidder's total bid. The bidder shall also include the name of the individual in charge of the project, the current phone, e-mail and mailing address of said individual and the entity or agency for which the projects were performed. By providing this information, the bidder expressly acknowledges and agrees that the Owner or the Engineer, on behalf of the Owner, may contact any or all of the individuals, entities and/or agencies provided by bidder regarding the project and their respective satisfaction with the bidder's performance of the work.

All prospective bidders are hereby notified that, upon request of the Owner or the Engineer, they must be able to prove to the satisfaction of the Owner that they have the skill and experience, as well as the necessary facilities, ample financial resources, organization and general reliability, to do the work to be performed under the provisions of the Contract in a satisfactory manner and within the time specified.

Upon request of the Owner or the Engineer, each bidder must establish, to the satisfaction of the Owner, that he has working capital available for the project upon which he is bidding in an amount equal to 25% of the first \$100,000 of the amount of his total bid, plus 10% of the next \$900,000, plus 2% of the remainder of his total bid. Working capital is defined as the excess of current assets over current liabilities. The Owner defines current assets as assets, which can be reasonably expected to be converted into cash within a year, and current liabilities as debts, which will have to be paid within a year.

Failure by a bidder to provide the information requested pursuant to this Paragraph 8 within five (5) business days following the request, may result in rejection of the bid in its entirety.

9. Conditions of Work

Each bidder must inform himself fully of the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of his obligations to furnish all material and labor necessary to carry out the provisions of his Contract. Insofar as possible, the Contractor, in carrying out his work, must employ such methods of means as will not cause any interruption of or interference with the work of any other Contractor.

10. Obligation of Bidder

At the time of the opening of bids, each bidder will be presumed to have inspected the site and to have full knowledge of conditions thereat and to have read and to be thoroughly familiar with the plans and Contract Documents, including all addenda.

The failure or omission of any bidder to inspect the site or to examine any form, instrument or document shall in no way relieve any bidder from any obligation in respect to his bid.

INFORMATION FOR BIDDERS

The low bidder shall supply the names and addresses of major material suppliers and subcontractors when requested to do so by the Owner or his representative.

11. Maintenance Guarantee

The Contractor shall guarantee his work for a period of one (1) year after final acceptance by the Owner. The Owner shall withhold 5% of the Contract, or the Contractor at its option may provide a guarantee against defective workmanship or material with an acceptable surety company as surety for the performance of the 1-year guarantee provided for in the Contract.

In the event the Contractor chooses to furnish the surety bond, it shall be delivered simultaneously with the request for final payment and shall be 100% of the final contract price. The surety on such bond shall be a duly authorized surety company satisfactory to the Owner. See Contract Documents for form of bond to be used.

12. Additions and Deletions

The Owner may elect to delete from the Contract any portion of the work described. Any major alterations, either subtractions or additions, will be made prior to Contract award.

13. Addenda and Interpretations

No interpretation of the meaning of the plans, Specifications or other pre-bid documents will be made to any bidder orally. Every request for such interpretation should be in writing addressed to Pitingaro & Doetsch Consulting Engineers, P.C. 15 Industrial Drive, Suite 2, Middletown NY 10941, and to be given consideration must be received at least five (5) days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the Specifications which, if issued, will be sent by electronic mail to all bidders on the official bidder's list as compiled by the Engineer, not later than three (3) days prior to the date fixed for the opening of bids. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the Contract Documents. Due to time constraints or otherwise, the addenda may be faxed to the prospective bidders in lieu of certified mail, one day prior to the bid opening.

14. Time of Completion and Liquidated Damages

The bidder must agree to commence work on or before a date to be specified in a written Notice to Proceed of the Owner and to fully complete all portions of the project within **180** consecutive calendar days thereafter.

The bidder must agree to pay, as liquidated damages, the sum of **\$500** for each consecutive calendar day that the project remains incomplete as hereinafter provided in the General Conditions.

15. Award of Contract

The award of the Contract shall be made to the low, responsive, responsible bidder who, in the opinion of the Owner, is qualified to perform the work required and is responsible and reliable. The lowest bid shall be determined by the Owner on the basis of the gross sum for which the entire work will be performed, arrived at by a correct computation of all the items specified in the bid therefore, at the lump sum and/or unit price, if any, contained in the bid.

INFORMATION FOR BIDDERS

Subject to the right hereinafter reserved, the work will be awarded within forty-five (45) calendar days after the opening of bids to a single responsible bidder or any combination of bidders whose bid conforms to the requirements of the bidding documents.

The Owner reserves the right to reject any bid or all bids and to waive any informality or minor irregularity in any bid received. Without limiting the generality of the foregoing:

- a. A bid may be rejected if the bidder failed to furnish the required bid security or to submit the data required with or after his bid.
- b. A bid may be rejected if the bidder cannot show to the satisfaction of the Owner:
 - 1) That he has the necessary capital, skill and experience.
 - 2) That he owns, controls or can procure the necessary plant and equipment to commence the work at the time prescribed in the Contract and thereafter to prosecute and complete the work at the rate or within the time specified.
 - 3) That he is not already obligated by the performance of so much other work as likely to delay the commencement, prosecution or completion of the work contemplated by the Contract.
- c. A bid may be rejected if, in the opinion of the Engineer, it is unbalanced.
- d. A bid may be rejected, if it does not provide for the completion of the work in the time specified.

The Owner also expressly reserves the right to reject any bid if, in its opinion, considering the work to be performed, the facts as to the bidder's business or technical organization, plant, financial and other sources or business experience compared with the work bid upon, justify rejection.

The award of the Contract shall not be construed as a guarantee by the Owner that the plant, equipment and the general scheme of operations and other data submitted by the bidder with or after his bid is either adequate or suitable for the satisfactory performance of the work.

16. Required Bonds

Within ten (10) calendar days after receipt of the Notice of Award, the lowest bidder shall procure, execute and deliver to the Owner and maintain, at his own cost and expense, the Performance and Payment Bonds, as hereinafter provided in the General Conditions.

Both the Performance and Payment Bonds shall be on the form prescribed by the Owner and in an amount not less than 100% of the total amount of the Contract awarded to the Contractor by the Owner. Said bonds must be issued by a surety company, approved by the Owner and authorized to do business in the State of New York as a surety. Both bonds shall be maintained in force for a period of one year after the full completion and acceptance of the work.

17. Power of Attorney

Attorneys-in-fact who sign Bid Bonds or Payment Bonds and Performance Bonds must file with each bond a certified and effectively dated copy of their power of attorney.

18. Liquidated Damages for Failure to Enter into Contract

The successful bidder, upon his failure or refusal to execute and deliver the Contract and bonds required within 10 days after he has received notice of the acceptance of his bid, shall forfeit to the Owner, as liquidated damages for such failure or refusal, the security deposited with his bid. No plea of mistake in

INFORMATION FOR BIDDERS

a bid (except excusable error) shall be available to the bidder for the recovery of his/her bid security or as a defense to any action based upon neglect or refusal to execute a contract with Owner.

19. Pre-Construction Conference

Following award of the contract, the successful bidder will be called to attend a pre-construction conference by the Engineer. The pre-construction conference will be attended by the Owner and other regulatory agencies, if required. The pre-construction conference may be held at the time of the signing of the contract.

20. Notice of Special Conditions

Attention is particularly called to those parts of the Contract Documents and Specifications, which deal with the following:

- a. Inspection and Testing of Materials
- b. Insurance Requirements
- c. Wage Rates

21. Laws and Regulations

The bidder's attention is directed to the fact that all applicable State and Federal laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout, and they will be deemed to be included in the Contract the same as though herein written in full.

22. Insurance

At the time of execution of the Agreement, the Contractor shall furnish the Owner with satisfactory proof of carriage of insurance required, including insurance in the limits specified for all motor vehicles. Such proof of carriage shall contain a provision that the insurer will, at least 30 days prior to cancellation or modification of any policy, notify the Owner of such cancellation or modification by certified mail. A recital in such provision that the insurer will not be responsible for failure of the Owner to receive such notice will not be acceptable and must be omitted or stricken from such certificate.

The following insurance is required:

<u>Types of Coverage</u>	<u>Limits of Coverage</u>
Worker's Compensation	Statutory
Owner's Protective Liability or Similar Insurance	\$2,000,000 aggregate
Bodily Injury/Property Damage	\$1,000,000 each occurrence
Automobile Liability	\$1,000,000 aggregate
Bodily Injury/Property Damage	\$1,000,000 each occurrence
Comprehensive General Liability, including broad form contractual liability, bodily injury and property damage	Bodily Injury \$2,000,000 aggregate \$1,000,000 each occurrence Property Damage \$2,000,000 aggregate \$1,000,000 each occurrence

INFORMATION FOR BIDDERS

Builder Risk Insurance	\$1,000,000 minimum
Umbrella Insurance	\$5,000,000 minimum

The Contractor shall either (1) require each of his subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage of the type and in the same amounts as specified in the preceding paragraph, or (2) insure the activities of his subcontractors in his own policy.

The named assureds to be protected by insurance are as follows:

- a. The Owner, Town of Pound Ridge
- b. Pitingaro & Doetsch Consulting Engineers, P.C.

The Contractor and subcontractor shall submit the attached completed "Certificate by Contractor Regarding His Insurance" with the Performance and Payment Bonds and Certificate of Insurance.

23. Wages Rate

The Contractor shall be required to pay the Prevailing State Wage Rates as required by the State Government under New York State Laws of 1975, Chapter 752 and 753. Copies of the wage rates are included herein. Additionally, this project is subject to Federal Prevailing Wage Rates per the Davis-Bacon Act. Said Federal Prevailing Wage Rates are included in this Contract and shall be current to ten days. It shall be the Contractor's responsibility to familiarize themselves with any deviations between the Federal and New York State Prevailing Wage Rates. An addendum will be issued at the start of the work for the most current wage rates. The Contractor shall submit weekly, for each week in which any contract work is performed, a certified copy of all payrolls, including benefits, to the Engineer.

24. Equal Employment Opportunity Clause

The bidder agrees to abide by the requirements under Executive Order No. 11246, as amended, including specifically the provisions of the Equal Employment Opportunity Clause.

By the submission of its bid, each bidder acknowledges that he understands and agrees to be bound (40 CFR Part 8, particularly Section 8.4(b)), which shall be applicable throughout the performance of work under any Contract awarded pursuant to this solicitation. Each bidder agrees that if awarded a Contract, it will similarly contractually bind each subcontractor. In implementation of the foregoing policies, each bidder further understands and agrees that if awarded a Contract, it must engage in affirmative action directed at promoting and insuring equal employment opportunity in the work force used under the Contract (and that it must require contractually the same effort of all subcontractors whose subcontracts exceed \$100,000). The bidder understands and agrees that "affirmative action" as used herein shall constitute a good faith effort to achieve and maintain minority employment in each grade in the on-site work force used on the project.

Each prime Contractor and subcontractor shall include, by reference, the Equal Employment Opportunity Clause and applicable bid conditions in all advertisements or other solicitations for bids and shall include the Equal Employment Opportunity Clause and applicable bid conditions in all contracts.

INFORMATION FOR BIDDERS

Each prime Contractor and subcontractor must provide written notice to each subcontractor of the specific reporting and record keeping requirements under the Equal Employment Opportunity Clause and applicable bid conditions. Upon award of a subcontract, each Contractor shall immediately notify the compliance agency of the Contract number, the subcontractor's name, the dollar amount of the Contract, estimated start and completion dates and the crafts, which will perform work under the subcontract.

25. **Safety Standards and Accident Prevention**

With respect to all work performed under this Contract, the Contractor shall:

- a. Comply with the safety standards provisions of applicable laws, building and construction codes, the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, the requirements of the Occupational Safety and Health Act of 1980 (Public Law 81-596), and the requirements of Title 29 of the Code of Federal Regulations, Section 1518 as published in the "Federal Register", Volume 36, No. 75, Saturday, April 17, 1971.
- b. Exercise every precaution at all times for the prevention of accidents and the protection of persons (including employees) and property.
- c. Maintain at his office or other well-known place, at the job site, all articles necessary for giving first aid to the injured and make standing arrangement for immediate removal to a hospital or a doctor's care of persons (including employees) who may be injured on the job site. In no case shall employees be permitted to work at a job site before the employer has made a standing arrangement for removal of injured persons to a hospital or a doctor's care.
- d. All OSHA rules and regulations regarding confined space entry shall be strictly followed.

26. **Terms for Convenience Only**

Any singular word or term herein shall also be read as in the plural and the masculine shall include the feminine gender, whenever the sense of this document may require it.

BID FORM

PLACE: Pound Ridge Town House

DATE: _____

Proposal of _____, (hereinafter called "Bidder"),
organized and existing under the laws of the State of _____,

doing business as _____.

To the _____ **Town of Pound Ridge** _____,
(hereinafter called the "Owner").

Gentlemen:

The Bidder, in compliance with your advertisement for bids for the

**TOWN OF POUND RIDGE
VILLAGE GREEN PROJECT**

Having examined the plans and specifications with related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project including the availability of materials, and labor, hereby proposes to furnish all labor, materials and supplies, and to construct the project in accordance with the contract documents, within the time set forth therein, at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the contract documents, of which this proposal is a part.

Bidder hereby agrees to commence work under this contract on or before a date to be specified in written "Notice to Proceed" of the Owner and to fully complete the project as stipulated in the specifications. Bidder further agrees to pay as liquidated damages, the sum of **\$1,000** for each consecutive calendar day thereafter as hereinafter provided in the General Conditions.

Bidder acknowledges receipt of the following addendum:

*Insert "a corporation", "a partnership", or "an individual" as applicable.

BID FORM

The following prices shall include all of the Contractor's costs, including but not limited to labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc. to cover the finished work of the several kinds called for.

Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informalities in the bidding.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of forty-five (45) calendar days after the scheduled closing time for receiving bids.

Upon receipt of notice of the acceptance of this bid, Bidder will execute the formal contract attached within ten (10) days and deliver a Surety Bond or Bonds, etc. as required by the General Conditions. The bid security attached in the sum of (5%) (\$_____) is to become the property of the Owner in the event the Contract and bonds are not executed within the time above set forth as liquidated damages for the delay and additional expense to the Owner caused thereby.

Respectfully submitted,

By: _____
(Signature)

(Title)

Address: _____

Seal if bid is by a Corporation

**Town of Pound Ridge Village Green Project
Contract Bid Form**

All prices shall include all work required to complete the project as detailed in the plans and specifications, including furnishing and installation unless mentioned otherwise, safety during construction and daily site cleaning with broom along roads. Includes furnishing all labor, materials, equipment, tools and services to complete the work.

	Item Description	Unit Mea.	Base Quantity	Unit Cost	Amount in Words	Total Amount
1	Mobilization/Demobilization	LS	1			
2	Erosion & Sediment Control	LS	1			
3	Landscaping/ Plantings	LS	1			
4	Concrete Sidedwalk Installation	SY	12			
5	Concrete & Stone Retaining/Sitting Wall	LF	240			
6	Concrete & Stone Planter Wall	LF	140			
7	Quarried Slab Stones for Boulder Wall	LS	1			
8	Structural Fill	CY	50			
9	Pavers for Plaza & Event Stage	SF	2000			
10	Concrete Steps with Stone Treads	LS	1			
11	Stepping Stones	LS	1			
12	Unified Bluestone Curbing	LS	1			
13	Privacy Fence 6' high	LF	160			
14	Electrical Service, Conduit & Receptacles	LS	1			
15	Lighting: Underseat and Post Mounted	LS	1			
16	Drainage Structures & Piping	LS	1			
17	Irrigation Piping	LS	1			
18	Wooden Plaza Bench	LS	1			
19	Walking Path Benches	LS	1			
20	Table & Chair Sets for Plaza	LS	1			
21	Removable 18" x 48" Planter with Wheels	EA	3			
22	Stated Allowance for Unforeseen Items	LS	1		Twenty Thousand Dollars	\$20,000
				Total Amount		
				Company Name		

III. STATEMENT OF BIDDERS QUALIFICATIONS

The Undersigned certifies under oath the truth and correctness of all statements and of all answers to questions made hereinafter. Answer all questions in a clear and comprehensive manner. This form must be completed in full and sealed (if corporation) or signed by all partners. The bidder may submit any additional information he/she desires.

NOTE: THIS STATEMENT MUST BE NOTARIZED

SUBMITTED BY

Name of Bidder:

Corporation _____ Partnership _____ Individual _____ Joint Venture _____ Other _____

1. Date When Firm Organized _____
2. State of Incorporation _____
3. How many years has your organization been engaged in contracting under your present firm or trade name?
4. Have you ever failed to complete any work awarded to you? If so, note when, where and why:
5. Has any office or partner of your organization ever been an officer or partner of another organization that failed to complete a construction contract? _____ If so, state circumstances:
6. List name of project, owner, architect, contract amount, percentage complete and scheduled completion of major projects your organization has in process on this date:

7. List names of project, owner, architect, contract amount, date of completion the major construction projects your organization has completed in the last five years:

8. List major equipment available for this contract:

9. Experience in work similar in scope and scale to this project:

10. List the construction experience of the principle individuals of your organization:

11. Trade References

12. Bank References

Name of Bidder: _____

State of New York

S.S.

County of _____

On this _____ day of _____, 20____ before me came

_____ to me known to be the individual (s) described in and

who executed the foregoing instrument and acknowledged that he/she executed the same.

Notary _____

County: _____

DESCRIPTION OF BID ITEMS

The following is a brief description of the bid items. This is not all inclusive. Check the plans and specifications for the complete scope of each item. This supplements the specifications.

The Town of Pound Ridge Village Green Project consists of the following items:

1. Coordination with the Town Supervisor, Town Engineer or other assigned representative.
2. Secure any and all Town of Pound Ridge permits.
3. Furnish and install construction/silt fencing and all necessary erosion control measures.
4. Mark out featured areas to map out construction and sequencing.
5. Furnish and install drainage structure, piping, stone, and structural fill.
6. Furnish and install irrigation piping.
7. Furnish and install connection to new electric service and appurtenances including but not limited to:
 - a. Electrical Conduit Underground To Lighting and Receptacle Locations
 - b. All Required Light Bases
 - c. Under Seat or Down Lighting
 - d. Receptacles
 - e. Post Mounted Lighting
8. Furnish and install quarried granite slab stone retaining walls.
9. Furnish and install concrete with appropriate reinforcement and stone veneer for concrete features:
 - a. Stage Step
 - b. Retaining/Sitting Walls
 - c. Planter Wall
 - d. Plaza Steps & Ramp
 - e. Sidewalk With Brick Edge and Ramp
 - f. Bench Landings Along Sidewalk
10. Prepare ground with structural fill, and furnish and install pavers and "unified bluestone dry set with polymer joints" for both the plaza and event stage areas.
11. Furnish and install inner fence along rear perimeter of park and gate entrance/exit to parking area.
12. Furnish and install boulder wall at the rear perimeter of the site behind fencing.
13. Furnish and install featured landscaping, and seed or turf grassed areas.
14. Furnish and install removable/wheeled planters on stage with associated plantings.
15. Furnish and install wood bench seats.
16. Furnish and install the plaza area with table and chair sets.
17. Furnish and install benches along walking path through tree grove at the front of the park.
18. Furnish and install 6-foot-high privacy fence around the rear and sides of the green.
19. The Contractor shall provide all labor, supervision, materials, equipment, tools, utilities, and incidentals necessary to complete the Work as specified in the Technical Specifications and as shown on the Plans.

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned,
_____ as Principal, and _____ as Surety,
are hereby held and firmly bound unto _____ as Owner in the penal sum of
_____ for the payment of which, well and truly to be made, we hereby jointly
and severally bind ourselves, successors and assigns.

Signed, this _____ day of _____, 20_____.

The Condition of the above obligation is such that whereas the Principal has submitted to
_____ a certain Bid, attached hereto and hereby made a part hereof to enter into a
contract in writing, for the _____.

NOW, THEREFORE,

- (a) If said Bid shall be rejected, or
- (b) If said Bid shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said Bid) and shall furnish a Bond for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said Bid, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its Bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Principal (L.S.)

Surety

By: _____

IMPORTANT - Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

NON-COLLUSIVE BIDDING CERTIFICATION
(General Municipal Law 103-d)

1. By submission on this Bid, each Bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:
 - a. The prices in this Bid have been arrived at independently without collusion, consultation, communications or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor:
 - b. Unless otherwise required by law, the prices which have been quoted in this Bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
 - c. No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

The foregoing statement has been read and subscribed by the undersigned Bidder and is hereby affirmed as true under the penalties of perjury.

(individual)

(corporation, partnership)

By: _____

(title)

(SEAL)

Date: _____

CONTRACT

THIS AGREEMENT, made this _____ day of _____ 20____, by and

between the _____ **Town of Pound Ridge** _____, herein called "Owner,"

(Corporate Name of Owner)

acting herein through its _____ **Supervisor** _____, and

(Title of Authorized Official)

(Name and Address of Contractor)

hereinafter called "Contractor."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Owner, the Contractor hereby agrees with the Owner to commence and complete the construction described as follows:

TOWN OF POUND RIDGE VILLAGE GREEN PROJECT

hereinafter called the Project, for the sum of _____ **Dollars and 00/00** (\$_____) and all extra work in connection therewith, under the terms as stated in the General and Special Conditions of the Contract; and at his (its or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said Project in accordance with the conditions and prices stated in the Proposal, the General Conditions, Supplemental General Conditions and Special Conditions of the Contract, the plans, which include all maps, plats, blueprints, and other drawings and printed or written explanatory matter thereof, the specifications and contract documents therefore as prepared by Pitingaro & Doetsch Consulting Engineers, P.C., herein entitled the Engineer and as enumerated in Paragraph 1 of the Supplemental General Conditions, all of which are made a part hereof and collectively evidence and constitute the Contract.

LIQUIDATED DAMAGES

The Contractor hereby agrees to commence work under this Contract on or before a date to be specified in a written "Notice to Proceed" of the Owner and to fully complete the Project within **180** consecutive calendar days thereafter ("Contract Time"). The Contractor acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed project following expiration of the Contract Time and that the Owner has entered into, or will enter into, binding agreements with 3rd parties based upon the Contractor achieving Substantial Completion of the Work within the Contract Time. The Contractor further acknowledges and agrees that if it fails to achieve Completion of any portion of the Work within the Contract Time, as further set forth in the General Conditions, the Owner will sustain extensive damages and possible loss of funding, as well as other serious losses as a

result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, the Owner and the Contractor agree that if the Contractor fails to achieve Completion within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor, as liquidated damages and not as a penalty, the following per diem amount commencing upon the first day following the expiration of the Contract Time and continuing until the date that the Contractor achieves Completion of the entire Work. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the Work: \$1000.00.

The Owner agrees to pay the Contractor in current funds for the performance of the Contract, subject to additions and deductions, as provided in the General Conditions of the Contract, and to make payments on account thereof as provided in the "Payments to Contractor" section of the General Conditions.

IN WITNESS WHEREOF, the parties to these presents have executed this Contract in four counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

(Seal)

ATTEST:

(Secretary)

(Witness)

(Seal)

(Secretary)

(Witness)

Town of Pound Ridge
(Owner)

By _____

Supervisor
(Title)

(Contractor)

By _____

(Title)

(Address)

NOTE: Secretary of the Owner should attest.
If Contractor is a corporation, Secretary should attest.

ACKNOWLEDGMENT BY THE TOWN OF POUND RIDGE

STATE OF NEW YORK

S.S.

COUNTY OF ORANGE

On this ____ day of _____, 20____, before me personally appeared Kevin Hansan of the Town of Pound Ridge, who by me being duly sworn did depose and say that he is the Supervisor for which he executed the foregoing Instrument that he signed his name thereto pursuant to a Resolution of the Town Board of Trustees, _____.

Notary Public

ACKNOWLEDGMENT BY PRINCIPAL, IF A CORPORATION

STATE OF NEW YORK

S.S.

COUNTY OF ORANGE

On this ____ day of _____, 20____, before me personally came _____ to me known, who being by me duly sworn, did depose and say that he resides in _____; that he is the _____ of _____, the corporation described in and which executed the foregoing Instrument; that he knew the seal of said Corporation; that the seal affixed to said Instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Notary Public

ACKNOWLEDGMENT BY INDIVIDUAL

STATE OF NEW YORK

S.S.

COUNTY OF ORANGE

On this ____ day of _____, 20____, before me personally came _____ to me known and known to be the same person described in and who executed the foregoing Instrument and he acknowledged to me that he executed the same for the purposes therein mentioned.

Commissioner of Deeds or Notary Public

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS; that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal,

and _____

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

Town of Pound Ridge

(Name of Owner)

179 Westchester Avenue Pound Ridge, NY 10576

(Address of Owner)

hereinafter called Owner, in the penal sum of _____ Dollars (\$_____), in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the _____ day of _____, 20____, a copy of which is hereto attached and made a part hereof for the construction of:

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Specifications accompanying the same shall in any wise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications.

PERFORMANCE BOND

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which shall be deemed an original, this the _____^(number) day of _____, 20__

ATTEST:

(Principal Secretary)

By _____
(Principal)

(Address)

(Seal)

(Witness as to Principal)

(Address)

ATTEST:

(Surety)

(Surety Secretary)

By _____
(Principal)

(Seal)

(Witness as to Principal)

(Attorney-in-Fact)

(Address)

(Address)

NOTE: Date of Bond must not be prior to date of Contract.
If Contractor is Partnership, all partners should execute Bond.

IMPORTANT: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS; that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal,

and _____

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

Town of Pound Ridge

(Name of Owner)

179 Westchester Avenue Pound Ridge, NY 10576

(Address of Owner)

hereinafter called Owner, in the penal sum of _____ Dollars (\$_____), in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the _____ day of _____, 20____, a copy of which is hereto attached and made a part hereof for the construction of:

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors and corporations furnishing materials for or performing labor in the prosecution of the Work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such Work, and all insurance premiums on said Work, and for all labor, performed in such Work whether by Subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Specifications accompanying the same shall in any wise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications.

PAYMENT BOND

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which shall be deemed an original, this the _____^(number) day of _____, 20____.

ATTEST:

(Principal Secretary)

By _____
(Principal)

(Address)

(Seal)

(Witness as to Principal)

(Address)

ATTEST:

(Surety)

(Surety Secretary)

By _____
(Principal)

(Seal)

(Witness as to Principal)

(Attorney-in-Fact)

(Address)

(Address)

NOTE: Date of Bond must not be prior to date of Contract.
If Contractor is Partnership, all partners should execute Bond.

IMPORTANT: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

GUARANTEE AGAINST DEFECTIVE WORKMANSHIP OR MATERIAL

KNOW ALL MEN BY THESE PRESENTS, that _____
(hereinafter called Principal), as Principal, and the _____
(hereinafter called Surety), as Surety, are held and firmly bound unto _____
(hereinafter called Obligee) in the amount of _____ Dollars (\$ _____)
for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators,
successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal and Obligee entered into a written contract dated _____ and,

WHEREAS, the Contract has been completed by Principal and was accepted by Obligee on _____,

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal shall, for a period
of 12 months, beginning on the aforesaid acceptance date, well and truly hold said Obligee harmless
against any direct loss or cost due to defective workmanship or materials used in the performance of
said Contract, then this obligation to be void, otherwise to remain in full force and effect. Obligee shall
notify Surety by letter addressed to its home office of any breach of this bond, within a reasonable time
after such breach shall have come to Obligee's attention.

Signed, sealed and dated

_____ (Seal)

_____ (Seal)

By: _____
Attorney

Proper acknowledgments must be added.

NOTICE OF AWARD

To:

Project Description: **TOWN OF POUND RIDGE
VILLAGE GREEN PROJECT**

The Owner has considered the Bid submitted by you for the above described Work in response to its Advertisement for Bids and Information for Bidders. You are hereby notified that your Bid has been accepted for items in the amount of _____ **Dollars and 00/100 (\$_____)**. You are required by the Information for Bidders to execute the Agreement and furnish the required Contractor's Performance Bond, Payment Bond and certificate of insurance within ten calendar days from the date of this Notice to you. If you fail to execute said Agreement and to furnish said Bonds within ten days from the date of this Notice, said Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The Owner will be entitled to such other rights as may be granted by law. You are required to return an acknowledged copy of this Notice of Award to the Owner.

Dated this _____ day of _____, 20 ____.

Town of Pound Ridge
Owner

By Jason A. Pitingaro, P.E.
Title Project Engineer

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged

By _____

this the _____ day of _____, 20_____.

By _____ Title _____

NOTICE TO PROCEED

To:

Date: _____

Project Description:

**TOWN OF POUND RIDGE
VILLAGE GREEN PROJECT**

You are hereby notified to commence Work in accordance with the Agreement dated on or before _____ 20 __, and you are to complete the Work within **180** consecutive calendar days thereafter. Therefore, the date of completion of all Work is _____, **20**__.

Town of Pound Ridge

Owner

By Jason A. Pitingaro, P.E.

Title Project Engineer

ACCEPTANCE OF NOTICE

Receipt of the above Notice To Proceed is hereby acknowledged

By _____

this the _____ day of _____, 20_____.

By _____ Title _____

CHANGE ORDER

Order No. _____

Date: _____

Name of Project: **TOWN OF POUND RIDGE
VILLAGE GREEN PROJECT**

Owner: Town of Pound Ridge

Contractor: _____

THE FOLLOWING CHANGES ARE HEREBY MADE TO THE CONTRACT DOCUMENTS:

JUSTIFICATION

CHANGE TO CONTRACT PRICE

Original Contract Price \$ _____

Current Contract Price adjusted by previous Change Order \$ _____

Contract Price due to this Change Order will be (increased) (decreased) by \$ _____

The new Contract Price including this Change Order will be \$ _____

CHANGE TO CONTRACT TIME

The Contract Time will be increased by _____ calendar days.

The date for completion of all work will be _____ (date).

APPROVALS REQUIRED

To be effective, this Order must be approved as required by the Supplemental General Conditions.

Requested By: _____

Recommended By: _____

Engineer

Approved By: _____

Owner

Accepted By: _____

Contractor

Federal Agency Approval (where applicable) _____

CERTIFICATE BY CONTRACTOR REGARDING INSURANCE

This is to certify that the _____ (Company) has issued the policies listed below, that these policies are written in accordance with the Company's standard policies and endorsements, except as indicated below or as noted in the attachments hereto, which policies and endorsements will be made available to the Engineer and the Owner upon request, that they provide coverage and limits of liability shown with respect to the insurance indicated, that they are in force on this date, that all deductible amounts are indicated below, and that this Certificate is furnished in accordance with and for the purpose of satisfying the requirements of the Engineer and the Owner in connection with the award and performance of a contract or agreement between _____ (Owner) and

1. Name of Insured (Contractor)
 2. Address of Insured (Contractor)
 3. Name of Insurance Company
 4. Location and Description of Work
- _____ Project Contract No.

Coverage and Limits of Liability (at least as shown below)

Policy Number	Effective Date	Expiration Date	Bodily Injury Liability	Property Damage Liability	Each Occurrence	Aggregate	Each Occurrence	Aggregate
A. Owner's Protective Liability has been issued at the expense of the Above Insured to _____ (Owner).								
_____	_____	_____	\$1,000,000	\$2,000,000	\$1,000,000	\$2,000,000		
B. Comprehensive General Liability								
_____	_____	_____	\$1,000,000	\$2,000,000	\$1,000,000	\$2,000,000		
Including: <ol style="list-style-type: none"> 1. Operations-Premises Liability; 2. Contractor's Protective Liability; 3. Contractual Liability as Below; 4. Products/Completed Operations 								

Property Damage Insurance under A and B above includes Coverage for Explosion, Collapse and Underground Property Damage. Policy B includes property in the care, custody and control of the insurance.

C. Auto Liability								
_____	_____	_____	Each Person	Each Accident	Each Accident	\$1,000,000	\$1,000,000	\$1,000,000
Including: <ol style="list-style-type: none"> 1. Owned; 2. Hired; 3. Non-owned 								

NOTE: This certificate must be signed and sent to the Engineer along with the Payment Bond, Performance Bond and Certificate of Insurance before the Contract is signed.

CERTIFICATE BY CONTRACTOR REGARDING INSURANCE

Coverage and Limits of Liability

(at least as shown below)

Policy Number	Effective Date	Expiration Date	Bodily Injury	Property Damage	Each Occurrence	Each Occurrence	Aggregate
			Liability	Liability			

D. Workmen's Compensation

_____ Compensation Statutory State(s)
_____ Coverage B Limit \$1,000,000 if applicable

The Workmen's Compensation and Employee's Liability Policy shall include endorsements providing coverage under the United States Longshoremen's and Harbor Workers' Compensation Act and coverage for liability under Admiralty Jurisdiction, Coverage II. Both endorsements shall have limits of liability of \$1,000,000/\$1,000,000.

E. Umbrella Insurance \$5,000,000

F. Other

CONTRACTUAL LIABILITY

The Contractor shall at all times indemnify and save harmless the Owner, the Engineer and their respective officers, agents and employees, on account of any and all claims, damages, losses, litigation, expenses, counsel fees and compensation arising out of injuries (including death) sustained by or alleged to have been sustained by the officers, agents and employees of said Owner or Engineer, or of the Contractor, his subcontractors or materialmen, and from injuries (including death) sustained by or alleged to have been sustained by the public, any or all persons on or near the work, or by any other person or property, real or personal (including property of said Owner or Engineer) caused in whole or in part by the acts, omissions or neglect of the Contractor including but not limited to any neglect in safeguarding the work or through the use of unacceptable materials in constructing the work of the Contractor, any subcontractor, materialmen or anyone directly or indirectly employed by them or any of them while engaged in the performance of the Contract, including the entire elapsed time from the date ordered to start work or the actual start whichever occurs first until completion of the guarantee period, as certified by the Owner or the Engineer.

Policies A, B, C and D shall remain in effect during guarantee period.

Such insurance as is herein certified applies to all operations of the insured in connection with, and necessary and incidental to, the work herein described at the locations stated.

It is hereby understood and agreed that the above policies will not be restrictively amended, materially changed nor canceled without 30 days advance notice by registered mail to Pitingaro & Doetsch Consulting Engineers, P.C., 15 Industrial Drive, Suite 2, Middletown, New York 10941, and Owner.

Contractor or Authorized Representative Signature
(Include Evidence of Authorization)

Address

**CONTRACTOR'S AFFIDAVIT
FOR
RELEASE OF RETAINAGE AND/OR FINAL PAYMENT**

Municipality	
Project	Address
Contract #	Phone #

STATE OF)
) SS
COUNTY OF)

_____, BEING DULY SWORN, DEPOSES AND SAYS:

1. He/She is the _____ (Title) of the Contractor on the above referenced project and makes this affidavit in the regular course of business with full authorization.
2. There are no claims, liens, or judgments against the Contractor except as set forth herein:

 (Insert "NO EXCEPTIONS", if applicable. Attach list, if necessary)
3. All provisions of the Labor Law of the State of New York have been fully complied with except as set forth herein:

 (Insert "NO EXCEPTIONS", if applicable. Attach list, if necessary)
4. The Municipality, upon the release of retainage requested herewith, is released of any and all claims by the Contractor with respect to the project to the date hereof.
5. This certification is made to induce the Municipality to release final payment and/or retainage held pursuant to the contract in accordance with General Municipal Law 106-b.

SIGNATURE

AFFIX SEAL, IF CORPORATION:

Subscribed and sworn to before me this _____ day of _____, 20_____

NOTARY PUBLIC _____

GENERAL CONDITIONS

TABLE OF CONTENTS OF GENERAL CONDITIONS

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GENERAL CONDITIONS

ARTICLE 1: DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

Addenda	Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the bidding documents or the Contract Documents.
Agreement	The written agreement between Owner and Contractor covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.
Application for Payment	The form accepted by Engineer which is to be used by Contractor in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.
Bid	The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
Bonds	Bid, performance and payment bonds and other instruments of security.
Change Order	A document recommended by Engineer, which is signed by Contractor and Owner and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.
Contract Documents	The Agreement, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all amendments, modifications and supplements issued pursuant to Paragraphs 3.5 and 3.6 on or after the Effective Date of the Agreement.
Contract Price	The moneys payable by Owner to Contractor under the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph in the case of Unit Price Work).
Contract Time	The number of days (computed as provided in Paragraph 17.3) or the date stated in the Agreement for the completion of the Work.
Contractor	The person, firm or corporation with whom Owner has entered into the Agreement.
Defective	An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.11 or 14.13). Disputed Work-Work which the contractor believes is "Extra Work" justifying additional compensation and which the Owner and Engineer determines to be work required by the contract for which the Contractor is not entitled to any additional compensation.
Drawings	The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by Engineer and are referred to in the Contract Documents.
Effective Date of the Agreement	The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
Engineer	The person, firm or corporation named as such in the Agreement.
Extra Work	Work other than that required by the contract documents.
Field Order	A written order issued by Engineer which orders minor changes in the Work in accordance with Paragraph 9.5, but which does not involve a change in the Contract Price or the Contract Time.
General Requirements	Sections of Division 1 of the Specifications.
Laws and Regulations; Laws or Regulations	Laws, rules, regulations, ordinances, codes and/or orders.
Notice of Award	The written notice by Owner to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, Owner will sign and deliver the Agreement.
Notice to Proceed	A written notice given by Owner to Contractor (with a copy to Engineer) fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform Contractor's obligations under the Contract Documents.
Owner	The public body or authority, corporation, association, firm or person with whom Contractor has entered into the Agreement and for whom the Work is to be provided.

Partial Utilization	Placing a portion of the Work in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion for all the Work.
Project	The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.
Resident Project Representative	The authorized representative of Engineer who is assigned to the site or any part thereof.
Shop Drawings	All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by Contractor to illustrate material or equipment for some portion of the Work.
Specifications	Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
Subcontractor	An individual, firm or corporation having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the site.
Substantial Completion	The Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer as evidenced by Engineer's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if there be no such certificate issued, when final payment is due in accordance with Paragraph 14.16. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.
Supplementary Conditions	The part of the Contract Documents which amends or supplements these General Conditions.
Supplier	A manufacturer, fabricator, supplier, distributor, materialman or vendor.
Underground Facilities	All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.
Unit Price Work	Work to be paid for on the basis of unit prices.
Work	The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.
Work Directive Change	A written directive to Contractor, issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in Paragraph 4.3 or 4.4 or to emergencies under Paragraph 6.22. A Work Directive Change may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time as provided in Paragraph 10.2
Written Amendment	A written amendment of the Contract Documents, signed by Owner and Contractor on or after the Effective Date of the Agreement and normally dealing with the non-engineering or nontechnical rather than strictly Work-related aspects of the Contract Documents.

ARTICLE 2: PRELIMINARY MATTERS

Delivery of Bonds

2.1 When Contractor delivers the executed Agreements to Owner, Contractor shall also deliver to Owner such Bonds as Contractor may be required to furnish in accordance with Paragraph 5.1

Copies of Documents

2.2 Owner shall furnish to Contractor up to 10 copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

Commencement of Contract Time; Notice to Proceed

2.3 The Contract Time will commence to run on the 30th day after the Effective Date of the Agreement, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Time commence to run later than the 75th day after the day of Bid opening or the 30th day after the Effective Date of the Agreement, whichever date is earlier.

Starting the Project

2.4 Contractor shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

Before Starting Construction

2.5 Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Contract Documents, unless Contractor had actual knowledge thereof or should reasonably have known thereof.

2.6 Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for review:

2.6.1 An estimated progress schedule indicating the starting and completion dates of the various stages of the Work,

2.6.2 A preliminary schedule of Shop Drawing submissions, and

2.6.3 A preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by Contractor at the time of submission.

2.7 Before any Work at the site is started, Contractor shall deliver to Owner, with a copy to Engineer, certificates (and other evidence of insurance requested by Owner) which Contractor is required to purchase and maintain in accordance with Paragraphs 5.3 and 5.4, and Owner shall deliver to Contractor certificates (and other evidence of insurance requested by Contractor) which Owner is required to purchase and maintain in accordance with Paragraphs 5.6 and 5.7.

Preconstruction Conference

2.8 Within 20 days after the Effective Date of the Agreement, but before Contractor starts the Work at the site, a conference attended by Contractor, Engineer and others as appropriate will be held to discuss the schedules referred to in Paragraph 2.6, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

Progress Meetings

2.9 Progress meetings shall be held every two (2) weeks at the Project Site, unless the Engineer notifies the Contractor otherwise, for the purpose of discussing status, expedition, extension and coordination of the work. The Contractor shall attend all progress meetings with any subcontractors which the Engineer may designate.

Finalizing Schedules

2.10 At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer and others as appropriate will be held to finalize the schedules submitted in accordance with Paragraph 2.6. The finalized progress schedule will be acceptable to Engineer as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on Engineer's responsibility for the progress or scheduling the Work nor relieve Contractor from full responsibility therefore. The finalized schedule of Shop Drawing submissions will be acceptable to Engineer as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to Engineer as to form and substance.

Photographs and Video Taping

2.11 Contractor shall videotape the work site before any work is commenced and shall provide a copy of the videotape to the Engineer within ten (10) days of the taping thereof

2.12 Contractor shall take photographs of work. Contractor shall provide such photographs to the Engineer.

2.13 Any costs, expenses or fees incurred for photographing and videotaping (including, but not limited to, fees and charges associated with processing, developing, copying) shall be borne solely by the Contractor.

ARTICLE 3: CONTRACT DOCUMENTS: INTENT, AMENDING AND REUSE

Intent

3.1 The Contract Documents comprise the entire agreement between Owner and Contractor concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. In addition, if there is a conflict between any of the documents that make up the Contract Documents the Contractor shall (i) provide the better quality or greater quantity of work or (ii) comply with the more stringent requirement; either or both in accordance with the Owner and Engineer's interpretation. The Contract Documents will be construed in accordance with the law of the State of New York.

3.2 It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to described Work, materials or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of Owner, Contractor or Engineer, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Engineer, or any of Engineer's consultants, agents or employees, any duty or authority to supervisor or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.16 or 9.17. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Paragraph 9.4. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner. In addition, the grades, elevations, dimensions, locations, and field measurements or any drawings or specifications issued by the Engineer, or the Work installed by other Contractors, are not guaranteed by the Engineer or the Owner. The Contractor shall be responsible for verifying the accuracy of all grades, elevations, dimensions, locations and field measurements. In all cases of the interconnection of its Work with existing or other Work, the Contractor shall verify at the site all dimensions relating to such existing or other Work. Any errors due to the Contractor's failure to verify all such grades, elevations, dimensions, locations, or field measurements shall be promptly rectified by the Contractor without any additional costs to the Owner or extensions of Contract Times.

3.3 If, during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, or should have had such knowledge under the circumstances of the Contract, Contractor shall so report to Engineer in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from Owner.

3.4 ENTIRE AGREEMENT: This written agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the other parties hereto, or to vary any of the terms contained herein. No oral agreement, conversation, or understanding between the Contractor and the Engineer before or after the execution of the Contract shall affect or modify any of the terms or obligations of the Contract Documents. No "constructive" changes shall be allowed.

Amending and Supplementing Contract Documents

3.5 Contract Price and Contract Time may only be changed by a Change Order or a Written Amendment signed by the Owner, Engineer and Contractor. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

3.5.1 A formal Written Agreement,

3.5.2 A Change Order (pursuant to Paragraph 10.4), or

3.5.3 A Work Directive Change (pursuant to Paragraph 10.1).

As indicated in Paragraphs 3.5, 11.2 and 12.2, Contract Price and Contract Time may only be changed by a Change Order or a Written Amendment.

3.6 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

3.6.1 A Field Order (pursuant to Paragraph 9.5),

3.6.2 Engineer's approval of a Shop Drawing or sample (pursuant to Paragraphs 6.26 and 6.27), or

3.6.3 Engineer's written interpretation or clarification (pursuant to Paragraph 9.4).

Reuse of Documents

3.7 Neither Contractor nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with Owner shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer; and they shall not reuse any of them on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

ARTICLE 4: AVAILABILITY OF LANDS, PHYSICAL CONDITIONS, REFERENCE POINTS

Availability of Lands

4.1 Owner shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by Owner, unless otherwise provided in the Contract Documents. If Contractor believes that any delay in Owner's furnishing these lands, rights-of-way or easements entitles Contractor to an extension of the Contract Time, Contractor may make a claim therefore as provided in Article 12. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

Physical Conditions

4.2 Duty To Inspect And Investigate

4.2.1 Surface and Subsurface Conditions: It is Contractor's responsibility to carefully examine the site(s) of the proposed work, as well as adjacent areas and seek usual sources of information for, by bidding on the project and contracting with the Owner, they will be conclusively presumed to have full knowledge of any and all surface and subsurface conditions by the performance of work to be done under this Contract which were or should have been indicated to a reasonably prudent bidder. Any failure of the Contractor to fully acquaint itself with all available information concerning surface and subsurface conditions will not relieve the Contractor from its responsibility to properly estimate the difficulty and total cost of successfully performing and completing the work.

4.2.2 Surface and Subsurface Facilities: It is Contractor's responsibility to carefully examine the site(s) of the proposed work, as well as adjacent areas and seek usual sources of information for, by bidding on the project and contracting with the Owner, they will be conclusively presumed to have full knowledge of any and all surface and subsurface facilities affecting the performance of work to be done under this Contract which were or should have been indicated to a reasonably prudent bidder. Any failure of the Contractor to fully acquaint itself with all available information concerning surface and subsurface facilities will not relieve the Contractor from its responsibility to properly estimate the difficulty and total cost of successfully performing and completing the work.

4.3 Physical Conditions – Surface And Subsurface Conditions

4.3.1 Explorations and Reports: Reference is made, where applicable, to the Supplementary Conditions for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by Engineer in preparation of the Contract Documents. Contractor may rely upon the accuracy of the technical data contained in such reports, but not upon nontechnical data, interpretations or opinions contained therein or for the completeness thereof for Contractor's purposes. Except as indicated in the immediately preceding sentence and in Paragraph 4.3.6, Contractor shall have full responsibility with respect to subsurface conditions at the site.

Such reports shall not excuse the Contractor and each Subcontractor from the duty to independently evaluate and satisfy themselves as to the site conditions and limitations under which the Work is to be performed, including, without limitation, (1) the location, condition, layout, and nature of the project site and surrounding areas; (2) generally prevailing climatic conditions; (3) anticipated labor, supply, and costs; (4) availability and cost of materials, tools, and equipment; and (5) other similar issues. Further, the Owner assumes no responsibility or liability for the physical condition or safety of the project site, or any improvement located on the project site. Except as set forth in Article 5, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make adjustments in either the Contract Price or Contract Times arising from a failure by the Contractor or any Subcontractor to independently evaluate and satisfy themselves as to the site conditions and limitations as required in this Paragraph.

4.3.2 Existing Structures: Reference is made, where applicable, to the Supplementary Conditions for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Facilities referred to in Paragraph 4.4) which are at or contiguous to the site that have been utilized by Engineer in preparation of the Contract Documents. Contractor may rely upon the accuracy of the technical data contained in such drawings, but not for the completeness thereof for Contractor's purposes. Except as indicated in the immediately preceding sentence and in Paragraph 4.3.6, Contractor shall have full responsibility with respect to physical conditions in or relating to such structures.

4.3.3 Report of Differing Conditions: If Contractor discovers or could reasonably have discovered that:

4.3.3.1 Any technical data on which Contractor is entitled to rely as provided in Paragraphs 4.3.1 and 4.3.2 is inaccurate, or

4.3.3.2 Any physical condition uncovered or revealed at the site differs materially from that indicated, reflected or referred to in the Contract Documents, Contractor shall, within five (5) days after becoming aware thereof and before performing any Work in connection therewith (except in an emergency as permitted by Paragraph 6.22), notify Owner and Engineer in writing about the inaccuracy or difference. The requirement that the Owner and Engineer shall be notified in writing cannot be waived except by written authorization by the Owner and Engineer. The Engineer has no authority to waive the requirement that the Owner be notified in writing absent written authorization from the Owner.

4.3.4 Engineer's Review: Engineer will immediately or as soon as feasible review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

4.3.5 Possible Document Change: If Engineer concludes that there is a material error in the Contract Documents or that because of newly discovered conditions a change in the Contract Documents is required, a Work Directive Change or a Change Order will be issued as provided in Article 10 to reflect and document the consequence of the inaccuracy or difference.

4.3.6 Possible Price and Time Adjustments: In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference. If Owner and Contractor are unable to agree as to the amount or length thereof, a claim may be made therefore as provided in Articles 11 and 12.

4.3.7 Claims Relating To Surface And Subsurface Conditions: In the event that the Contractor seeks additional compensation or time due any surface or subsurface condition, such a claim must be submitted in strict compliance with the notice of claim procedures set forth in Articles 11 and 12. Strict compliance is a condition precedent to recovery for such a claim. No claim against the Owner for Extra Work or Disputed Work shall be asserted or made in arbitration or any action or proceeding at law, or in equity, unless the Contractor has strictly complied with all the requirements relating to the giving of notice and information with respect to such claims. Failure to strictly comply with these requirements will effectuate a waiver by the contractor of a claim and the Contractor will be precluded from recovering for the Extra Work or Disputed Work claimed.

Physical Conditions – Surface and Subsurface Facilities

4.4 Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Surface and Subsurface Facilities at or contiguous to the site is based on information and data furnished to Owner or Engineer by the owners of such Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

4.4.1.1 Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and

4.4.1.2 Contractor shall have full responsibility for reviewing and checking all such information and data, for locating all Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners or such Facilities during construction, for the safety and protection thereof as provided in Paragraph 6.20 and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

4.4.2 Not Shown or Indicated: If a Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which Contractor could not reasonably have been expected to be aware of, Contractor shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by Paragraph 6.22), identify the owner of such Facility and given written notice thereof to that owner and to Owner and Engineer. Engineer will promptly review the Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, Contractor shall be responsible for the safety and protection of such Facility as provided in Paragraph 6.20. Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Facility that was not shown or indicated in the Contract Documents and which Contractor could not reasonably have been expected to be aware of. If the parties are unable to agree as to the amount or length thereof, Contractor may make a claim therefore as provided in Articles 11 and 12.

4.4.3 Claims Relating To Surface And Subsurface Facilities: In the event that the Contractor seeks additional compensation or time due any surface or subsurface facility, such a claim must be submitted in strict compliance with the notice of claim procedures set forth in Articles 11 and 12. Strict compliance is a condition precedent to recovery for such a claim. No claim against the Owner for Extra Work or Disputed Work shall be asserted or made in arbitration or any action or proceeding at law, or in equity, unless the Contractor has strictly complied with all the requirements relating to the giving of notice and information with respect to such claims. Failure to strictly comply with these requirements will effectuate a waiver by the contractor of a claim and the Contractor will be precluded from recovering for the Extra Work or Disputed Work claimed.

Photographs of Differing Site Conditions

4.5 A differing site condition shall include any surface or subsurface condition or facility under this article for which the contractor claims differs materially from that indicated, reflected or referenced to in the Contract Documents, or which the Contractor claims could not have been anticipated by a reasonably prudent bidder. The Contractor shall promptly photograph any claimed differing site condition upon discovery thereof. Contractor shall further photograph the claimed differing site condition as is practicable and necessary to fully illustrate the condition encountered. Such photographs shall be provided to the engineer promptly.

Reference Points

4.6 Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work (unless otherwise specified in the General Requirements), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of Owner, Contractor shall report to Engineer whenever any reference point is lost or destroyed or requires relocation because of necessary

changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

ARTICLE 5: BONDS AND INSURANCE

Performance and Other Bonds

5.1 Contractor shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents. Contractor shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the forms prescribed by Law or Regulation or by the Contract Documents and be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

5.2 If the surety on any Bond furnished by Contractor is declared a bankrupt or becomes insolvent or its right to do business is terminated in any State where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.1, Contractor shall within 5 days thereafter substitute another Bond and Surety, both of which must be acceptable to Owner.

Contractor's Liability Insurance

5.3 The Contractor, at its own expense, shall purchase and maintain insurance of the following types of coverage and limits of liability through insurance carriers licensed to provide insurance in the State of New York and have an A. M. Best Company rating of "A" or better. These insurances shall be maintained by the Contractor and its Subcontractors prior to the earlier of the commencement of work or the effective date of the Contract, through and including any warranty period along with and including any Completed Operations requirements.

5.3.1 Commercial General Liability (CGL) Insurance

- a. CGL with limits of Insurance of not less than One Million Dollars and Zero Cents (1,000,000.00) each occurrence and Two Million Dollars and Zero Cents» (\$ 2,000,000.00) Annual Aggregate.
- b. CGL coverage shall be written on ISO Occurrence form CG 00 01 10 01 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, products, completed operations, personal & advertising injury and independent contractors as well as liability assumed in a Contract including the Tort Liability of another assumed in a contract.
- c. The policy shall be endorsed for the General Aggregate to apply separately to this project.
- d. The following entities shall be included as an insured/additional insured on the CGL: Owner and Engineer ("additional insureds") using ISO Additional Insured Endorsement CG 20 10 11 85 or an endorsement providing equivalent coverage to the additional insureds for both on-going operations and completed operations. This insurance for the additional insured shall be as broad as the coverage provided for the named insured Contractor. Coverage for the additional insured shall apply as primary insurance (hereinafter called "Primary") before any other insurance or self-insurance, including any deductible, maintained by, or provided to the additional insureds and shall not require the contribution of any of the insurances available to the Additional Insured (hereinafter called "Non-contributory), evidenced by ISO Endorsement Form CG 20 01 04 13 or equivalent.
- e. Contractor shall maintain CGL coverage as set forth herein for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 2 years after completion of the Work

5.3.2 Business Automobile Liability Insurance

- a. Business Auto Liability (BAL) with limits of at least One Million Dollars and Zero Cents (\$ 1,000,000.00) each accident
- b. Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
- c. Owner, Contractor and all other parties required of the Subcontractor, shall be included as insureds on the auto policy.

5.3.3 Workers Compensation and Employers Liability

- a. Workers Compensation at statutory levels
- b. Employers Liability Insurance limits of at least \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee for injury by disease.
- c. Where applicable, U.S. Longshore & Harborworkers Compensation Act, Maritime Coverage and Voluntary Compensation Endorsements shall be attached to the policy.
- d. Coverage is required for those who are statutorily exempt i.e. Sole Proprietors, Partners, Limited Liability Members or Executive Officers.

5.3.4 Umbrella/Excess Liability

Umbrella Liability Policy with limits of Insurance of not less than Five Million Dollars and Zero Cents (5,000,000.00) each occurrence/aggregate. Coverage is in excess of Contractor's CGL, Business Auto and Employer's Liability and must name additional insureds as set forth above in Paragraph 1(d).

5.3.5 Waiver of Subrogation

All insurance policies maintained by the Contractor shall include a waiver of any and all rights of subrogation of the Contractor or its Insurers against the Owner, along with all other Additional Insureds / Indemnified Parties and their agents, officers, directors and employees for recovery of damages. Contractor further waives its right of subrogation against the Owner or any Additional Insured or Indemnified Party for any damage or loss to the Contractors scope of work, tools, equipment, materials or any other loss within the scope of any insurance maintained by Contractor.

5.3.6 Notice of Cancellation

All insurance coverage required herein shall be endorsed that the Insurer providing such coverage shall provide Owner thirty (30) days written notice of non-renewal or ten (10) days notice of cancellation for non-payment. In the event the Insurer is unable to provide such endorsement, the Contractor agrees that it is its responsibility to provide such notice to the Owner as soon as practically possible but in no event more than seven (7) days from when they receive notice of the non-renewal or cancellation. Failures to advise the Owner of cancellation or to maintain the insurance coverages outlined herein shall constitute of Breach of Contract allowing the Owner to terminate the Contractor and suspend all payments until such time that the Contractor has provided evidence that the affected coverage have been reinstated or replaced as of the date of non-renewal or cancellation.

5.3.7 No Limitation

Insurance coverages outlined herein, maintained or not, by the Owner shall not be interpreted to limit any of the Contractor's indemnity obligations or other liabilities under the Contract Documents. Insurance coverages maintained by the Subcontractor that exceed the minimum requirements of this agreement shall be applicable to this Project and available to the Additional Insureds and Indemnitees.

5.3.8 Certificate / Evidences of Insurance

An ACORD 25 - Certificate of Liability Insurance and ACORD 855 – New York Construction Certificate of Liability Insurance Addendum shall be provided reflecting "all work performed by the Contractor for the Owner" and all of the above coverages. The Copies of All Policies including Endorsements reflecting Additional Insured status, Primary and Non-Contributory Coverage, Waiver of Subrogation and Notice of Cancellation/Change on the above policies must be attached to the Certificate of Insurance as evidence that the Contractor is compliant with its Contractual requirements. Failure to provide the necessary coverages, Certificates and/or Policies or Endorsements may preclude the Contractor from working or any payments being made to the Contractor.

Contractual Liability Insurance

5.4 The comprehensive general liability insurance required by Paragraph 5.3 will include contractual liability insurance applicable to Contractor's obligations under Paragraphs 6.30 and 6.31.

Owner's Liability Insurance

5.5 Owner shall be responsible for purchasing and maintaining Owner's own liability insurance and, at Owner's option, may purchase and maintain such insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

Property Insurance

5.6 Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the site to the full insurable value thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall include the interests of Owner, Contractor, Subcontractors, Engineer and Engineer's consultants in the Work, all of whom shall be listed as insureds or additional insured parties, shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and such other perils as may be provided in the Supplementary Conditions, and shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers, architects, attorneys and other professionals). If not covered under the "all risk" insurance or otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain similar property insurance on portions of the Work stored on and off the site or in transit when such portions of the Work are to be included in an Application for Payment.

5.7 Owner shall purchase and maintain such boiler and machinery insurance, or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, Engineer and Engineer's consultants in the Work, all of whom shall be listed as insured or additional insured parties.

5.8 All the policies of insurance (or the certificates or other evidence thereof) required to be purchased and maintained by Owner in accordance with Paragraphs 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be cancelled or materially changed or renewal refused until at least 30 days' prior written notice has been given to Contractor by certified mail and will contain waiver provisions in accordance with Paragraph 5.11.2.

5.9 Owner shall not be responsible for purchasing and maintaining any property insurance to protect the interests of Contractor, Subcontractors or others in the Work to the extent of any deductible amounts that are provided in the Supplementary Conditions. The risk of loss within the deductible amount will be borne by Contractor, Subcontractor or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.10 If Contractor requests in writing that other special insurance be included in the property insurance policy, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.11 Intentionally omitted.

Receipt and Application of Proceeds

5.12 Any insured loss under the policies of insurance required by Paragraphs 5.6 and 5.7 will be adjusted with Owner and made payable to Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.13. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest

may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied don account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

5.13 Owner as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as trustee shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If required in writing by any party in interest, Owner as trustee shall, upon the occurrence of an insured loss, give bond for the proper performance of such duties.

Acceptance of Insurance

5.14 In no event shall the failure of the Owner to verify coverage, receive or require certification of coverage or identify deficiencies in any insurance provided by Contractor relieve Contractor from any insurance or contractual obligations set forth herein. All obligations to procure and maintain the following insurance are separate and independent of the duty to furnish certified copies or certificates of such insurance policies.

Partial Utilization - Property Insurance

5.15 If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with Paragraph 14.13; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be cancelled or lapse on account of any such partial use or occupancy.

ARTICLE 6: CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence

6.1 Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but Contractor shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

Contractor's Personnel

6.2.1 The Contractor shall be solely responsible for the supervision, conduct and safety of his personnel. The Contractor shall restrict his personnel to only those areas of the plant necessary for the performance of the work of this Contract. The Contractor shall instruct his personnel to observe extreme caution when working in the vicinity of mechanical equipment or open tankage. Personnel should be advised that equipment may start automatically and without warning or may be started from a remote location. The Contractor shall instruct his personnel on the hazards and precautions associated with sewage, sludges and chemicals, which are present in the plant. Personnel should be cautioned that surfaces may be wet or slippery and that physical, chemical, electrical and biological hazards are present. The Contractor's personnel shall not operate or tamper with any valve or switches or other devices or equipment. The Contractor shall be solely responsible for any damage or disruption caused by his personnel.

6.2.2 Contractor shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor's representative at the site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor.

Contractor's Responsibility and Liability for Injuries to Persons or Damage to Property

6.2.3 To the fully extent allows by law, the Contractor shall be solely responsible and liable for the health, safety and protection of property including, but not limited to, the premises, its access road, its appurtenances and equipment and for the health, safety and protection of all person, including but not limited to, the employees of the Owner, Engineer, Contractor, or Subcontractors. The Contractor shall be for all physical illness and injuries, including death, to any such persons and for all damage to property occurring on account of the work under this Contract, whether or not due to the negligence, fault, or default of the Contractor, his officers, employees or agents, or of a Subcontractor, his officers, employees or agents.

6.2.4 The liability of the Contractor under this Contract shall be absolute and shall not be dependent upon any question of negligence on his part or on the part of his officers, agents, servants or employees. Neither the approval by the Engineer of the methods of doing the work, nor the failure of the Engineer to call attention to improper or inadequate methods or to require a change in methods; nor the neglect of the Engineer to direct the Contractor to take any particular precautions or to refrain from doing any particular thing shall excuse the Contractor from his obligations hereunder in case of any such injury to person or damage to property.

Labor, Materials and Equipment

6.3 Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and Contractor will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without Owner's written consent given after prior written notice to Engineer.

6.4 Unless otherwise specified in the General Requirements, Contractor shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

6.5 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to Engineer, or any of Engineer's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.16 or 99.17.

Adjusting Progress Schedule

6.6 Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.10) adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

Substitutes or "Or Equal" Items

6.7.1 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by Engineer if sufficient information is submitted by Contractor to allow Engineer to determine that the material or equipment proposed is equivalent or equal to that named. The procedure for review by Engineer will include the following as supplemented in the General Requirements. Requests for review of substitute items of material and equipment will not be accepted by Engineer from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make written application to Engineer for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Engineer in evaluating the proposed substitute. Engineer may require Contractor to furnish at Contractor's expense additional data about the proposed substitute.

6.7.2 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to Engineer, if Contractor submits sufficient information to allow Engineer to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by Engineer will be similar to that provided in Paragraph 6.7.1 as applied by Engineer and as may be supplemented in the General Requirements.

6.7.3 Engineer will be allowed a reasonable time within which to evaluate each proposed substitute. Owner will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without Engineer's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute. Engineer will record time required by Engineer and Engineer's consultants in evaluating substitutions proposed by Contractor and in making changes in the Contract Documents occasioned thereby. Whether or not Owner accepts a proposed substitute, Contractor shall reimburse Owner for the charges of Engineer and Engineer's consultants for evaluating each proposed substitute.

Concerning Subcontractors, Suppliers and Others

6.8.1 Contractor shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to Owner as indicated in Paragraph 6.8.2), whether initially or as a substitute, against whom Owner or Engineer may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom Contractor has reasonable objection.

6.8.2 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to Owner in advance of the specified date prior to the Effective Date of the Agreement for acceptance by Owner and Engineer and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's or Engineer's acceptance (either in writing or by failing to make written objection thereby by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case Contractor shall submit an acceptable substitute, the Contract Price will be increased by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Agreement signed. No acceptance by Owner or Engineer of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of Owner or Engineer to reject Defective Work.

6.9 Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for

Contractor's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

6.10 The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

6.11 All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer and contains waiver provisions as required by Paragraph 5.11. Contractor shall pay each Subcontractor a just share of any insurance moneys received by Contractor on account of losses under policies issued pursuant to Paragraphs 5.6 and 5.7.

Patent Fees and Royalties

6.12 Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents. Contractor shall indemnify and hold harmless Owner and Engineer and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees and court and arbitration costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

Permits

6.13 Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening Bids, or if there are no Bids on the Effective Date of the Agreement. Contractor shall pay all charges of utility owners for connections to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

Laws and Regulations

6.14.1 Contractor shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

6.14.2 If Contractor observes that the Specifications or Drawings are at variance with any Laws or Regulations, Contractor shall give Engineer prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in Paragraph 3.6. If Contractor performs any Work knowing or having reason to know that it is contrary to such Laws or Regulations, and without such notice to Engineer, Contractor shall bear all costs arising therefrom; however, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with such Laws and Regulations.

Taxes

6.15 Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

Use of Premises

6.16 Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and Plans and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against Owner or Engineer by any such owner or occupant because of the performance of the Work, Contractor shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold Owner and Engineer harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against Owner or Engineer to the extent based on a claim arising out of Contractor's performance of the Work.

6.17 During the progress of the Work, Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by Owner. Contractor shall restore to original condition all property not designated for alteration by the Contract Documents.

6.18 Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

Record Documents

6.19 Contractor shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications (issued pursuant to Paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, samples and Shop Drawings will be delivered to Engineer for Owner.

Safety and Protection

6.20 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.20.1 All employees on the Work and other persons and organizations who may be affected thereby;

6.20.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.20.3 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

Contractor shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in Paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor). Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.16 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.21 Contractor shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to Owner.

Emergencies

6.22 In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, Contractor, without special instruction or authorization from Engineer or Owner, is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Engineer determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Directive Change or Change Order will be issued to document the consequences of the changes or variations.

Shop Drawings and Samples

6.23 After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, Contractor shall submit to Engineer for review and approval in accordance with the accepted schedule of Shop Drawing submissions (see Paragraph 2.10), or for other appropriate action if so indicated in the Supplementary Conditions, five copies (unless otherwise specified in the General Requirements) of all Shop Drawings, which will bear a stamp or specific written indication that Contractor has satisfied Contractor's responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as Engineer may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable Engineer to review the information as required.

6.24 Contractor shall also submit to Engineer for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that Contractor has satisfied Contractor's responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

6.25.1 Before submission of each Shop Drawing or sample Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

6.25.2 At the time of each submission, Contractor shall give Engineer specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

6.26 Engineer will review and approve with reasonable promptness Shop Drawings and samples, but Engineer's review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Contractor shall make corrections

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

6.27 Engineer's review and approval of Shop Drawings or samples shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has in writing called Engineer's attention to each such variation at the time of submission as required by Paragraph 6.25.2 and Engineer has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any approval by Engineer relieve Contractor from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of Paragraph 6.25.1

6.28 Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to Engineer's review and approval of the pertinent submission will be the sole expense and responsibility of Contractor.

Continuing the Work

6.29 Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.6 or as Contractor and Owner may otherwise agree in writing.

Indemnification

6.30 To the fullest extent permitted by Laws and Regulations Contractor shall indemnify and hold harmless Owner and Engineer and their consultants, agents and employees from an against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of Contractor, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

6.31 In any and all claims against Owner or Engineer or any of their consultants, agents or employees by any employee of Contractor, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.30 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any such Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

6.32 The obligations of Contractor under Paragraph 6.30 shall not extend to the liability of Engineer, Engineer's consultants, agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications.

6.33 The Contractor's indemnity obligations under this Section shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

6.34 The Contractor shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

ARTICLE 7: OTHER WORK

Related Work at Site

7.1 Owner may perform other work related to the Project at the site by Owner's own forces, have other work performed by utility owners or let other direct contracts therefore which shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to Contractor prior to starting any such other work; and, if Contractor believes that such performance will involve additional expense to Contractor or requires additional time and the parties are unable to agree as to the extent thereof, Contractor may make a claim therefore as provided in Articles 11 and 12.

7.2 Contractor shall afford each utility owner and other contractor who is a party to such a direct contract (or Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate the Work with theirs. Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are

for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

7.3 If any part of Contractor's Work depends for proper execution or results upon the work of any such other contractor or utility owner (or Owner), Contractor shall inspect and promptly report to Engineer in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Contractor's failure so to report will constitute an acceptance of the other work as fit and proper for integration with Contractor's Work except for latent or nonapparent defects and deficiencies in the other work.

Coordination

7.4 If Owner contracts with others for the performance of other work on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified in the Supplementary Conditions, and the specific matters to be covered by such authority and responsibility will be itemized, and the extent of such authority and responsibilities will be provided, in the Supplementary Conditions. Unless otherwise provided in the Supplementary Conditions, neither Owner nor Engineer shall have any authority or responsibility in respect of such coordination.

ARTICLE 8: OWNER'S RESPONSIBILITIES

8.1 Owner shall issue all communications to Contractor through Engineer provided, however, that this provision shall not alter, modify, abrogate or affect any of the terms or obligations of the Contract Documents.

8.2 In case of termination of the employment of Engineer, Owner shall appoint an engineer against whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer. Any dispute in connection with such appointment shall be subject to arbitration.

8.3 Owner shall furnish the data required of Owner under the Contract Documents and shall make payments to Contractor as provided in Paragraphs 14.4, 14.5 and 14.16.

8.4 Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.1 and 4.6. Paragraph 4.3.1 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions at the site and in existing structures which have been utilized by Engineer in preparing the Drawings and Specifications.

8.5 Owner's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in Paragraphs 5.5 through 5.8.

8.6 Owner is obligated to execute Change Orders as indicated in Paragraph 10.4.

8.7 Owner's responsibility in respect of certain inspections, tests and approvals is set forth in Paragraph 13.4.

8.8 In connection with Owner's right to stop Work or suspend Work, see Paragraphs 13.10 and 15.1 Paragraph 15.2 deals with Owner's right to terminate services of Contractor under certain circumstances.

ARTICLE 9: ENGINEER'S STATUS DURING CONSTRUCTION

Owner's Representative

9.1 Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitation of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of Owner and Engineer.

Visits to Site

9.2 Engineer will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design professional, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defects and deficiencies in the Work.

Project Representation

9.3 If Owner and Engineer agree, Engineer will furnish a Resident Project Representative (or Representatives) to assist Engineer in observing the performance of the Work. Any such representative shall have no authority to: change the contract price or contract time; change the scope of the Work; or, approve or recommend the means, methods, techniques, sequences or procedures of construction. If Owner designates another agent to represent Owner at the site who is not Engineer's agent or employee, the duties, responsibilities and limitations of authority of such other person will be as provided in the Supplementary Conditions .

Classifications and Interpretations

9.4 The Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If Contractor believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of Contract Time and the parties are unable to agree to the amount or extent thereof, Contractor may make a claim therefore as provided in Article 11 or Article 12.

Authorized Variations in Work

9.5 The Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner, and also on Contractor who shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount thereof, Contractor may make a claim therefore as provided in Article 11 or 12.

Rejecting Defective Work

9.6 The Engineer will have authority to disapprove or reject Work which Engineer believes to be Defective and will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.9, whether or not the Work is fabricated, installed or completed.

Shop Drawings, Change Orders and Payments:

9.7 In connection with Engineer's responsibility for Shop Drawings and samples, see Paragraphs 6.23 through 6.28 inclusive.

9.8 In connection with Engineer's responsibilities as to Change Orders, see Articles 10, 11 and 12.

9.9 In connection with Engineer's responsibilities in respect of Applications for Payment, etc., see Article 14.

Limitations on Engineer's Authority

9.10.1 The Engineer has no authority to waive or modify the notice and documentation requirements herein, unless the Owner, in writing, expressly authorizes the Engineer to waive or modify the notice and documentation requirements relative to any particular aspect of the work.

9.10.2 The Engineer has no authority to change the terms of the contract, unless the Owner, in writing, expressly authorizes the Engineer to change the Contract terms.

Determinations for Unit Prices

9.11 The Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor Engineer's preliminary determinations on such matters. Engineer's written decisions thereon will be final and binding upon Contractor, unless, within ten days after the date of any such decision, either Owner or Contractor delivers to the other party to the Agreement and Engineer written notice of intention to appeal from such a decision.

Decisions on Disputes

9.12 Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, dispute and other matters relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the work and claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Time will be referred initially to Engineer in writing with a request for a formal decision in accordance with this Paragraph, which Engineer will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to Engineer and the other party to the Agreement promptly (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within sixty days after such occurrence unless Engineer allows an additional period of time to ascertain more accurate data in support of the claim.

9.13 When functioning as interpreter and judge under Paragraphs 9.11 and 9.12, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Engineer pursuant to Paragraphs 9.11 and 9.12 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in Paragraph 14.16) will be a condition precedent to any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

Limitations on Engineer's Responsibilities

9.14 Neither Engineer's authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of Engineer to Contractor, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

9.15 Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used

to describe a requirement, direction, review or judgment of Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.16 or 9.17.

9.16 Engineer will not be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and Engineer will not be responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

9.17 Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

ARTICLE 10: CHANGES IN THE WORK

10.1 Without invalidating the Agreement and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by a Written Amendment, a Change Order, or a Work Directive Change signed by the Owner, Contractor and Engineer. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

10.2 If Owner and Contractor are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Directive Change, a claim may be made therefore as provided in Article 11 or Article 12.

10.3 Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in Paragraphs 3.5 and 3.6, except in the case of an emergency as provided in Paragraph 6.22 and except in the case of uncovering Work as provided in Paragraph 13.9.

10.4 Owner and Contractor shall execute appropriate Change Orders (or Written Amendments) covering:

10.4.1 changes in the Work which are ordered by Owner pursuant to Paragraph 10.1, are required because of acceptance of Defective Work under Paragraph 13.13 or correcting Defective Work under Paragraph 13.14, or are agreed to by the parties;

10.4.2 changes in the Contract Price or Contract Time which are agreed to by the parties.

10.5 If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Contractor's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 11: CHANGE OF CONTRACT PRICE

Owner's Changes in the Work

11.1 The Owner at any time without notice to any Surety may make changes in the work of the Contractor by making alterations therein, by making additions thereto, or by omitting Work therefrom, and no such action shall invalidate the Contract, relieve or release the Contractor from any guarantee under the Contract, affect the terms of validity of any bond, relieve or release any surety, or constitute grounds for any claim by the Contractor for damages or loss of anticipated profits. All Work required by such alternations, additions, or omissions shall be executed under the terms of the Contract.

11.1.1 Other than any emergency endangering life or property, the Contractor shall not make any changes in the Work nor furnish any labor, equipment, materials, supplies or other services in connection with any change except pursuant to, and after, receipt of a written executed authorization from the Owner in the form of a Modification Order. The Contractor shall not be entitled to any increase in the Contract price or extension of the Contract time, and no claim, therefore, shall be valid, unless such written authorization has been so issued to the Contractor.

Adjustments in Contract Price

11.2.1 Changes Must Be In Writing: The Contract Price constitutes the total compensation, subject to authorized adjustments, payable to the contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the Contractor in connection with the Work shall be at the Contractor's expense without a change in the Contract Price. The Contract Price shall only be changed by a written change order signed by the Owner, Engineer and Contractor or by a written amendment signed by the Owner, Engineer and Contractor.

11.2.2 Any claim for an increase or decrease in the Contract price shall be based on written notice delivered by the party making the claim to the other party and to the Engineer promptly (but in no event later than fifteen (15) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within thirty (30) days after such occurrence unless the Engineer and Owner allow an additional period of time in writing and shall be accompanied by claimant's written statement that the amount claimed covers all amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. Any claim for an adjustment in the contract price not submitted in full and strict compliance with the foregoing, shall be deemed waived and no right to recovery for such claim shall exist. Strict compliance with all the requirements relating to the giving of notice and of information with respect to such claims shall be a condition precedent to recovery on such claims in any arbitration, or proceeding at law, or inequity.

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

11.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of Paragraphs 11.9.1. through 11.9.3. inclusive).

11.3.2 By mutual acceptance of a lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.6.2.1).

11.3.3 On the basis of the Cost of the Work (determined as provided in Paragraphs 11.4 and 11.5) plus a Contractor's Fee for overhead and profit (determined as provided in Paragraphs 11.6 and 11.7).

Cost of the Work

11.4 The term Cost of the Work means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in Paragraph 11.5:

11.4.1 Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by OWNER and Contractor. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by Owner.

11.4.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

11.4.3 Payments made by Contractor to the Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from Subcontractors acceptable to Contractor and shall deliver such bids to Owner who will then determine, with the advice of Engineer, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as Contractor's Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.4.4 Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.

11.4.5 Supplemental costs including the following:

11.4.5.1 The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

11.4.5.2 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of Contractor.

11.4.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof – all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

11.4.5.4 Sales, consumer, use or similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.

11.4.5.5 Deposits lost for causes other than negligence of Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

11.4.5.6 Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by Contractor in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by Owner in accordance with Paragraph 5.9), provided they have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's Fee. If, however, any such loss or damage requires reconstruction and Contractor is placed in charge thereof. Contractor shall be paid for services a fee proportionate to that stated in Paragraph 11.6.2.

11.4.5.7 The cost of utilities, fuel and sanitary facilities at the site.

11.4.5.8 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

11.4.5.9 Cost of premiums for additional Bonds and insurance required because of changes in the Work and premiums for property insurance coverage within the limits of the deductible amounts established by Owner in accordance with Paragraph 5.9.

11.5 The term Cost of the Work shall not include any of the following:

11.5.1 Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site or in Contractor's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.4.1 or specifically covered by Paragraph 11.4.4 – all of which are to be considered administrative costs covered by the Contractor's Fee.

11.5.2 Expenses of Contractor's principal and branch offices other than Contractor's office at the site.

11.5.3 Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

11.5.4 Cost of premiums, for all Bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by Subparagraph 11.4.5.9 above).

11.5.5 Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

Contractor's Fee

11.6 The Contractor's Fee allowed to Contractor for overhead and profit shall be determined as follows:

11.6.1 a mutually acceptable fixed fee; or if none can be agreed upon,

11.6.2 a fee based on the following percentages of the various portions of the Cost of the Work:

11.6.2.1 for costs incurred under Paragraphs 11.4.1 and 11.4.2, the Contractor's Fee shall be fifteen percent;

11.6.2.2 for costs incurred under Paragraph 11.4.3, the Contractor's Fee shall be five percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to Contractor on account of overhead and profit of all Subcontractors shall be fifteen percent;

11.6.2.3 no fee shall be payable on the basis of costs itemized under Paragraphs 11.4.4, 11.4.5 and 11.5;

11.6.2.4 the amount of credit to be allowed by Contractor to Owner for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in Contractor's Fee by an amount equal to ten percent of the net decrease; and

11.6.2.5 when both additions and credits are involved in any one change, the adjustment in Contractor's Fee shall be computed on the basis of the net change in accordance with Paragraphs 11.6.2.1 through 11.6.2.4, inclusive.

11.7 Whenever the cost of any Work is to be determined pursuant to Paragraph 11.4 or 11.5, Contractor will submit in form acceptable to Engineer an itemized cost breakdown together with supporting data.

Cash Allowances

11.8 It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to Engineer. Contractor agrees that:

11.8.1 The allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and

11.8.2 Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

Unit Price Work

11.9.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work

times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer in accordance with Paragraph 9.11.

11.9.2 Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

11.9.3 Where the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement and there is no corresponding adjustment with respect to any other item of Work and if Contractor believes that Contractor has incurred additional expense as a result thereof. Contractor may make a claim for an increase in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such increase.

Modification and Change Order Processing

11.10 Any change which will substantially alter the nature, scope or quality of work, regardless of whether or not an adjustment in Contract Price or Time will result, shall be initiated and accomplished in writing, in accordance with the procedures contained herein. It is expressly understood and agreed that the Owner, through his authorized representative, can authorize changes in the Contract. Should the Contractor proceed with the performance of extra work, including ordering materials, therefore, without having first received a Modification Order, as described herein, signed by the Owner's authorized representative, the Owner reserves the right to refuse to compensate the Contractor for such extra work or any part thereof.

Extra Work Or Disputed Work Claims

11.11 "Extra Work" is work which the Owner, Engineer and Contractor agree is not required by the Contract. If there is a dispute about whether or not the work is required by the contract, such work will be deemed "Disputed Work."

11.11.1 Extra Work: Any increase in the Contract Price due to Extra Work shall be valid only if an extra work order or change order is issued in writing and signed by the Engineer and Owner before the performance of such work.

In order to reserve its right to compensation for Extra Work and any damages resulting therefrom, the Contractor shall: (1) notify the Owner and Engineer, in writing, within five (5) days of the event giving rise to the claim, the nature of the claim, that the work is being performed, or that the work is being performed under protest as Disputed Work, and that the Contractor considers the work to be Extra Work; and (2) within twenty (20) days of the event giving rise to the claim, submit to the Owner and Engineer, in writing, verified detailed statements of the damages and expenses sustained together with documentary evidence of such damages and expenses. The time periods herein may be extended by the Engineer, in writing, only with the Owner's written consent. Any Extra Work claim not submitted in full and strict compliance with the foregoing, shall be deemed waived and no right to recovery for such claim shall exist.

11.11.2 Disputed Work: If the Owner and Engineer determine that the Work in question is Contract Work and not Extra Work, the Engineer will direct, in writing, that the Contractor shall proceed with the Disputed Work, and the Contractor must promptly comply.

In order to reserve its right to compensation for Disputed Work and any damages resulting therefrom, the Contractor shall: (1) notify the Owner and Engineer, in writing, within five (5) days of the event giving rise to the claim, the nature of the claim, that the work is being performed, or that the work is being performed under protest as Disputed Work, and that the Contractor considers the work to be Disputed Work; and (2) within twenty (20) days of the event giving rise to the claim, submit to the Owner and Engineer, in writing, verified detailed statements of the damages and expenses sustained together with documentary evidence of such damages and expenses. The time periods herein may be extended by the Engineer, in writing, only with the Owner's written consent. Any Disputed Work claim not submitted in full and strict compliance with the foregoing, shall be deemed waived and no right to recovery for such claim shall exist.

11.11.3 Performance of Extra Work or Disputed Work: While the Contractor or any subcontractor is performing Extra Work (unless payment is to be made by an agreed upon lump sum or at unit prices agreed upon) or is performing Disputed Work under protest, in each such case the Contractor shall furnish the Engineer daily with three copies of written statements signed by the Contractor's representatives at the site showing:

- (1) the name and number of each workman employed on such work, the number of hours employed thereon, and the character of work each workman is doing; and
- (2) the nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work and from whom purchased or rented.

Failure to comply strictly with these requirements shall constitute a waiver of any claim for extra compensation or damages on account of the performance of such Extra or Disputed Work.

11.11.4 Actions and Claims for Extra Work or Disputed Work: No claim against the Owner for breach of contract or for compensation for Extra or Disputed Work shall be made or asserted in any action or proceeding at law, or in equity, unless the Contractor shall have strictly complied with all the requirements relating to the giving of notice and of information and documentation with respect to such claims hereinbefore provided.

11.12 Effect Of Extra Work Or Disputed Work Claims On Contract Time: Any claim for Extra Work or Disputed Work shall have no effect on the time specified for completion of the Contract unless the Owner and Engineer authorize in writing an extension of the Contract Time due to an Extra Work or Disputed Work claim. Any request for an extension of time due to the performance of Extra Work or Disputed Work shall be submitted in accordance with Article 12. However, if an Extra Work or Disputed Work claim does not state in writing that an extension of time will be requested by the Contractor, the Contractor shall be deemed to waive any right to an extension of the Contract Time by virtue of any such Extra or Disputed Work.

Effect Of Change Order Or Written Authorization on Contract Time: If a change order or written authorization signed by the Owner, Engineer, and Contractor does not explicitly extend the Contract Time, then the Contractor shall be deemed to have waived any right to an extension of time because of the work covered thereby. Any request for an extension of time due to the performance of work pursuant to a change order or written authorization signed by the Owner, Engineer and Contractor shall be submitted in accordance with Article 12 unless the change order or written authorization signed by the Owner, Engineer and Contractor expressly states that the Contract Time shall be extended by virtue of such change order or written authorization.

ARTICLE 12: CHANGE OF CONTRACT TIME

12.1 All time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement, the Contractor affirms and acknowledges that the Contract Time is a reasonable period for performing the work.

12.2 The Contract Time can only be changed by a change order or written amendment signed by the Owner, Engineer and Contractor. Any request for an extension of the Contract Time must be submitted by the Contractor in writing to the Owner and Engineer within twenty (20) days of the event giving rise to the request and shall set forth the reason for the request. The Contractor shall, within thirty (30) days of the event giving rise to the request, submit to the Engineer and Owner, in writing, verified detailed statements with supporting documentary evidence justifying its request for additional time. Upon failure of the contractor to fully and strictly comply with the foregoing, any claim for additional time shall be deemed waived and no right to recover on such claim shall exist. Failure to comply strictly with these requirements shall constitute a waiver of any claim for additional time or claim for delay not prohibited by this Article as set forth below.

12.3 Liquidated Damages

If the Contractor fails to complete the work on or before the scheduled contract time (as may be extended in accordance with this Article), the Contractor shall owe the Owner the amount of ONE THOUSAND DOLLARS (\$1,000.00) for each and every calendar day beyond such scheduled Contract time until the occurrence of substantial completion to compensate the Owner for the delay suffered in obtaining beneficial use of the work. The Contractor agrees that the Owner's actual damages for delay in obtaining beneficial use of the work would be difficult or impossible to ascertain and that such amount constitutes a fair and reasonable amount for damages for the Owner's loss of beneficial use.

The Owner shall deduct any amounts owing to the Contractor as liquidated damages from any unpaid balance of the Contract price, and the Contractor shall pay to the Owner upon demand, any amount for liquidated damages, which exceeds the unpaid balance of the Contract price.

12.4 Where the Owner accepts an application by the Contractor for an extension of time and/or it is agreed that the Contractor is entitled to an extension of time, and the Contract completion date shall be adjusted pursuant to a time extension change order, which shall be signed by the Engineer and the Contractor.

12.5 No Damages For Delay

12.5.1 If the Contractor or the Contractor's performance of the Contract is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Engineer, their consultants or separate contractors; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

12.5.2 Notwithstanding anything to the contrary, an extension in the Contract Time, to the extent permitted under Section 12.5 shall be the sole remedy of the Contractor for any (1) delay in the commencement, prosecution, or completion of the Work; (2) hindrance or obstruction in the performance of the Work; (3) loss of productivity or acceleration; or (4) other similar claims (collectively referred to in this Section as Delays) whether or not such Delays are foreseeable, unless a Delay is caused by the Owner's intentional or active interference with the Contractor's performance of the Work, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference.

In no event shall the Contractor be entitled to any compensation or recovery of any damages in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, acceleration costs, or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as intentional or active interference with the Contractor's performance of the Work.

ARTICLE 13: WARRANTY AND GUARANTEE, TESTS AND INSPECTIONS, CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

Warranty and Guarantee

13.1 Contractor warrants and guarantees to Owner and Engineer that all Work will be in accordance with the Contract Documents and will not be Defective. Prompt notice of all defects shall be given to Contractor. All Defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article 13.

Access to Work

13.2 Engineer and Engineer's representatives, other representatives of Owner, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. Contractor shall provide proper and safe conditions for such access.

Tests and Inspections

13.3 Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests or approvals.

13.4 If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish Engineer the required certificates of inspection, testing or approval. Contractor shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with Owner's or Engineer's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. The cost of all inspections, tests and approvals in addition to the above which are required by the Contract Documents shall be paid by Owner (unless otherwise specified).

13.5 All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to Owner and Contractor (or by Engineer if so specified).

13.6 If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

Neither observations by Engineer nor inspections, tests or approvals by others shall relieve Contractor from Contractor's obligations to perform the Work in accordance with the Contract Documents.

Uncovering Work

13.8 If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

13.9 If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is Defective, Contractor shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and Owner shall be entitled to an appropriate decrease in the Contract Price. If, however, such Work is not found to be Defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, Contractor may make a claim therefore as provided in Articles 11 and 12.

Owner May Stop the Work

13.10 If the Work is Defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor or any other party.

Correction or Removal of Defective Work

13.11 If required by Engineer, Contractor shall promptly, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Engineer, remove it from the site and replace it with non-defective Work. Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

One Year Correction Period

13.12 If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provisions of the Contract Documents, any Work is found to be Defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, either correct such Defective Work, or, if it has been rejected by Owner, remove it from the site and replace it with non-defective Work. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by Contractor. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

Acceptance of Defective Work

13.13 If, instead of requiring correction or removal and replacement of Defective Work, Owner (and, prior to Engineer's recommendation of final payment) prefers to accept it, Owner may do so. Contractor shall bear all direct, indirect and consequential costs attributable to Owner's evaluation of and determination to accept such Defective Work (such costs to be approved by Engineer as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and

Owner shall be entitled to an appropriate decrease in the Contract Price. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

Owner May Correct Defective Work

13.14 If Contractor fails within a reasonable time after written notice of Engineer to proceed to correct and to correct Defective Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.11, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days' written notice to Contractor, correct and remedy any such deficiency. In exercising the rights and remedies under this Paragraph Owner shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, Owner may exclude Contractor from all or part of the site, take possession of all or part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees such access to the site as may be necessary to enable Owner to exercise the rights and remedies under this Paragraph. All direct, indirect and consequential costs of Owner in exercising such rights and remedies will be charged against Contractor in an amount approved as to reasonableness by Engineer, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's Defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

ARTICLE 14: PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values

14.1 The schedule of values established as provided in Paragraph 2.10 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

Application for Progress Payment

14.2 Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

Each Application for Payment shall be accompanied by the following, all in a form and substance satisfactory to the Owner:

- a. In addition to the current Contractor's lien waiver, a duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into Subcontracts, the amount of each such Subcontract, the amount requested for each Subcontractor and Supplier who is to be paid any sum under the Application for Payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and Suppliers;
- b. Duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material Suppliers and lower-tier Subcontractors, establishing payment or satisfaction of payment of all amounts requested of the Contractor on behalf of such entities or persons in any previous application for payment; and
- c. All information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Engineer. If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

14.2.1 If at any time there shall be evidence of a lien or claim of lien for which, if established, the Owner might become liable, and that is for Work within the scope of this Contract, or if the Contractor shall incur any liability to the Owner, or the Owner shall have any claim or demand against the Contractor of any kind or for any reason, whether reduced to judgment or award, the Owner shall have the right to retain out of any payment due, or to become due under the Contract, or any other agreement between the Owner and the Contractor, an amount sufficient to indemnify the Owner against any lien or claim, or to fully satisfy such liability, claim, or demand. The Owner shall also be entitled to charge against or deduct from any such payment all costs of defense or collection with respect thereto, including reasonable attorneys' fees and expenses. Should any claim or lien develop after all payments are made hereunder, the Contractor shall refund to the Owner within ten (10) days of demand therefor all monies that the Owner shall be compelled to pay in discharging or satisfying such claims or liens and all costs, including reasonable attorneys' fees incurred in collecting said monies from the Contractor. Owner shall have the right in its sole judgment to satisfy a claim or a claim of lien or file a bond to discharge a claim of lien or other claim and to deduct all amounts paid to satisfy or discharge a claim of lien or other claim plus Owner's attorneys' fees and expenses from any amounts remaining due under this Contract to Contractor or to collect from Contractor those amounts to the extent those amounts exceed the amount remaining in the Contract Sum.

14.2.2 No progress payments made under the Contract shall be conclusive evidence of the performance of the Contract either in whole or in part, and no such payment shall be construed to be acceptance of defective work or improper materials.

The Contractor further expressly undertakes to defend the Owner, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Owner as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements on it, payments from the Contractor, or any portion of the property of any of the Owner (referred to collectively as liens in). The Contractor agrees to indemnify and hold the Owner harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.

Contractor's Warranty of Title

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

Review of Applications for Progress Payment

14.4 Submission of Applications for Progress Payment: Contractor shall submit applications for progress payment by the fifth of each month. Payment applications shall not be submitted by facsimile or any electronic means. Contractor shall not submit an application for progress payment more than once a month.

14.4.1 Untimely submission of an application for progress payment: If any application for progress payment is submitted after the fifth of the month, neither the Owner nor Engineer shall be obligated to process the late payment application until the following payment period. For purposes of processing late payment applications, a late payment application shall be deemed submitted on the first day of the month following the submission of the late payment application.

ARTICLE 15: SUSPENSION OF WORK AND TERMINATION

Owner May Suspend Work

15.1 Owner may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety days in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension so long as Contractor makes an approved claim therefore as provided in Articles 11 and 12.

Owner May Terminate

15.2 Upon the occurrence of any one or more of the following events:

15.2.1 if Contractor commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if Contractor takes any equivalent or similar action by filing a petition or otherwise under any other Federal or State law in effect at such time relating to the bankruptcy or insolvency;

15.2.2 if a petition is filed against Contractor under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against Contractor under any other Federal or State law in effect at the time relating to bankruptcy or insolvency;

15.2.3 if Contractor makes a general assignment for the benefit of creditors;

15.2.4 if a trustee, receiver, custodian or agent of Contractor is appointed under applicable law or under contract, whose appointment or authority to take charge of property of Contractor is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of Contractor's creditors;

15.2.5 if Contractor admits in writing an inability to pay its debts generally as they become due;

15.2.6 if Contractor persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to have the Contractor's authorized representative available as reasonably needed (including the repeated absence of such authorized representative for two business days consecutively or more at a time), failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under Paragraph 2.9 as revised from time to time);

15.2.7 if Contractor disregards Laws or Regulations of any public body having jurisdiction;

15.2.8 if Contractor disregards the authority of Engineer; or

15.2.9 if Contractor otherwise violates in any substantial way any provisions of the Contract Documents;

Owner may, after giving Contractor (and the surety, if there be one) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of Contractor, exclude Contractor from the site and take possession of the Work and of all Contractor's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which Owner has paid Contractor but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs)

such excess will be paid to Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to Owner. Such costs incurred by Owner will be approved as to reasonableness by Engineer and incorporated in a Change Order, but when exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

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

15.4 Owner's Termination for Convenience

The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause. Termination by the Owner under this Paragraph shall be by a notice of termination delivered to the Contractor specifying the extent of termination and the effective date. Upon receipt of a notice of termination for convenience, the Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Paragraph:

- (1.) Cease operations as specified in the notice;
- (2.) Place no further orders and enter into no further subcontracts for materials, labor, services, or facilities except as necessary to complete continued portions of the Contract;
- (3.) Terminate all subcontracts and orders to the extent they relate to the Work terminated;
- (4.) Proceed to complete the performance of Work not terminated; and
- (5.) Take actions that may be necessary, or that the Owner may direct, for the protection and preservation of the terminated Work.

15.4.1 Upon such termination, the Contractor shall recover as its sole remedy payment of the percentage of the Contract Price equal to the percentage of the work performed satisfactorily and not previously paid for as determined by the Engineer. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.4.2 The Owner shall be credited for: (1) payments previously made to the Contractor for the terminated portion of the Work; (2) claims that the Owner has against the Contractor under the Contract; and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Price.

15.5 Neither the inspection by the Engineer, Owner or any of its employees, nor any order of the Owner for payment of money, nor any order, measurement or certificate by the Engineer, nor payment for, nor acceptance of the whole or any parts of the Work by the Engineer or Owner, nor any extension of time, nor any possession taken by the Owner or employees shall operate as a waiver of any provisions of this Contract, or of an power herein reserved to the Owner or any right to damage herein provided, no waiver of any breach of this Contract shall be held to a waiver of any other subsequent breach. All remedies provided in this Contract to the Owner shall be construed as cumulative, i.e. in addition to each and every other remedy herein provided, and the Owner shall have any and all equitable and legal remedies, which he would in any case have.

Contractor May Stop Work or Terminate

15.6 If, through no fact or fault of Contractor, the work is suspended for a period of more than ninety days by Owner or under an order of court or other public authority, or Engineer fails to act on any Application for Payment within thirty days after it is submitted, or Owner fails for thirty days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days' written notice to Owner and Engineer, terminate the Agreement and recover from Owner payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition, and in lieu of terminating the Agreement, if Engineer has failed to act on an Application for Payment or Owner has failed to make any payment as aforesaid, Contractor may upon seven days' written notice to Owner and Engineer stop the Work until payment of all amounts then due. The provisions of this Paragraph shall not relieve Contractor of the obligations under Paragraph 6.29 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with Owner.

Termination Notice Period and Procedure

15.7 The notice that is to be given by a terminating party under Paragraphs 15.2 and 15.6 shall provide the non-terminating party the opportunity to cure the ground or grounds of termination.

Termination By Owner For Cause

15.7.1 In the event that the Owner exercises its termination rights under Paragraph 15.2, the Contractor shall have seven days to cure the basis of the termination unless the Owner extends the cure period in writing. Any extension of the cure, which is not in writing shall be invalid. The extension validly granted by the Owner shall state the date by which the Contractor must cure.

15.7.1.1 Cure: If the Contractor cures the basis of termination under Paragraph 15.2 within the cure period, or any valid extensions thereof, Owner shall, within seven days of the expiration of the cure (or any valid extension thereof), withdraw its termination in writing. Upon the withdrawal of the Owner's termination, the Contractor shall promptly resume the work.

15.7.1.2 Failure To Cure: If the Contractor fails to cure the basis of the termination within the cure period (or any valid extension thereof), the Owner shall, within seven days, notify the Contractor in writing that the contractor has failed to cure the basis of the termination and is terminated.

15.7.1.3 Disputes As To Cure: If the Contractor claims it has cured the basis of termination and the Owner has nevertheless terminated, the Contractor shall, within seven days of its receipt of the termination notice, notify the Owner, in writing, that the Contractor has cured and there is no basis for the Owner's termination. Such notice shall set forth and include the following:

- (1) Each and every act taken by the Contractor to cure the basis of termination specifying the date on which each act was done, and the names of all persons performing such acts.
- (2) The general nature of the acts undertaken by the Contractor to cure the basis of termination;
- (3) All documentation, paperwork, and all information relating to the Contractor's efforts to cure the basis of termination.

15.7.1.4 If the Contractor provides all documents and information required by the above, the Owner shall, within ten days of its receipt of such documentation and information, shall, in writing, either withdraw its termination or terminate the Contractor. In the event the Owner withdraws its termination, the Contractor shall promptly resume the work.

15.7.1.5 The Contractor's strict compliance with the foregoing constitutes a condition precedent to any claim by the Contractor against the Owner for breach of contract or wrongful termination, or any other claims relating to the Owner's exercise of its termination rights. The Contractor's failure to strictly comply with the foregoing shall constitute a waiver of any claim arising out of the Owner's exercise of its termination right and no right to recover on such claim shall exist.

15.7.1.6 Contractor's Proof Of Cure: Any proof, acts, documents, information or any other proof submitted by the Contractor in support of its contention that it cured the basis for termination not provided by the Contractor to the Owner may not be used by the Contractor in arbitration or any action or proceeding at law, or in equity

15.7.2 Termination By Contractor: If the Contractor has exercised its termination rights under Paragraph 15.6, the Owner shall have seven days to cure the basis of termination unless the cure period has been extended, in writing, by the Contractor and Owner. Any extension of the cure period which is not in writing shall be invalid.

15.7.2.1 Cure By The Owner: If the Owner cures the basis of the Contractor's termination within the cure period, or a valid extension thereof, the Contractor shall, within seven days of the expiration of the cure period (or any valid extension thereof), in writing, withdraw its termination. Upon the Contractor's withdrawal of its termination, the Contractor shall promptly resume the work.

15.7.2.2 Failure To Cure By Owner: If the Owner fails to cure the termination within the cure period (or any valid extension thereof), the Contractor shall, within seven days, notify the owner in writing that it has failed to cure and is terminated. The failure of the Contractor to send a termination notice within seven days after the cure period shall be deemed a withdrawal of the Contractor's termination.

15.7.2.3 Dispute As To Cure By Owner: If the Owner claims it has cured the basis of termination and the Contractor claims it has not, the Contractor shall, within seven days of the expiration of the cure period or any extension thereof, notify the Owner, in writing, that it has failed to cure and is terminated. The failure of the Contractor to send such a termination notice within the time specified shall constitute a withdrawal of the Contractor's termination.

ARTICLE 16: DISPUTE RESOLUTION

If a dispute arises between the parties to this agreement, the parties agree to use the following procedures:

Negotiation

16.1 A meeting shall be held between representatives of the Owner, Engineer and Contractor with decision making authority regarding the dispute to attempt in good faith to negotiate a resolution of the dispute; such meeting shall be held within seven (7) calendar days of a party's written request for such a meeting. Compliance with this provision shall in no way relieve the Contractor of, nor fulfill its obligations concerning written notice of claims or requests for time extension. Further, attendance of such a meeting by the Owner shall not waive the written notice or documentation requirements set forth above of concede compliance therewith. Finally, the Owner may, at its sole discretion, forego Negotiation by notifying the Contractor in writing that it has elected to forego negotiation pursuant to this paragraph.

Compliance with this provision shall have no impact on the Contract Price or the Contract Time and no claim for additional compensation or for an extension of time can be predicated on any actions taken in compliance with this Article.

Mediation

16.2 If the parties fail to negotiate a resolution of the dispute, or if Owner waives Negotiation, they shall endeavor to resolve the dispute by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.

No claim against the owner for breach of contract or compensation for extra or disputed work shall be made or asserted in any action or proceeding at law, unless the contractor submits a dispute or claim to mediation. Failure to strictly comply with these requirements shall constitute waiver of any such claim.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall take place at the Owner's place of business or, at Owner's sole option, at a location within a thirty (30) mile radius of the Owner's place of business. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

If a dispute involves a claim(s) for Extra Work or Disputed Work and the parties fail to resolve the dispute through mediation, the engineer shall, within forty-five (45) days of the close of the mediation, recommend, in writing, a resolution of the dispute. Such recommendation shall include an amount, if any, the engineer believes is reasonably due the contractor for such work. If the contractor accepts that amount, the dispute shall be resolved in all respects. The failure of the engineer to recommend an amount within forty-five (45) days of the close of the mediation shall constitute a recommendation that the contractor is not owed any additional compensation.

No recommendation, determination, representation, finding or other matter relating to mediation shall have any binding or prejudicial effect on either of the parties, except to the extent provided in Paragraph 16.3. Further, no correspondence, letter, memorandum or other communication arising out of, or pertaining to the mediation or negotiations therein shall be admissible in arbitration.

Any mediation held pursuant to this contract shall be independent of any meetings, negotiations, mediation or other dispute resolution mechanisms required by any bonds obtained pursuant to this contract. Any obligations created by this contract shall be independent of any obligations imposed by any bonds obtained pursuant to this contract.

Plenary Action

16.3 If the parties fail to resolve the dispute through mediation, then either party may commence a plenary legal action. The parties agree that jurisdiction for any and all disputes arising from this Contract shall be venued in New York State Supreme Court, Orange County and that said Court shall have exclusive jurisdiction.

Owner

If the contractor is awarded, excluding interest and any other fees, an amount less than the amount recommended by the engineer pursuant to Paragraph 16.2 (b) above plus 25%, the contractor shall be liable to the owner for all expenses, fees and costs, including attorney's fees, expert fees, witness fees and all other expenses, incurred in by the Owner in the plenary action.

In the event more than one dispute/claim is to the subject of a plenary action, then contractor will be liable for such expenses, fees and costs if the total award is less than the total amount recommended by the engineer for all such claims pursuant Paragraph 16.2 (b) above plus 25%.

ARTICLE 17: MISCELLANEOUS

No Estoppel

17.1 The Owner nor any department, officer, agent, representative, or employees thereof, shall be bound, precluded or estopped by any termination, decision, approval, letter, payment or certificate made or given under or in connection with this Contract by the Town, or any officer, agent, represent, department or employees thereof, either before or after the final completion and acceptance of the work and payment therefore: (1) from showing the true and correct classification, amount, quality or character of the work actually done; or that any such termination, decision, order, letter, payment or certificate was untrue, incorrect or improperly made in any particular matter, or that the work or any part thereof does not in fact conform to the requirements of this Contract; or (2) from demanding and recovering from the Contractor any overpayments made to it, or such damages as it may sustain by reason of its failure to perform each and every part of this Contract in strict accordance with its terms; or (3) (1) and (2) hereto.

Giving Notice

17.2 Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

Computation of Time

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

17.3.2 A calendar day of 24 hours measured from midnight to the next midnight shall constitute a day.

Work Hours

17.4 Work shall be restricted to normal hours, Monday - Friday, (7:00 a.m. to 6:00 p.m.) except in cases of emergency; or unless prior written approval has been obtained from the Owner.

State Wage Rates

17.5 State Wage Rates predetermined in accordance with the law shall be transmitted to the Contractor following receipt by the Owner and will become a part of this Contract at no cost to the Owner.

Law and Ordinances

17.6 The Contractor shall at all times abide by all existing and future Local, State and Federal laws or ordinances.

Safety and Protection

17.7 The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in accordance with the Work. He shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the Work and any other persons who may be affected thereby.

General Provisions

17.8 Titles of articles, sections, and subsections are for the convenience only and neither limit nor amplify the provisions of this Contract. The usage of the word "including" or following any general statement, term, or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such a word or to similar items or matters, whether or not non-limiting language (such words as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that can reasonably fall within the broadest possible scope of such general statement, term, or matter.

17.9 Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or effecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

17.10 This Contract embodies the entire agreement of the parties and supersedes all prior and contemporaneous representations, agreements and understandings relating to the subject matter hereof, and any and all such prior and contemporaneous representations, agreements or understandings are deemed to be merged herein.

17.11 Contractor hereby represents, promises and warrants to Owner that it is financially solvent and possesses sufficient experience, licenses, authority to perform the Work.

17.12 Any specific requirement in this Contract that the responsibilities or obligations of the Contract are also applied to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, aggregate, or limit any responsibilities or obligations of a Subcontractor of any tier under this Contract Documents or the applicable Subcontract.

SUPPLEMENTAL GENERAL CONDITIONS

SUPPLEMENTAL GENERAL CONDITIONS

TOWN OF POUND RIDGE VILLAGE GREEN PROJECT

1. Enumeration of Plans, Specifications and Addenda
2. Special Hazards
3. Retainage
4. Payments to Contractor
5. Time for Completion and Liquidated Damages
6. Wage Rates

SUPPLEMENTAL GENERAL CONDITIONS

TOWN OF POUND RIDGE VILLAGE GREEN PROJECT

1. ENUMERATION OF PLANS, SPECIFICATIONS AND ADDENDA

Following are the Plans, Specifications and Addenda which form a part of this contract, as set forth in Paragraph 1 of the General Conditions, "Contract and Contract Documents":

DRAWINGS

<u>Sheet #</u>	<u>Title</u>
T-1	TITLE SHEET
SP-2	SITE PLAN-EXISTING AND PROPOSED CONDITIONS
LP-1	LAYOUT PLAN
PL-1	PLANTING PLAN
GD-1	GRADING AND DRAINAGE PLAN
D-1	CONSTRUCTION DETAILS
L-1	LIGHTING PLAN

TECHNICAL SPECIFICATIONS

<u>Division #</u>	<u>Description</u>
1	GENERAL REQUIREMENTS
5	METALS
11	EQUIPMENT
15	MECHANICAL

ADDENDA

2. SPECIAL HAZARDS

The Contractor's and his Subcontractor's Public Liability and Property Damage Insurance shall provide adequate protection against the following special hazards:

No known special hazards

3. RETAINAGE

a. Withdrawal of Retained Percentages

The Municipality will accept only bonds or notes of the United States of America, New York State or political subdivisions thereof in lieu of all or part of the cash retainage." (Reference: New York State General Municipal Law, Section 106.)

SUPPLEMENTAL GENERAL CONDITIONS

TOWN OF POUND RIDGE VILLAGE GREEN PROJECT

b. **Retainage Amount**

The retainage on each payment shall be 5% as per New York State General Municipal Law, Section 106.b.

4. PAYMENTS TO CONTRACTOR

Progress payments will be made as the work progresses upon applications submitted by the Contractor and approved by the Engineer and the Owner. Payment of such approved applications shall be made by the Owner within 30 days after such approval has been given.

The Owner shall make progress payments to the Contractor on the basis of such approved applications, less an amount equal to 5% thereof which it shall reserve from each such payment until all of the work covered by the Contract has been completed.

5. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced on a date to be specified in the "Notice to Proceed."

The Contractor agrees that said work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

If the said Contractor shall neglect, fail or refuse to commence or to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of the Contract, to pay to the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing of work.

The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain, and said amount shall be retained from time to time by the Owner from current periodical estimates.

SUPPLEMENTAL GENERAL CONDITIONS

TOWN OF POUND RIDGE VILLAGE GREEN PROJECT

It is further agreed that time is of the essence to each and every portion of this Contract and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the Owner; Provided, further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

- a. To any preference, priority or allocation order duly issued by the Government;
- b. To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to acts of God, or of the public enemy, acts of the Owner, acts of another contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; and
- c. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections a. and b. of this article;

Provided, further, that the Contractor shall, within 10 days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner, in writing, of the causes of delay, who shall ascertain facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

6. WAGE RATES

The Contractor is required to pay prevailing wage rates as included in the Contract Documents and as periodically modified by the New York State Department of Labor.

PAYMENT FORMS

AIA DOCUMENT G702
APPLICATION AND CERTIFICATION
FOR PAYMENT

AIA DOCUMENT G703
CONTINUATION SHEET

APPLICATION AND CERTIFICATION FOR PAYMENT

TO OWNER:

PROJECT:

AIA DOCUMENT G702

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PAGE ONE OF 2 PAGES

FROM CONTRACTOR:

VIA ARCHITECT:

PERIOD TO:

Distribution to:

OWNER
ARCHITECT
CONTRACTOR

PROJECT NOS:

CONTRACT FOR:

CONTRACT DATE:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

1. ORIGINAL CONTRACT SUM \$
2. Net change by Change Orders 0.00
3. CONTRACT SUM TO DATE (Line 1 ± 2) 0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) 0.00
5. RETAINAGE:
 - a. % of Completed Work \$ 0.00
(Column D + E on G703)
 - b. % of Stored Material \$ Included in above
(Column F on G703)
Total Retainage (Lines 5a + 5b or Total in Column I of G703) 0.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total) 0.00
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) 0.00
8. CURRENT PAYMENT DUE 0.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) 0.00

CONTRACTOR:

By: _____ Date: _____

State of: _____ County of: _____
Subscribed and sworn to before me this _____ day of _____

Notary Public:

My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$0.00	

CONTINUATION SHEET

AIA DOCUMENT G703

PAGE OF PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing

APPLICATION NO:

Contractor's signed certification is attached.

APPLICATION DATE:

In tabulations below, amounts are stated to the nearest dollar.

PERIOD TO:

Use Column I on Contracts where variable retainage for line items may apply.

ARCHITECT'S PROJECT NO:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		E THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H % (G ÷ C)	I BALANCE TO FINISH (C - G)	J RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD						
	<i>(Fill in & break down contract values)</i>									
	<i>(Add any change order(s) descriptions)</i>									
	GRAND TOTALS	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00

Users may obtain validation of this document by requesting of the license a completed AIA Document D401 - Certification of Document's Authenticity

NEW YORK STATE
PREVAILING WAGE RATE SCHEDULE
(AVAILABLE UPON REQUEST)