

PROJECT MANUAL

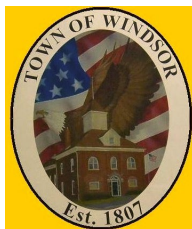
TOWN OF WINDSOR WASTEWATER TREATMENT PLANT SLUDGE REMOVAL

Project Location:
135 FAIRVIEW AVENUE WEST

**TOWN OF WINDSOR
BROOME COUNTY
NEW YORK**



Prepared for:



TOWN OF WINDSOR

124 Main Street
Windsor, NY 13865
Phone: (607) 655-2023 Fax: (607) 655-2027
Web: www.windsorny.org

Prepared by:



GRIFFITHS ENGINEERING, LLC

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Project # 2015-109-022

February 23, 2024

DOCUMENT 00010

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SERIES 0 - BIDDING REQUIREMENTS

ADVERTISEMENT TO BID

Sealed bids will be received by the Town Clerk, Town of Windsor Town Hall, 124 Main Street, Windsor, NY 13865, until 11:00 A.M. Wednesday, March 20, 2024 at which time and place they will be publicly opened and read aloud, for the following work:

TOWN OF WINDSOR WWTP SLUDGE REMOVAL

It is the Contractors responsibility to meet the minimum guidelines of the Occupational Safety and Health Act (O.S.H.A.), in particular Part 1926, the Safety and Health Regulations for Construction. The Town of Windsor has the authority to issue a Stop Work Order if the applicable O.S.H.A. regulations are violated. The Stop Work Order will remain in effect until such violations of the O.S.H.A regulations have been rectified.

The Contract Documents and Drawings may be examined at the office of the Town Clerk, Town of Windsor, 124 Main Street, Windsor, New York 13865, and electronic copies (pdf format) can be obtained at no charge by e-mailing a request to: windsortcl@echoes.net

A pre-bid conference will not be held; however, prospective bidders may view the project site at their discretion. Entry into the facility will be permitted through coordination with the Wastewater Treatment Plant Operator, Don Sherwood (607) 655-2026.

No proposal will be considered unless it is accompanied by a bid guaranty which shall not be less than ten percent (10%) of the amount bid for the total work contemplated to be done. At the option of the Bidder, the guaranty may be a certified check, bank draft, or a bid bond approved by the Town Attorney. Certified check or bank draft must be payable to the order of the Town of Windsor. Cash deposits will not be accepted. The Bid guaranty shall insure the execution of the Agreement and the furnishing of the surety bond or bonds by the successful Bidder, all as required by the Contract Documents.

Bidders submitting bid proposals for this work hereby acknowledge the following:

Each laborer, workman, or mechanic employed by the Contractor, Subcontractor, or other person about or upon the work under this Contract, shall be paid not less than the prevailing rate of wages, and shall be paid for or provided the supplements not less than the prevailing supplements as determined by the New York State Department of Labor, pursuant to Article 8 of the New York State Labor Law. The prevailing rate schedule, as determined by the New York State Department of Labor (PRC# 2024002070 – WWTP Sludge Removal), is a part of this Contract, and can be obtained at the following website:

<https://apps.labor.ny.gov/wpp/publicViewProject.do?method=showIt&id=1563599>

The Contractor shall submit a certified copy of all payrolls with each payment requisition to the Town of Windsor. The prime Contractor shall be responsible for the submission of copies of payrolls of all Subcontractors.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of 30 calendar days after the scheduled closing time for receiving bids. The Town will award the bid within 30 days after the scheduled closing time for receiving bids.

The Town reserves the right to reject any and all bids and to award the Contract in the best interests of the Town of Windsor, New York.

Date: February 23, 2024

Elizabeth Pfister
Town Clerk
Town of Windsor

DOCUMENT 00200

INSTRUCTIONS TO BIDDERS

1. DEFINED TERMS

Terms used in these Instructions to Bidders which are defined in the Standard General Conditions of the Construction Contract (EJCDC C-700) (2002 Edition) have the meanings assigned to them in the General Conditions.

Certain additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.

1.1. Bidder - one who submits a Bid directly to Owner as distinct from a sub-bidder, who submits a bid to a Bidder.

1.2. Issuing Office-the office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.

1.3. Successful Bidder-the lowest, responsible and responsive Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award.

2. COPIES OF BIDDING DOCUMENTS

2.1. A complete set of the Bidding Documents as stated in the Advertisement or Invitation to Bid may be obtained from the Issuing Office.

2.2. Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.3. Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

3. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

3.1. It is the responsibility of each Bidder before submitting a Bid:

3.1.1. To examine thoroughly the Contract Documents and other related data identified in the Bidding Documents;

3.1.2. To visit the site to become familiar with and satisfy Bidder as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work;

3.1.3. To consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work;

3.1.4. To study and carefully correlate Bidder's knowledge and observations with the Contract Documents and such other related data; and

3.1.5. To promptly notify Engineer of all conflicts, errors, ambiguities or discrepancies which Bidder has discovered in or between the Contract Documents and such other related documents.

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

3.3. On request, Owner will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. Bidder must fill all holes and clean up and restore the site to its former conditions upon completion of such explorations, investigations, tests and studies.

4. AVAILABILITY OF LANDS FOR WORK, ETC

The land upon which the Work is to be performed and the rights-of-entry for access thereto and other lands designated for use by Contractor in performing the Work and the limits of Work are identified in the Contract Documents which will be provided by Owner pursuant to section 4.01 of the General Conditions. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor.

5. INTERPRETATIONS AND ADDENDA

5.1. All questions about the meaning or intent of the Bidding Documents should be emailed to John Mastronardi, P.E. at jmastronardi@griffithsengineering.com. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda e-mailed to all parties having received the Bidding Documents. Questions received by phone or less than two days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

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

6. BID SECURITY

6.1. Each Bid must be accompanied by Bid security made payable to Owner in an amount of ten percent of Bidder's maximum Bid price and in the form of a certified or bank check or a Bid Bond (on form attached, if a form is prescribed) issued by a surety meeting the requirements of Paragraph 5.01 of the General Conditions.

6.2. The Bid security of Successful Bidder will be retained until such Bidder has executed the Agreement, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within fifteen days after the Notice of Award, Owner may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner for forty-five days. Bid security with Bids which are not competitive will be returned within seven days after the Bid opening.

7. CONTRACT TIMES

The number of days within which, or the dates by which, the Work is to be substantially completed and also completed and ready for final payment (the term "Contract Times" is defined in paragraph 1.01.14 of the General Conditions) are set forth in the Agreement (or incorporated therein by reference to the attached Bid Form).

8. LIQUIDATED DAMAGES

Provisions for liquidated damages, if any, are set forth in the Agreement.

9. SUBSTITUTE AND "OR-EQUAL" ITEMS

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications. If a substitute or "or-equal" item is proposed and is acceptable by the Engineer, then an addendum will be issued and the Contract will be awarded on the basis of all addendum's. The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in Paragraphs 6.05.A, 6.05.B and 6.05.C of the General Conditions and may be supplemented in the General Requirements.

10. BID FORM

10.1. The Bid Form is included with the Bidding Documents; additional copies may be obtained from Owner.

10.2. All blanks on the Bid Form must be completed by printing in black ink or by typewriter.

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

10.4. Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

10.5. Bids by limited liability companies must be executed in the LLC name and signed by a member, duly authorized to do so, whose name must appear under the signature and the official address of the LLC must be shown below the signature.

10.6. All names must be typed or printed in black ink below the signature.

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

10.8. The address and telephone number for communications regarding the Bid must be shown.

10.9. Evidence of authority to conduct business as an out-of-state corporation in the state where the Work is to be performed shall be provided. State contractor license number, if any, must also be shown.

11. SUBMISSION OF BIDS

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

12. MODIFICATION AND WITHDRAWAL OF BIDS

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

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

13. OPENING OF BIDS

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

14. BIDS TO REMAIN SUBJECT TO ACCEPTANCE

All Bids whom Owner believes to have a reasonable chance of receiving the award will remain subject to acceptance for forty-five days after the day of the Bid opening, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to that date.

15. AWARD OF CONTRACT

15.1. Owner reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, non-responsive, unbalanced or conditional Bids and to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Owner also reserves the right to waive all informalities not involving price, time or changes in the Work. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

15.2. In evaluating Bids, Owner will consider the qualifications of Bidders, and such alternates, unit prices, lump sum and other data, as may be requested in the Bid Form or prior to the Notice of Award.

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

16. CONTRACT SECURITY

Paragraph 5.01 of the General Conditions set forth Owner's requirements as to performance and payment Bonds. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by the required performance and payment Bonds.

17. SIGNING OF AGREEMENT

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

18. SALES AND USE TAXES

Owner is exempt from State Sales and Compensating Use Taxes on materials and equipment to be incorporated in the Work. Said taxes shall not be included in the Contract Price. Refer to Supplementary Conditions for additional information.

19. RETAINAGE

Provisions concerning retainage and Contractors' rights to deposit securities in lieu of retainage are set forth in the Agreement.

DOCUMENT 00411

BID FORM - STIPULATED PRICE

To: Prospective Bidders

Project: Town of Windsor – WWTP Sludge Removal

Date:

Submitted by:
(full name)

(full address)
.....

1. OFFER

Having examined the Place of The Work and all matters referred to in the Instructions to Bidders and the Contract Documents prepared by Engineer for the above-mentioned project, we, the undersigned, hereby offer to enter into a Contract to perform the Work for the Sum of:

\$.....dollars, in lawful money of the United States of America.

We have included, the security Bid Bond as required by the Instruction to Bidders.

All applicable federal taxes are excluded, and State of New York taxes are excluded from the Bid Sum.

2. ACCEPTANCE

This offer shall be open to acceptance and is irrevocable for thirty days from the bid closing date.

If this bid is accepted by the Owner within the time period stated above, we will:

- Execute the Agreement within seven calendar days of receipt of Notice of Award.
- Furnish the required bonds within seven days of receipt of Notice of Award.
- Commence work within ten days after written Notice to Proceed of this bid.

If this bid is accepted within the time stated, and we fail to commence the Work or we fail to provide the required bonds, the security deposit shall be forfeited as damages to the Owner by reason of our failure, limited in amount to the lesser of the face value of the security deposit or the difference between this bid and the bid upon which a Contract is signed.

In the event our bid is not accepted within the time stated above, the required security deposit will be returned to the undersigned, in accordance with the provisions of the Instructions to Bidders, unless a mutually satisfactory arrangement is made for its retention and validity for an extended period of time.

3. CONTRACT TIME

If this Bid is accepted, we will:

- Complete the Work by the May 24, 2024.

4. CHANGES TO THE WORK

When the Engineer establishes that the method of valuation for Changes in the Work will be net cost plus a percentage fee in accordance with General Conditions, our percentage fee shall be:

10% percent overhead and profit on the net cost of our own Work;

15% percent on the gross cost of work done by any Subcontractor.

On work deleted from the Contract, our credit to the Owner shall be the Engineer approved net cost plus 0% of the overhead and profit percentage noted above.

5. ADDENDA

The following Addenda have been received. The modifications to the Bid Documents noted below have been considered and all costs are included in the Bid Sum.

Addendum # Dated

Addendum # Dated

6. APPENDICES

The following documents are attached to and made a condition of the Bid:

Bid security in form of
Bidder's qualifications statement and supporting data.
Document 00430 - Bid Form Supplements including:
Appendix A - List of Subcontractors.

7. BID FORM SIGNATURES

The Corporate Seal of

.....
(Bidder - print the full name of your firm)

was hereunto affixed in the presence of:

.....
(Authorized signing officer Title)
(Seal)

.....
(Authorized signing officer Title)
(Seal)

If the Bid is a joint venture or partnership, add additional forms of execution for each member of the joint venture in the appropriate form or forms as above.

END OF DOCUMENT

DOCUMENT 00430

BID FORM SUPPLEMENTS

To: Town of Windsor

Project: WWTP Sludge Removal

Date:

Submitted by:
(full name)

(full address)
.....

In accordance with Document 00200 - Instructions to Bidders and Document 00412 - Bid Form - Stipulated Price, we include the Appendices to Bid Form Supplements listed below. The information provided shall be considered an integral part of the Bid Form.
The following Appendices are attached to this document:

Appendix A - List of Subcontractors: Include names of all Subcontractors and portions of the Work each Subcontractor will perform.

BID FORM SUPPLEMENTS SIGNATURES

The Corporate Seal of

.....
(Bidder - print the full name of your firm)

was hereunto affixed in the presence of:

.....
(Authorized signing officer Title)

(Seal)

.....
(Authorized signing officer Title)
(Seal)

If the Bid is a joint venture, partnership, or limited liability company, add additional forms of execution for each member of the joint venture in the appropriate form or forms as above.

APPENDIX A - LIST OF SUBCONTRACTORS

Herewith is the list of subcontractors referenced in the bid submitted by:

(Bidder)

To (Owner) Town of Windsor

Dated and which is an integral part of the Bid Form.

The following work will be performed (or provided) by subcontractors and coordinated by us:

WORK SUBJECT	NAME
.....
.....
.....
.....
.....
.....
.....

DOCUMENT 00432

BID BOND

KNOW ALL MEN BY THESE PRESENT, 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 _____, 2024.

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 Agreement attached hereto (properly complete 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 as 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, the value received, hereby stipulates and agrees that the obligations of said Surety and it's 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 offices, the day and year first set forth above.

Principal _____

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.

Please Complete Information Requested Below:

The P.O. Address of the Bidder is: Federal I.D. No. _____

_____ Street

_____ City, State & Zip

() _____ Phone Number

If a Corporation:

Name _____ Address _____

President _____

Secretary _____

Treasurer _____

If a Firm:

Name _____ Address _____

If a Limited Liability Company

(Corporation Name)

By _____

(Name of Person Authorized to Sign)

(Title)

Business address: _____

Phone No. : _____

DOCUMENT 00433

NON-COLLUSIVE BIDDING CERTIFICATE

By submission of 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:

- (1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices with any other bidder or with any competitor;
- (2) 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
- (3) 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.
- (4) Bids by limited liability companies must be executed in the LLC name and signed by a member, duly authorized to do so, whose name must appear under the signature and the official address of the LLC must be shown below the signature.

Bidders Name _____

By _____

Dated _____

Subscribed and sworn to before me

this _____ day of _____, 2024

Notary Public

My commission expires _____

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

IRANIAN DIVESTMENT CERTIFICATION

Attachment "D"

Certification Pursuant to Section 103-g
Of the New York State
General Municipal Law

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

Signature

Title

Company

Date

SERIES 0 - CONTRACTING REQUIREMENTS

DOCUMENT 00505

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2024, by and between the TOWN BOARD OF THE TOWN OF WINDSOR (hereinafter “Town”), a municipal corporation organized and existing under and by virtue of the laws of the State of New York (mailing address: Town of Windsor, Attention: Town Supervisor, Town Hall, 124 Main Street, Windsor NY 13865), acting for and on behalf of the Town Highway Department, and _____ (hereinafter “Contractor”) (mailing address: _____).

WHEREAS, the Town Board of the Town has solicited a proposal for the purpose of sludge removal and disposal at the Wastewater Treatment Plant (the “Work”), and

WHEREAS, Contractor has offered to provide such Work at a price estimated not to exceed _____ Dollars (\$ _____) without the further consent of the Town Board, all as enumerated on Exhibit A, attached hereto and made a part hereof,

NOW, THEREFORE, in consideration of the foregoing promises and the mutual covenants hereinafter expressed, it is hereby agreed by and between the parties hereto as follows:

ARTICLE 1: PRICE & PAYMENT

(a) The Town hereby enters into an agreement with Contractor to perform the Work at a price not to exceed _____ Dollars (\$ _____) without the further consent of the Town Board. Contractor must start work within fourteen (14) days from Notice to Proceed and complete work within sixty (60) days from Notice to Proceed.

(b) Upon receipt of written notice that the work is ready for final inspection and acceptance, the Highway Superintendent and/or Engineer of the Town shall within 2 days make such inspection, and when the Highway Superintendent and/or Engineer finds the work acceptable under the Contract and the Contract fully performed, the Town, on or about the last Thursday of the month, will pay the Contractor an amount not to exceed \$ _____ for said services.

(c) The Town and Contractor recognize time is of the essence of this Agreement and the Town will suffer financial loss if the Work is not completed within the times specified, plus any extensions allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by the Town if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Town and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor will pay the Town one hundred dollars (\$100.00) for each day that expires after the time specified.

ARTICLE 2: EXTRA AND DISPUTED WORK

(a) The Contract may be modified or changed by the Town from time to time in a manner not materially affecting the substance thereof or increasing the price to be paid by more than ten percent of the contract price in order to carry out and complete more fully and perfectly the Work to be done and performed. An order for Extra Work, shall designate the method of payment therefore, and shall be valid only if issued in writing and signed by the Town. Work so ordered must be performed by the Contractor.

(b) If the Town determines that the Work in question is Contract Work and not Extra Work, or that the determination or order complained of is proper, it will direct the Contractor to proceed, and the Contractor must promptly comply. However, in order to reserve his right to claim compensation for such Work or damages resulting from such compliance, the Contractor must, within five (5) days after receiving notice of the Town's determination and direction, notify the Town in writing that the work is being performed, or that the determination and direction is being complied with, under protest.

(c) If the Contractor shall claim to be sustaining damages by reason of any act or omission of the Town or its agents, he shall within five (5) days after such act or omissions occur, notify the Town in writing, and within thirty (30) days thereafter, or within such additional time in excess of thirty (30) days as may be granted by the Town upon written request therefor, submit to the Town verified detailed statements of the damages sustained together with documentary evidence of such damages. Upon failure of the Contractor to fully comply with the foregoing provisions, such claims shall be deemed waived and no right to recover on such claims shall exist.

(d) No claim against the Town for damages for breach of contract or compensation for Extra 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 with respect to such claims all as hereinbefore provided.

(e) Neither the Town nor any department, officer, agent or employees thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this Contract by the Town, or any officer,

agent or employee of the Town, either before or after the final completion and acceptance of the Work and payment therefor: (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 him, or such damages as it may sustain by reason of his failure to perform each and every part of this Contract in strict accordance with its terms.

ARTICLE 3: INSURANCES

Contractor shall not commence any work under this agreement until Contractor has, at his cost and expense, obtained all of the following general liability insurance required under this paragraph and such insurance has been approved by the Town.

- A. Liability Insurance – Contractor shall take out and maintain during the life of this agreement such commercial general liability insurance from an A.M. Best rated "secured" NYS licensed insurer containing a 30-day notice of cancellation as shall protect Contractor from claims for damages for personal injury including accidental death, as well as from claims for property damage which may arise from activities and operations under this agreement. Contractor shall furnish the Town with satisfactory proof that the required insurance is in full force and effect. The commercial general liability insurance policy shall specifically name and include Town as additional named insured with ISO endorsement CG2026 or its equivalent. The amounts of such insurance shall be as follows: Commercial general liability insurance on an occurrence coverage form with a

combined single limit in an amount not less than \$1,000,000.00 for injuries including wrongful death to any one person and property damage on account of any one occurrence.

- B. Compensation Insurance - The Contractor shall take out and maintain during the life of this contract Workers' Compensation Insurance and Disability Benefits Insurance for all its employees to be assigned to the work hereunder, and if none, execution of Workers Compensation Board Form C-105.21 to that effect.
- C. The Contractor agrees to indemnify the Town for any applicable deductibles.

ARTICLE 4: REPRESENTATIONS OF CONTRACTOR

The Contractor represents and warrants:

- (a) That it is financially solvent and that he is experienced in and competent to perform the type of work; and
- (b) That it is familiar with all Federal, State, municipal and department laws, ordinances and regulations, which may in any way affect the work or those employed therein.

ARTICLE 5: PERMITS AND REGULATIONS

The Contractor shall procure and pay for all permits and licenses necessary for the services to be rendered hereunder.

ARTICLE 6: TOWN'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

The Town shall have the right to stop work or terminate the contract if:

- (a) The Contractor shall be adjudged bankrupt or make an assignment for the benefit of creditors; or

(b) A receiver or liquidator shall be appointed for the Contractor or for any of his property and shall not be dismissed within 20 days after such appointment or the proceeding in connection therewith shall not be stayed on appeal within the said 20 days; or

(c) The Contractor shall refuse or fail to prosecute the work or any part thereof with such diligence; or

(d) The Contractor shall fail to make prompt payment to persons supplying labor for the work; or

(e) The Contractor shall fail or refuse to comply with all applicable laws or ordinances, or otherwise be guilty of a substantial violation of any provision of this contract;

(f) In any event, the Town, without prejudice to any other rights or remedy it may have, may by seven (7) days' notice to the Contractor, terminate the employment of the Contractor and his right to proceed as to the work. In such case, the Contractor shall not be entitled to receive any further payment until the work is completed. If the unpaid balance of the compensation to be paid the Contractor hereunder shall exceed the expense of so completing the work, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall be liable to the Town for such excess.

ARTICLE 7: NO ASSIGNMENT

In accordance with the provisions of Section 109 of the General Municipal Law, the Contractor is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this Agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Town.

ARTICLE 8: REQUIRED PROVISIONS OF LAW

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party, this contract shall be physically amended forthwith to make such insertion.

ARTICLE 9: INDEPENDENT CONTRACTOR STATUS

The Contractor, in accordance with its status as an independent Contractor, covenants and agrees that it will conduct itself consistently with such status. The Contractor, its partners and employees will not hold out as nor claim to be an officer or employee of the Town by reason hereof, nor make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

ARTICLE 10: PREVAILING WAGE RATES REQUIRED BY LAW

(a) The parties hereto, in accordance with the provisions of Section 220(3) of the Labor Law, hereby agree that there shall be paid each employee engaged in work under this contract not less than the wage rate and supplements set opposite the trade or occupation in which he is engaged, as listed New York State Department of Labor website:

<https://apps.labor.ny.gov/wpp/publicViewProject.do?method=showIt&id=1563599>

(as project PRC# 2024002070), which is incorporated herein by reference and made a part of this agreement, which are the wage rates and supplements established as the prevailing rate of wages for the work covered by this contract.

(b) Labor classifications not appearing on the schedule of wages can be used only with the consent of the Town and then the rate to be paid will be given by the Town after being advised by the Department of Labor.

(c) The Contractor shall post in a prominent and accessible place on the site of the work a legible statement of all wage rates and supplements as specified in the contract, for the various classes of mechanics, workingmen, or laborers employed on the work.

(d) Pursuant to recently adopted provisions of the New York State Labor Law, the winning bidder must (1) provide each employee on each pay stub relating to this project the prevailing wage rate for his/her job classification, and (2) at beginning of the work to be performed must notify all employees of the telephone number, name and address of the New York State Department of Labor and his/her right to contact said Department if he/she does not receive the prevailing wage rates or supplements required for his/her job classification, which notice must also be provided with each employee's first pay check after July 1st of each year, (3) must submit to the Town within 30 days after the issuance of its first payroll and every 30 days thereafter a transcript of the original payroll record, sworn to under the penalty of perjury, and if this contract and all other for this project exceed \$250,000.00 all workers must complete a ten hour or more OSHA-approved construction safety and health course.

ARTICLE 14: NO WAIVER

No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

ARTICLE 15: AUTHORITY TO SIGN

The Supervisor has executed this Agreement pursuant to a Resolution adopted by the Town Board of the Town of Windsor, at a meeting thereon held on _____. Mark Odell, Supervisor, whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of the Town.

ARTICLE 16: COUNTERPARTS

This instrument shall be executed in quadruplicate. At least one copy shall be permanently filed, after execution thereof, in the office of the Town Clerk of the Town of Windsor, New York.

IN WITNESS WHEREOF, the Town of Windsor has caused its corporate seal to be affixed hereto and these presents to be signed by Mark Odell, its Supervisor, duly authorized to do so, and to be attested to by Elizabeth Pfister, Town Clerk, and _____ has caused these presents to be signed by _____, its duly authorized representative.

(SEAL OF THE TOWN
OF WINDSOR)

TOWN OF WINDSOR

By: _____
MARK ODELL, Supervisor

Attest:

ELIZABETH PFISTER, Town Clerk

_____ (CONTRACTOR)

By: _____
Signature, Title

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place
of Business):

OWNER (Name and Address):

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR AS PRINCIPAL

Company: _____ (Corp. Seal)

Signature: _____

Name and Title:

SURETY

Company: _____ (Corp. Seal)

Signature: _____

Name and Title:

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company: _____ (Corp. Seal)

Signature: _____

Name and Title:

SURETY

Company: _____ (Corp. Seal)

Signature: _____

Name and Title:

EJCDC No. 1910-28-A (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, and the American Institute of Architects.

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Contract, which is incorporated herein by reference.

2. If the CONTRACTOR performs the Contract, the Surety and the CONTRACTOR have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.

3. If there is no OWNER Default, the Surety's obligation under this Bond shall arise after:

3.1. The OWNER has notified the CONTRACTOR and the Surety at the addresses described in paragraph 10 below, that the OWNER is considering declaring a CONTRACTOR Default and has requested and attempted to arrange a conference with the CONTRACTOR and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract. If the OWNER, the CONTRACTOR and the Surety agree, the CONTRACTOR shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the OWNER's right, if any, subsequently to declare a CONTRACTOR Default; and

3.2. The OWNER has declared a CONTRACTOR Default and formally terminated the CONTRACTOR's right to complete the Contract. Such CONTRACTOR Default shall not be declared earlier than twenty days after the CONTRACTOR and the Surety have received notice as provided in paragraph 3.1; and

3.3. The OWNER has agreed to pay the Balance of the Contract Price to:

3.3.1. The Surety in accordance with the terms of the Contract;

3.3.2. Another contractor selected pursuant to paragraph 4.3 to perform the Contract.

4. When the OWNER has satisfied the conditions of paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1. Arrange for the CONTRACTOR, with consent of the OWNER, to perform and complete the Contract; or

4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or

4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the OWNER for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the OWNER and the contractor selected with the OWNER's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the OWNER the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price incurred by the OWNER resulting from the CONTRACTOR Default; or

4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances;

4.4.1. After investigation, determine the amount for which it may be liable to the OWNER and, as soon as practicable after the amount is determined, tender payment therefor to the OWNER; or

4.4.2. Deny liability in whole or in part and notify the OWNER citing reasons therefor.

5. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the OWNER to the Surety demanding that the Surety perform its obligations under this Bond, and the OWNER shall be entitled to enforce any remedy available to the OWNER. If the Surety proceeds as provided in paragraph 4.4, and the OWNER refuses the payment tendered or the Surety has denied

liability, in whole or in part, without further notice the OWNER shall be entitled to enforce any remedy available to the OWNER.

6. After the OWNER has terminated the CONTRACTOR's right to complete the Contract, and if the Surety elects to act under paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the OWNER shall not be greater than those of the CONTRACTOR under the Contract, and the responsibilities of the OWNER to the Surety shall not be greater than those of the OWNER under the Contract. To a limit of the amount of this Bond, but subject to commitment by the OWNER of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:

6.1. The responsibilities of the CONTRACTOR for correction of defective Work and completion of the Contract;

6.2. Additional legal, design professional and delay costs resulting from the CONTRACTOR's Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and

6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the CONTRACTOR.

7. The Surety shall not be liable to the OWNER or others for obligations of the CONTRACTOR that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the OWNER or its heirs, executors, administrators, or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after CONTRACTOR Default or within two years after the CONTRACTOR ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

12.1. Balance of the Contract Price: The total amount payable by the OWNER to the CONTRACTOR under the Contract after all proper adjustments have been made, including allowance to the CONTRACTOR of any amounts received or to be received by the OWNER in settlement of insurance or other Claims for damages to which the CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of the CONTRACTOR under the Contract.

12.2. Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

12.3. CONTRACTOR Default: Failure of the CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

12.4. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY--Name, Address and Telephone)
AGENT or BROKER: OWNER'S REPRESENTATIVE (Engineer or other party):

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place
of Business):

OWNER (Name and Address):

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Signature: _____

Name and Title:

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Signature: _____

Name and Title:

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

EJCDC No. 1910-28-B (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, the American Institute of Architects, the American Subcontractors Association, and the Associated Specialty Contractors.

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the OWNER to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference.

2. With respect to the OWNER, this obligation shall be null and void if the CONTRACTOR:

2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2. Defends, indemnifies and holds harmless the OWNER from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided the OWNER has promptly notified the CONTRACTOR and the Surety (at the addresses described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the CONTRACTOR and the Surety, and provided there is no OWNER Default.

3. With respect to Claimants, this obligation shall be null and void if the CONTRACTOR promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

4.1. Claimants who are employed by or have a direct contract with the CONTRACTOR have given notice to the Surety (at the addresses described in paragraph 12) and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2. Claimants who do not have a direct contract with the CONTRACTOR:

1. Have furnished written notice to the CONTRACTOR and sent a copy, or notice thereof, to the OWNER, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

2. Have either received a rejection in whole or in part from the CONTRACTOR, or not received within 30 days of furnishing the above notice any communication from the CONTRACTOR by which the CONTRACTOR had indicated the claim will be paid directly or indirectly; and

3. Not having been paid within the above 30 days, have sent a written notice to the Surety and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the CONTRACTOR.

5. If a notice required by paragraph 4 is given by the OWNER to the CONTRACTOR or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1. Send an answer to the Claimant, with a copy to the OWNER, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2. Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the OWNER to the CONTRACTOR under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By the CONTRACTOR furnishing and the OWNER accepting this Bond, they agree that all funds earned by the CONTRACTOR in the performance of the Contract are dedicated to satisfy obligations of the CONTRACTOR and the Surety under this Bond, subject to the OWNER's priority to use the funds for the completion of the Work.

9. The Surety shall not be liable to the OWNER, Claimants or others for obligations of the CONTRACTOR that are unrelated to the Contract. The OWNER shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by paragraph 4.1 or paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the OWNER or the CONTRACTOR, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, the CONTRACTOR shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. DEFINITIONS

15.1. Claimant: An individual or entity having a direct contract with the CONTRACTOR or with a Subcontractor of the CONTRACTOR to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of the CONTRACTOR and the CONTRACTOR's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2. Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

15.3. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY--Name, Address and Telephone)

AGENCY or BROKER: OWNER'S REPRESENTATIVE (Engineer or other party):

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
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NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

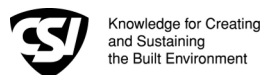
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The Associated General Contractors of America



Construction Specifications Institute

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American Council of Engineering Companies
1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor Nos. C-520 or C-525 (2002 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC Construction Documents, General and Instructions (No. C-001) (2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800) (2002 Edition).

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*--The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *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 Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*--The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*--See Paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *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.

19. *Engineer*--The individual or entity named as such in the Agreement.

20. *Field Order*--A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*--Polychlorinated biphenyls.

31. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

37. *Resident Project Representative*--The authorized representative of Engineer who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

40. *Schedule of Values*--A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

41. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

42. *Site*--Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

43. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain

administrative requirements and procedural matters applicable thereto.

44. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

45. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

48. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

49. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

50. *Unit Price Work*--Work to be paid for on the basis of unit prices.

51. *Work*--The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

52. *Work Change Directive*--A written statement 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 subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times

but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

B. Intent of Certain Terms or Adjectives

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. Day

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

- a. does not conform to the Contract Documents, or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
- c. 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 14.04 or 14.05).

E. Furnish, Install, Perform, Provide

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 Copies of Documents

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the thirtieth 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 Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 Starting the Work

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 Before Starting Construction

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule; indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 Preconstruction Conference

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 Initial Acceptance of Schedules

A. 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 review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

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

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

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

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the 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 in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or

responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work

(unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:

1. 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 or Engineer's consultants, including electronic media editions; or

2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaption by Engineer.

B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's

sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party..

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice*: If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review*: After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

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

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

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

- a. reviewing and checking all such information and data,
- b. locating all Underground Facilities shown or indicated in the Contract Documents,
- c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and
- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will

promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

A. 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, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument 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 or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to

entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06. G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. 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 of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified

in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall 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 Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

C. If the surety on any bond furnished by Contractor is declared 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 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

5.04 *Contractor's Liability Insurance*

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection

from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insured (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.

a. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, (other than caused by flood) and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any

deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, 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.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. 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.

5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. 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 on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary 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 fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

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

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract

Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any 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 canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, 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. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign 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 or

received from the superintendent shall be binding on Contractor.

6.02 *Labor; Working Hours*

A. 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.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, 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 performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,

3) it has a proven record of performance and availability of responsive service; and

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times, and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;

b) whether or not use of the proposed substitute item 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 other work on the Project) to adapt the design to the proposed substitute item; and

c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services;

4) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change,

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. Engineer's Evaluation: Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

E. Engineer's Cost Reimbursement: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract

Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. Contractor's Expense: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor

2. shall anything in the Contract Documents 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 individual

or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

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

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use 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.

B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

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

6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the 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.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

A. 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.

6.11 *Use of Site and Other Areas*

A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas 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 adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. Removal of Debris During Performance of the Work: During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. Cleaning: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures: 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.

6.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 *Safety and Protection*

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

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

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.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property 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 other 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.

C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform 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 Draw-

ings or Specifications or to the acts or omissions of Owner or Engineer or , or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall 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 or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. Shop Drawings

a. Submit number of copies specified in the General Requirements.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples*: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals , any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and

d. shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents

with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for 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.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures

1. 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.

6.18 Continuing the Work

A. 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 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 Contractor's General Warranty and Guarantee

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or

arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage 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 but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A 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, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal

shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 - OTHER WORK AT THE SITE

7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and

properly 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.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

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

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

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

8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

8.06 *Insurance*

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

8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility in respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

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

9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site 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 generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep

Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

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

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, 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.

9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

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

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. 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).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

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

10.05 *Claims*

A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim, shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part,

2. approve the Claim, or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. 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 11.01.B.

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. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time at the Site. 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' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

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 returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and

Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any 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 and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

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

5. Supplemental costs including the following:

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

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

c. Rentals of all construction equipment and machinery, and the parts thereof 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, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the 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.

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

e. 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.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages 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.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety 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 branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

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

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

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.

C. Contractor's Fee: When all the Work is performed on the basis of cost-plus, Contractor's fee shall

be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. Documentation: Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

A. 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 performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. Cash Allowances

1. Contractor agrees that:

a. the cash 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

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

C. Contingency Allowance

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

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

11.03 Unit Price Work

A. 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 unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. 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 subject to the provisions of Paragraph 9.07.

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

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. 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

2. there is no corresponding adjustment with respect any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an

allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

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

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted

by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to

be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.

F. Uncovering Work as provided in Paragraph 13.03.E 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.

13.04 *Uncovering Work*

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

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, 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.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner 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, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. 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 .

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. 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, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, 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 or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or 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, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, 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. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A 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.

14.02 *Progress Payments*

A. Applications for Payments

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. 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 and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations on the Site of the executed Work as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent

inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

- a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
- b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
- c. there are other items entitling Owner to a set-off against the amount recommended; or
- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.

3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

14.03 Contractor's Warranty of Title

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

14.04 Substantial Completion

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

B. Promptly after Contractor's notification, , Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial

Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals

that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. Application for Payment

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;

b. consent of the surety, if any, to final payment;

c. a list of all Claims against Owner that Contractor believes are unsettled; and

d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Engineer's Review of Application and Acceptance*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations

under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and , will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

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

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance

with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. 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),

2. 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

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. 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.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be

governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or

2. agrees with the other party to submit the Claim to another dispute resolution process, or

3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. 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

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

DOCUMENT 00815

SUPPLEMENTARY GENERAL CONDITIONS

Section - 1.0: The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (No. C-700, 2002 edition) have the meanings assigned to them in the General Conditions. These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. C-700, 2002 edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

Section - 1.01.A.3 Add the following language immediately after paragraph 1.01.A.3: “The application for payment form to be used on this project is EJCDC No. 1910-9-E.

Section - 1.01.A.9 Add the following language immediately after paragraph 1.01.A.9: “The change order form to be used on this project is EJCDC No. 1910-8-B.

Section 1.01.A.25: insert “, or legal actions to assert the same” after “encumbrances”.

Section 1.01.A.27: insert new sentence at the end – “The Notice of Award alone shall not create remedies for any Work performed under the Agreement or Contract Documents. Until the Contractor receives a Notice to Proceed from the Owner, the Contractor shall not proceed with work and has no remedy against the Owner for performing any Work related to the Project before receiving that Notice.”

Section - 1.02:GENERAL REQUIREMENTS

Substitute the words "Contract Documents" for "General Conditions" in all occurring places in these documents.

Section 1.02.B.1: in the third sentence, replace “general” with “accordance with such exercise”.

Section – 2.03.A: Delete paragraph 2.03 in its entirety and insert the following in its place: The Contract Times will commence to run on the day indicated in the Notice to Proceed, which may be given at any time within 30 days after the Effective Date of the Agreement.

Section 2.04.A: insert “Engineer will call and arrange” before “a conference”. Insert new sentence at the end: “Upon review and acceptance by the Owner and Engineer, the Progress Schedule shall be deemed to be part of the Contract Documents and attached to the Agreement.”

Section 2.05.A: insert “Engineer will call and arrange” before “a conference”.

Section 2.05.A.1: replace the first sentence with “The Progress Schedule shall, in a detailed precedence-style critical path method or primavera type format satisfactory to the Owner and the Engineer, (1) provide a graphic representation of all activities and events that will occur during the performance of the Work; (2) identify each phase of construction and occupancy, (3) set forth milestone dates that are significant to ensure the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents, and (4) be otherwise acceptable to Engineer.”

Section – 2.05.A.3 (Omitted)

Section - 2.06 PRECONSTRUCTION CONFERENCE

The CONTRACTOR will be required to attend a pre-construction conference prior to the start of construction. The date of the conference shall be set by the ENGINEER, and notice in writing given to the CONTRACTOR.

The purpose of the meeting shall be to discuss in detail the CONTRACTORS approach to the execution of the work. Representatives of the various utility companies, as necessary, will be invited to the conference to discuss the impact that the construction will produce on their facilities.

The CONTRACTOR shall submit the following information at the pre-construction conference:

1. A detailed construction Schedule shall be provided that will show the exact sequence of various portions of the work. This Schedule shall be updated monthly by the Contractor.
2. The Contractor shall submit the name of the job superintendent on the project.
3. In the event that portions of the work are to be sub-contracted, names of sub-contractors on the project shall also be submitted.
4. The contractor shall submit the name and phone number(s) for the emergency contact person for the project.

The Engineer will set forth at the pre-construction conference the methods to be used in accounting for the work, the submission of periodic payments, and any other information applicable to the project.

Section - 2.07 (Omitted)

Section 3.01.B: insert new sentence at the end: Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.”

New Section 3.01.D: “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.”

Section 3.03.A.3: insert at the end “, or should have had such knowledge under the circumstances of the Contract.”

New Section 3.04.D: “No interpretation, clarification, interpretation, supplement, variation, or deviation in the Work decided by Engineer shall, per se, adjust the Contract Price or Contract Times.

Section 4.01.B: delete entirely.

Section - 4.02 (Omitted)

Section 4.03.A: replace “believes” with “discovers or should have discovered”.

Section 4.03.C: change title to “Possible Time Adjustments”.

Section 4.03.C.1: delete “Contract Price or”; and “or both”; and “cost of, or”

Section 4.03.C.1.b: delete entirely

Section 4.03.C.2: delete “Contract Price or”.

Section 4.03.C.2.a: delete “Contract Price and”

Section 4.03.C.3: delete “Contract Price or”; and “, or both”.

Section 4.03.C.4: delete “Contract Price or”; and “, or both”.

Section – 4.05 (Omitted)

Section - 4.06.G (Omitted)

Section 4.06: delete entirely

Section 5.02.A: delete “Owner and”; insert new sentence at the end: “Contractor shall name Owner as an additional insured on a primary, non-contributory basis on all such policies.”

Section - 5.03 Add the following language immediately after paragraph 5.03: See page 00815-13 for Certificate of Insurance for reference:

Section 5.03.B: delete entirely.

Section 5.04: CONTRACTORS LIABILITY INSURANCE

The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by laws and Regulations:

5.04.A1 and 5.04.A2 Workers' Compensation, etc. under paragraphs 5.04.A1 and 5.04.A2 of the General Conditions:

- | | |
|---|-----------|
| (1) State: | Statutory |
| (2) Applicable Federal (e.g. Longshoreman's): | Statutory |
| (3) Employer's Liability: | \$100,000 |

5.04.A3 through 5.04.A5. Comprehensive General Liability (under paragraphs 5.04.A3 through 5.04.A5 of the General Conditions):

- | | |
|---|------------------|
| (1) Bodily Injury (including completed operations and products liability): | |
| \$1,000,000 | Each Occurrence |
| \$2,000,000 | Annual Aggregate |
| Property Damage: | |
| \$1,000,000 | Each Occurrence |
| \$2,000,000 | Annual Aggregate |
| or a combined single limit of | \$1,000,000 |
| (2) Property Damage liability insurance will provide Explosion, Collapse and Underground coverage's where applicable. | |
| (3) Personal Injury, with employment exclusion deleted: | |
| \$1,000,000 | Annual Aggregate |

5.04.A6 Comprehensive Automobile Liability:

- | | |
|----------------|-----------------|
| Bodily Injury: | |
| \$1,000,000 | Each Person |
| \$1,000,000 | Each Occurrence |

Property Damage:

\$1,000,000
or combined single limit of

Each Occurrence
\$1,000,000

5.04.B1 Here list additional types and amounts of insurance that may be required by OWNER.

The Contractual Liability required by paragraph 5.04.B4 of the General Conditions shall provide coverage for not less than the following amounts:

- | | |
|---|-------------------------------------|
| (1) Bodily Injury:
\$1,000,000 | Each Occurrence |
| (2) Property Damage:
\$1,000,000
\$2,000,000 | Each Occurrence
Annual Aggregate |
| (3) Products Completed Operations | Aggregate
\$2,000,000 |
| (4) Automobile Liability:
combined single limit of | \$2,000,000 |

Section - 5.06 OWNER'S PROPERTY INSURANCE

Delete Paragraph 5.06 of the General Conditions in its entirety and insert the following in its place:

CONTRACTOR shall purchase and maintain property insurance upon the Work at the site in the full amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in these Supplementary Conditions or required by Laws and Regulations). This insurance shall:

5.06.1 include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER and ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of *whom* is deemed to have an insurable interest and shall be listed as an insured or additional insured (refer to SECTION 5.4.7. list of Additional Named Insured's);

5.06.2 be written on a Builders Risk "all risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework and Work in transit and shall insure against at least the following perils: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions.

The "all risk" insurance policy shall be in the form of an All Risk Installation Floater or Inland Marine Policy on behalf of OWNER. The amount of insurance to be procured and maintained shall be based on the purchase price of equipment or supplies. The policy will be endorsed deleting the coinsurance clause The policy will further be endorsed provide that the coverage

does not cease until the Project is accepted by the OWNER.

5.06.3 include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers, architects);

5.06.4 cover materials and equipment in transit for incorporation in the Work or stored at the site or at another location that was agree to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER, and

5.06.5 be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER with thirty days written notice to each other additional insured to *whom* a certificate of insurance has been issued.

The policies of insurance required to be purchased and maintained by CONTRACTOR in accordance with this paragraph 5.06 shall comply with the requirements of the General Conditions paragraph 5.06.C.

Section-5.06.B (Omitted)

Section-5.06.C Amend paragraph 5.06.C, of the General Conditions to read as follows:

All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by OWNER in accordance with paragraph 5.06.B will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty days' prior written notice has been give to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

Section-5.06.D Add the following language at the end of the last sentence of paragraph 5.06.D of the General Conditions: The deductible amount for property insurance coverage may not exceed \$250.00.

Section-5.06.E Delete paragraph 5.06.E of the General Conditions in its entirety.

Section-5.08.A Delete paragraphs 5.08.A and 5.08.B of the General Conditions in their entirety and & 5.08.Binsert the following in its place:

Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted in accordance with the policy provisions. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment, except when CONTRACTOR is at fault, is negligent, and has caused damage, then no Change Order will be allowed.

Section-5.09 Delete paragraph 5.09 of the General Conditions in its entirety and insert the following in its place:

If OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with paragraph 5.02, 5.03, 5.04 and 5.06 on the basis of its not complying with the Contract Documents, OWNER will notify CONTRACTOR in writing thereof within ten days of the date of delivery of such certificates to OWNER in accordance with paragraph 2.05.C CONTRACTOR will provide OWNER such additional information in respect of insurance provided by him as OWNER may request. Failure by OWNER to give any such notice does not eliminate CONTRACTOR's responsibility to purchase required insurance policies. Failure to purchase required insurance coverage's shall be grounds for OWNER to withhold payments.

Section 6.01.A: replace the last sentence with “Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents.”

Section 6.03.B: in the first sentence, insert “shall be as specified or, if not specified,” before “shall be of good”. In the second sentence, delete “special”. Insert new sentence at the end: “The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer’s warranties relating to materials and labor used in the Work, and the Contractor further agrees to perform the Work in such a manner as to preserve any and all manufacturer’s warranties.”

Section – 6.08 Blank

Section - 6.09 LAWS AND REGULATIONS

1. New York State Prevailing Wage Rates and contract requirements of Article 8 (Sections 220-223) of the New York State labor law are appended to these Supplemental Conditions.

Section - 6.10 TAX EXEMPTION

Delete paragraph 6.10 of the General Conditions in its entirety and insert the following in its place:

OWNER is exempt from payment of sales and compensating use taxes of the State of New York and of cities and counties on all supplies and material sold to OWNER pursuant to this Contract.

There is no exemption from the sales or use tax on charges to CONTRACTOR or subcontractor for the lease or purchase of supplies, equipment, tools, etc., used by him in the completion of the Contract. The exemption is limited to tangible personal property which becomes an integral part of the real property. No exemption exists for services which are purchased by CONTRACTOR while completing the Project.

Title to all materials to be sold by CONTRACTOR to OWNER, pursuant to the provisions of this Contract shall immediately vest in OWNER upon delivery of such materials to the job site before their installation or incorporation into the Project. Such materials shall then become the sole property of OWNER, subject to the right of OWNER and ENGINEER to reject the same within a reasonable period for failure to conform to the Specifications of the Contract Documents.

With respect to such materials to be sold hereunder, CONTRACTOR, at the request of OWNER shall furnish to OWNER such bills of sale and other instruments as may be required by it, properly executed, acknowledged and delivered, assuring to it title to such supplies and materials free of encumbrances and CONTRACTOR shall mark or otherwise identify all such materials as the property of OWNER.

The purchase by subcontractor of materials to be sold hereunder will also be a purchase for resale to CONTRACTOR (either directly or through other subcontractors), regardless of the terms of the contract between CONTRACTOR and the subcontractor.

CONTRACTOR, in order to purchase materials and services exempt from the sales tax, must give their suppliers and subcontractors a properly completed Contractor Exempt Purchase Certificate (Form ST-120.1).

If as a result of such sale of supplies and materials (1) any claim is made against CONTRACTOR by the State of New York or any city or county for sales or compensating use taxes on the aforementioned supplies and materials, or (2) any claim is made against CONTRACTOR by a material man or a subcontractor on account of a claim against such material men or subcontractor by the State of New York or any city or county for sales or compensating use taxes on the aforementioned supplies and materials, then, if CONTRACTOR and subcontractors have complied with the provisions of this Contract relating thereto, OWNER will reimburse CONTRACTOR for an amount equal to the amount of such tax required to be paid in accordance with the requirements of law, provided that:

- a. The subcontract Agreements in connection with this Contract provide for the resale of such materials prior to and separate and apart from the incorporation of such supplies and materials into the permanent construction;
- b. CONTRACTOR and his subcontractors and material men obtain any and all necessary resale exemption certificates from the appropriate governmental agency or agencies and furnish a resale certificate to all persons, firms or corporations from which they purchase materials for the performance of the Work covered by this Contract;
- c. CONTRACTOR and all subcontractors maintain and keep, for a period of six (6) years after the date of final payment for the sale, or if a claim for sales or compensating use tax is pending or threatened at the end of such six (6) year period, until such claim is finally settled, records which, in the judgment of the Department of Taxation & Finance, adequately show (1) all materials purchased by them for resale pursuant to the provisions of this Contract, and (2) all materials and supplies sold to OWNER pursuant to the provisions of this Contract;

- d. OWNER is afforded the opportunity, before any payment of tax is made, to contest said claim in the manner and to the extent that OWNER may choose and to settle or satisfy said claims; and
- e. CONTRACTOR and the subcontractor give immediate notice to OWNER of any such claim, cooperate with OWNER and its designated attorney in contesting said claim and furnish promptly to OWNER and said attorney all information and documents necessary or convenient for contesting said claim, said information and documents to be preserved for six (6) years after the date of final payment for the sale or, if such claim is pending or threatened at the end of such six (6) years, until such claim is finally settled. If OWNER elects to contest any such claim, it will bear the expense of such contest.

Nothing in this Section is intended or shall be construed as relieving CONTRACTOR from his obligations under any other provision of the Contract, and CONTRACTOR shall have the full continuing responsibility to install the materials and supplies purchased in accordance with the provisions of this Contract, to protect the same, to maintain them in proper condition and to forthwith repair, replace and make good any damage thereto without cost to OWNER until such time as the Work covered by the Contract is fully accepted by OWNER.

Section - 6.11 USE OF SITE AND OTHER AREAS

No work shall be done before 6:00 a.m. or after 6:00 p.m. local time on a working day, on Sundays, or on legal holidays, except as necessary for the proper care and protection of work already performed, or during emergencies. The Contractor shall observe local ordinances and refer to the New York State prevailing wage rates regarding working hours.

The Contractor shall make every effort to minimize noise caused by his operations. Equipment shall be equipped with silencers or mufflers designed to operate with the least possible noise. The Contractor shall not permit the use of loud, abusive, obnoxious or profane language by employees or by the employees of sub-contractors. The Contractor shall observe local ordinances regarding noise standards.

The Contractor shall minimize the introduction of noxious fumes into the air. Motor equipment shall be kept in repair and equipped with anti-pollution devices to cut down on exhaust emissions. The Contractor shall take active measures to control dust and air-borne debris resulting from his operations. Burning as a method of clearing or disposal will not be permitted.

The Contractor shall conduct his operations to minimize damage to natural watercourses, and shall not permit petroleum products to excessive amounts of silt, clay or mud to enter any drainage system. The bed of natural watercourses shall be restored to normal gradient and cross Section after being disturbed.

The Contractor shall not dispose of debris, refuse or sanitary wastes in an open dump or in a natural watercourse, whether on public or private property, or in such places that undesirable wastes can eventually be exposed or carried to a natural watercourse.

The Contractor shall restrict his operations as nearly as possible to the immediate use. Unnecessary cutting of vegetation adjacent to the site is prohibited. Every effort shall be returned to its original conditions, except where improvements are indicated or required.

Section 6.16 delete what is in GC and use what is SC.

Section - 6.16 EMERGENCIES

The Contractor shall designate someone to be available to respond to emergency calls. The name of the person and the telephone number at which he/she can be reached at any time shall be given to the Engineer and the Town of Windsor. Such person shall have full authority and capability to mobilize forces promptly as required to respond to an emergency and protect the public.

Section 6.16.D.3: insert new sentence at the end: “Engineer will notify Owner of any unapproved variations from the requirements of the Contract Documents prior to giving approval of any Shop Drawing or Sample.”

Section-6.20.C

OMITTED

Section-7.0 Other Work

OMITTED

Section 9.02.A: in the second sentence, delete “, in general,”; in the fourth sentence, delete “generally”; insert new sentence at the end: “If the Engineer’s inspections identify deficiencies in quality or quantity of work, the Engineer shall, in the normal course of its regular inspections, or as otherwise required by the Contract Documents, re-inspect such work to determine whether the deficiency was corrected.”

Section-9.03 Delete paragraph 9.03 of the General Conditions in its entirety and substitute the following:

9.03 If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more continuous observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and at the Pre-Construction Conference. If OWNER designates another representative or agent to represent OWNER at the site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other person will be as provided at the Pre-Construction Conference.

Section 9.07.A: delete the last sentence.

Section-11.03 (Omitted)

Section-13.03 TESTS AND INSPECTIONS

Delete paragraph 13.03.B in its entirety and substitute the following:

13.03.B CONTRACTOR shall employ and pay for services of an independent testing laboratory to perform all inspections, tests or approvals required by Contract Documents.

Section-14.01 (Omitted)

Section 17: delete in its entirety, including its subparts, and insert "All disputes between Owner and Contractor shall be finally resolved in a court of competent jurisdiction."

Add the following after paragraph 17.06:

Section-17.06 CONTRACT PROVISIONS REQUIRED BY LAW (New York State)

A. Provisions Deemed Inserted

All CONTRACTORS and subcontractors performing Work under this Contract shall comply with the applicable provisions of the "Labor Law" as amended, of the State of New York. Each and every provision required by law to be inserted in the Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein and in the event any such provision is not inserted or is not correctly inserted then, upon the application of either party, this Contract shall forthwith be physically amended to make such insertion or correction.

B. Labor Provisions

1. Working Hours and Pay

- a. Refer to New York State prevailing wage rates attached herein.
- b. Pursuant to recently adopted provisions of the New York State Labor Law, the winning bidder must (1) provide each employee on each pay stub relating to this project the prevailing wage rate for his/her job classification, and (2) at beginning of the work to be performed must notify all employees of the telephone number, name and address of the New York State Department of Labor and his/her right to contact said Department if he/she does not receive the prevailing wage rates or supplements required for his/her job classification, which notice must

also be provided with each employee's first pay check after July 1st of each year, (3).must submit to the Town within 30 days after the issuance of its first payroll and every 30 days thereafter a transcript of the original payroll record, sworn to under the penalty of perjury, and if this contract and all other for this project exceed \$250,000.00 all workers must complete a ten hour or more OSHA-approved construction safety and health course.

2. Non-Discrimination in Employment

- a. Refer to New York State Department of Labor Form PW-3 attached herein as Exhibit "A".
- b. Neither CONTRACTOR nor any subcontractor nor any person acting on behalf of CONTRACTOR or any subcontractor shall in any way or manner discriminate against or intimidate any employee hired for the performance of the Work covered by the Contract on account of race, creed, color, sex or national origin.
(NOTE: The Human Rights Law also prohibits discrimination in employment because of age, disability or marital status.)
- c. There may be deducted from the amount payable to CONTRACTOR under the Contract a penalty of five (\$5.00) dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the Contract.
- d. The Contract may be canceled or terminated by OWNER and all monies due or to become due thereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this subdivision of the Contract.

3. Equal Employment Opportunity

During the performance of this Contract, CONTRACTOR agrees as follows:

- a. CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability, or marital status, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, creed, color, or national origin. Such action shall be taken with reference, but not limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- b. CONTRACTOR will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commission for Human Rights, advising such labor union or representative of CONTRACTOR'S Agreement under clauses a through f (hereinafter called "non-discrimination clauses"). If CONTRACTOR was directed to do so by OWNER as part of the bid or negotiation of this Contract, CONTRACTOR

shall request such labor union or representative to furnish him with a written statement that such labor union or representative will not discriminate because of race, creed, color, sex, national origin, age, disability, or marital status, and that such labor union or representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this Contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, CONTRACTOR shall promptly notify the State Commission for Human Rights of such failure and refusal.

- c. CONTRACTOR will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commission for Human Rights setting forth the substance of the provisions of clauses a and b and such provisions for the State's laws against discrimination as the State Commission for Human Rights shall determine.
- d. CONTRACTOR will state, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability, or marital status.
- e. CONTRACTOR will comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commission for Human Rights under these non-discrimination clauses and such Sections of the Executive Law, and will permit access to his books, records and accounts by the State Commission for Human Rights, the Attorney General and the Industrial Commissioner for purposes of investigation to ascertain compliance with these non-discrimination clauses and such Sections of the Executive Law and Civil Rights Law.
- f. This Contract may be forthwith canceled, terminated, or suspended, in whole or in part, by OWNER upon the basis of a finding made by the State Commission for Human Rights that CONTRACTOR has not complied with these non-discrimination clauses, and CONTRACTOR may be declared ineligible for future contracts made by or on behalf of OWNER, until he has satisfied the State Commission for Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commission for Human Rights after conciliation efforts by the Commission have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commission, notice thereof has been given to CONTRACTOR and an opportunity has been afforded him to be heard publicly before three members of the Commission. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by Law.
- g. CONTRACTOR will include the provisions of clauses a through f of this Section in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York.

CONTRACTOR will take such action 'in enforcing such provisions of such subcontract or purchase order as OWNER may direct, including sanctions or remedies for noncompliance. If CONTRACTOR becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by OWNER, CONTRACTOR shall promptly so notify the Attorney General and OWNER requesting them to intervene and protect the interests of OWNER.

4. Affirmative Action

As used herein, the word and designation "affirmative action" include, but are not limited to, the following:

- a. Except as otherwise provided by this Contract, CONTRACTOR shall be the judge as to the qualifications of all applicants for employment on or in connection with the construction of the Project and where a collective bargaining agreement provides for referral by the union of "qualified journeymen," CONTRACTOR should evaluate the qualifications of such applicants.
- b. CONTRACTOR will not limit recruitment or employment, directly or indirectly, to members or referrals or labor organizations which do not have minority group journeymen members or do not currently and consistently refer minority group members for employment or do not indicate willingness to admit into journeymen membership a prospective employee or applicant for employment who is a *member* of a minority group or to permit his employment on the construction site of the Project.
- c. CONTRACTOR will notify community agencies and communication media associated with minority groups of opportunities for employment.
- d. To the extent permitted by law and the applicable collective bargaining agreement not in violation thereof, CONTRACTOR will recruit, evaluate and hire, without regard to race, creed, color, sex, national origin, age, disability, marital status, or union membership, it being understood that a union may require a new employee to join the union within eight (8) days after he commences Work and it being further understood that CONTRACTOR may retain in employment any employee he deems qualified whose tender of initiation fees and dues have been refused by the union.
- e. To the extent permitted by law and the applicable collective bargaining agreement, not in violation thereof, CONTRACTOR will take the initiative in seeking out for prospective employment on the construction site of the Project craftsmen who are members of minority groups.
- f. To the extent permitted by law and the applicable collective bargaining agreement, not in violation thereof, wherever possible and consistent with the actual requirements of the Work to be done, CONTRACTOR will establish entry level positions, (e.g., mechanic's helper, electrician's helper, laborers helper, etc.) in which skills may be taught in preparation for, or as an adjunct or alternative to, formal apprenticeship.
- g. CONTRACTOR will review his respective collective bargaining agreements in order to

identify, and discontinue when possible, provisions which tend to limit recruitment or hiring members of minority groups, and will seek to negotiate remedial provisions.

- h. To the extent permitted by law and the applicable collective bargaining agreement, not in violation thereof, CONTRACTOR will make the fullest possible use of his rights of selection to further the employment of members of minority groups.
 - i. CONTRACTOR will include the provisions of paragraphs "a" through "h" of this Section in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. CONTRACTOR will take such action in enforcing such provisions of such subcontract or purchase order as OWNER may direct, including sanctions or remedies for non-compliance.
5. Worker's Compensation and Disability Insurance

CONTRACTOR shall secure Worker's Compensation and Disability Benefits Insurance for the benefit of, and keep insured during the life of the Contract, such employees as are required to be insured by the provisions of Chapter 41 of the laws of 1914, as amended, known as the Worker's Compensation and Disability Benefits Law, as amended.

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

6. Dust Hazards

If in the construction of the Work covered by the Contract, a harmful dust hazard be created for which appliances or methods for the elimination of harmful dust hazards have been approved by the Board of Standards and Appeals, such appliances or methods shall be installed and maintained and effectively operated by CONTRACTOR at his sole cost and expense.

The Contract shall be void and of no effect unless CONTRACTOR complies with the provisions of this subdivision of the Contract. CONTRACTOR will take such action in enforcing such provisions of such subcontract or purchase order as OWNER may direct, including sanctions or remedies for non-compliance.

7. No Assignment

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

If such assignment, transfer, conveyance, subletting, or otherwise, is made without the required consent of the OWNER, the Contract herein shall be revoked, and annulled in accordance with Section 109 of the General Municipal Law, which is incorporated herein.

Add Section 17.07: “Each and every provision required by law to be inserted in the Contract Documents shall be deemed inserted herein, and it shall be read and enforced as though it were included, and in the event any such provision is not inserted or not correctly inserted then, upon application of either party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.”

Add Section 17.08: “No laborer, workman or mechanic in the employ of Contractor, subcontractor or other person doing or contracting to do the whole or any part of the Work contemplated shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in case of extraordinary emergency set forth in the Labor Law. The wages (including supplements) paid for a legal day’s work shall not be less than the prevailing rate of wages (including supplements) as defined by law.”

Add Section 17.09: “The minimum hourly wage rates (including supplements) to be paid shall not be less than that designated by the Industrial Commissioner and any re-determination of prevailing rate of wages after Contract is approved shall be deemed to be incorporated herein by reference as of effective date of re-determination and shall form part of these Contract Documents. The minimum hourly supplement to be paid shall be in accordance with prevailing practices in locality where Work is located and shall be not less than that designated by Industrial Commissioner. Supplements as defined in Section 220 of the Labor Law, as amended, means all remuneration for employees paid in any medium other than cash or reimbursements for expenses or any payments which are not wages within the meaning of the law, including, but not limited to, health, welfare, nonoccupational disability, retirement, vacation benefits, holiday pay, and life insurance. The Contract shall be forfeited by Contractor and he shall not be entitled to receive any sum of money for any Work performed hereunder on his second conviction for willfully paying less than stipulated wage scale (including supplements) as provided in Labor Law, Section 220, as amended or stipulated minimum hourly wage scale (including supplements) as provided in Labor Law, Section 220-d, as amended. The Prevailing Wage Rate Schedule shall be obtained by bidders online. A copy will be inserted in the Agreement.”

Add Section 17.10: “Apprentices must be registered, individually, under a bona fide program registered with the New York State Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to contractor as to his Work force on any job under the registered program. Any employee who is not registered as above, shall be paid prevailing wage rate for classification of Work he actually performed. The contractor or subcontractor shall be required to furnish written evidence of registration of his program and apprentices as well as of appropriate ratios and wage rates for area of construction, prior to using any apprentices on contract Work. (See Section 220.3-e).”

Add Section 17.11: “Contractor agrees, in accordance with applicable provisions of the Labor Law of the State of New York, to the following: (1) That in the hiring of employees for performance of Work under this contract or any subcontract hereunder no Contractor,

subcontractor nor any person acting on behalf of such Contractor or subcontractor, shall by reason of religion, sex, age, color or national origin discriminate against any citizen of the State of New York who is qualified and available to perform Work to which the employment relates. (2) That no Contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for performance of Work under this Contract on account of religion, sex, age, race, color or national origin. (3) That there may be deducted from the amount payable to Contractor by Owner under this Contract, a penalty of fifty dollars (\$50.00) for each calendar day during which such person was discriminated against or intimidated in violation of provisions of Contract. (4) That this Contract may be canceled or terminated by Owner and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violations of terms of conditions of this Section of Contract. (5) The aforesaid provisions of this section covering every contract for or on behalf of Owner for manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.”

Add Section 17.12: “If in the construction of Work covered by Contract, a harmful dust hazard be created for which appliances or method for elimination of harmful dust hazards have been approved by the Board of Standards and Appeals, such appliances or methods shall be installed and maintained and effectively operated by Contractor at his sole cost and expense.”

Add Section 17.13: “This Contract shall be void and of no effect unless the person or corporation making or performing such contract shall secure compensation for the benefit of, and keep insured during the life of contract, such employees, in compliance with provisions of Workmen's compensation law.”

Add Section 17.14: “As provided in Section 109 of General Municipal Law, Contractor is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of same or of his right title or interest therein, or his power to execute such contract or any other person or corporation without previous consent in writing of officer, board or agency awarding contract. If any contractor, to whom any contract is let, granted and awarded, as required by law, by any officer, board or agency in political subdivision or of any district therein, shall without previous written consent specified in subdivision one of this section, assign, transfer, convey, sublet or otherwise dispose of such contract or his right, title or interest therein or his power to execute such contract, to any other person or corporation, the officer, board or agency which let, made, granted, or awarded such contract shall revoke and annul such contract, and the political subdivision or district therein, as the case may be, and such officer, board or agency shall be relieved and discharged from any and all liability and obligations growing out of such contract to such contractor, and to the person or corporation to which such contract shall have been assigned, transferred, conveyed, sublet or otherwise disposed of, and such contractor, and his assignees, transferees or sub lessees shall forfeit and lose all moneys, theretofore earned under such contract, except so much as may be required to pay his employees. The provisions of this section shall not hinder, prevent, or affect an assignment by any such contractor for the benefit of his creditors made pursuant to the laws of this state.”

Add Section 17.15: “The Contractor acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the Site following expiration of the substantial and/or final completion date. The Contractor further acknowledges and agrees that if it, for causes reasonably within its control, fails to complete the Work by the substantial and/or final completion date, the Owner will sustain extensive delay damages and serious loss as a result of such failure, and the exact amount of such damages will be extremely difficult to ascertain. If the Contractor fails to achieve substantial and/or final completion by the appropriate completion dates due to its fault, the Owner shall be entitled to retain or recover from the Architect, as liquidated delay damages and not as a penalty, \$____.00 per day commencing upon the first day following the substantial and/or final completion date, as applicable, and continuing until the actual date of substantial and/or final completion, as applicable. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages due to delay the Owner will incur as a result of delayed completion of the Work, and is not intended to substitute or compensate Owner for any other damages Owner may incur, for which Owner retains all rights it has under the Contract Documents and in law.

Add Section 17.16:

Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Times, to the extent permitted, shall be the sole and exclusive 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 (4) other similar claims (collectively referred to in this paragraphs as Delays) whether or not such Delays are foreseeable. In no event shall the Contractor be entitled to any compensation or recovery of any damages in connection with any Delays including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remunerations. The Owner’s exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, directing suspension, rescheduling, or correction of the Work, or terminating this agreement for its convenience), regardless of the extent or frequency of the Owner’s exercise of such rights or remedies, shall not be construed as active interference with the Contractor’s performance of the Work. If the Contractor submits a progress report indicating, or otherwise expressing an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Times, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

Add Section 17.17: All time limits stated in the Contract Documents are of the essence of the Agreement. The Contractor acknowledges and understands that (1) the Owner has a need for the completed Work, shortly after the date set forth in the Agreement by which substantial completion is to be achieved because the Work is to replace and expand the Owner’s central freezer for each of Owner’s buildings; and (2) failure by the Contractor to complete the Work in accordance with the construction schedule will cause significant damages to the Owner, including, without limitation, need for temporary freezer storage, increased labor costs, disruption in schedule, and other logistical problems.”

END OF DOCUMENT

DIVISION 1 - GENERAL REQUIREMENTS

SECTION 01100

SUMMARY

PART 1 GENERAL

1.1 SECTION INCLUDES

- A. Contract description.
- B. Owner supplied products.

1.2 CONTRACT DESCRIPTION

- A. Work of the Project includes the excavation and disposal of the bio-solid waste (sludge) from the Town's Wastewater Treatment Plant (WWTP) located in four (4) Reed Sludge Treatment Beds.
- B. The work consists of furnishing all labor, equipment, and material and performing all operations in strict conformance with the Drawings and Project Manual dated February 23, 2024 for the WWTP Sludge Removal.

1.3 OWNER SUPPLIED PRODUCTS

Not Used.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

Not Used.

END OF SECTION

SECTION 01500

TEMPORARY FACILITIES AND CONTROLS

PART 1 GENERAL

1.1 SECTION INCLUDES

- A. Construction Facilities:
 - 1. Vehicular access.
 - 2. Parking.
 - 3. Progress cleaning and waste removal.
 - 4. Traffic regulation.
- B. Temporary Controls:
 - 1. Dust control.
 - 2. Erosion and sediment control.
 - 3. Noise control.
 - 4. Pollution control.
- C. Removal of utilities, facilities, and controls.

1.2 VEHICULAR ACCESS

- A. During work hours the road will be closed except for local traffic. During non-working hours the road will be open.
- B. Provide unimpeded access for emergency vehicles. Maintain 20 feet wide driveways with turning space between and around combustible materials.
- C. Provide and maintain access to fire hydrants if present and control valves free of obstructions.
- D. Provide means of removing mud from vehicle wheels before entering streets.
- E. Provide access to local traffic at all times.

1.3 PARKING

- A. Use of designated existing on-site streets and driveways used for construction traffic is not permitted. Tracked vehicles not allowed on paved areas.
- B. Do not allow heavy vehicles or construction equipment in parking areas.
- C. Permanent Pavements and Parking Facilities:
 - 1. Avoid traffic loading beyond paving design capacity. Tracked vehicles not allowed.

- D. Maintenance:
 - 1. Maintain traffic and parking areas in sound condition free of excavated material, construction equipment, products, mud, snow, and ice.
 - 2. Maintain existing and permanent paved areas used for construction; promptly repair breaks, potholes, low areas, standing water, and other deficiencies, to maintain paving and drainage in original, or specified, condition.
- E. Mud From Site Vehicles: Provide means of removing mud from vehicle wheels before entering streets.

1.4 PROGRESS CLEANING AND WASTE REMOVAL

- A. Maintain areas free of waste materials, debris, and rubbish. Maintain site in clean and orderly condition.
- B. Collect and remove waste materials, debris, and rubbish from site periodically and dispose off-site.

1.5 TRAFFIC REGULATION

- A. Signs, Signals, And Devices:
 - 1. Post Mounted and Wall Mounted Traffic Control and Informational Signs: As approved by authority having jurisdiction.
 - 2. Traffic Cones and Drums, Flares and Lights: As approved by authority having jurisdiction.
 - 3. Flagperson Equipment: Stop/Slow paddle.
- B. Flag Persons: Provide trained and equipped flag persons to regulate traffic when construction operations or traffic encroach on public traffic lanes.
- C. Flares And Lights: Use flares and lights during hours of low visibility to delineate traffic lanes and to guide traffic.
- D. Traffic Signs and Signals:
 - 1. Provide signs at approaches to site and on site, at crossroads, detours, parking areas, and elsewhere as needed to direct construction and affected public traffic.
 - 2. Relocate as Work progresses, to maintain effective traffic control.
- E. Removal:
 - 1. Remove equipment and devices when no longer required.
 - 2. Repair damage caused by installation.

1.6 DUST CONTROL

- A. Execute Work by methods to minimize raising dust from construction operations.
- B. Provide positive means to prevent air-borne dust from dispersing into atmosphere.

1.7 EROSION AND SEDIMENT CONTROL

- A. Plan and execute construction by methods to control surface drainage from cuts and fills, from borrow and waste disposal areas. Prevent erosion and sedimentation.
- B. Minimize surface area of bare soil exposed at one time.
- C. Provide temporary measures including berms, dikes, and drains, and other devices to prevent water flow.
- D. Construct fill and waste areas by selective placement to avoid erosive surface silts or clays.
- E. Periodically inspect earthwork to detect evidence of erosion and sedimentation; promptly apply corrective measures.

1.8 NOISE CONTROL

- A. Provide methods, means, and facilities to minimize noise produced by construction operations.

1.9 POLLUTION CONTROL

- A. Provide methods, means, and facilities to prevent contamination of soil, water, and atmosphere from discharge of noxious, toxic substances, and pollutants produced by construction operations.

1.10 REMOVAL OF UTILITIES, FACILITIES, AND CONTROLS

- A. Clean and repair damage caused by installation or use of temporary work.
- B. Restore existing and permanent facilities used during construction to original condition. Restore permanent facilities used during construction to specified condition.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

Not Used.

END OF SECTION

SECTION 01700
EXECUTION REQUIREMENTS

PART 1 GENERAL

1.1 SECTION INCLUDES

- A. Closeout procedures.
- B. Final cleaning.
- C. Protecting installed construction.
- D. Project record documents.
- E. Product warranties and product bonds.

1.2 CLOSEOUT PROCEDURES

- A. Submit written certification that Contract Documents have been reviewed, Work has been inspected, and that Work is complete in accordance with Contract Documents and ready for Engineer's review.
- B. Submit final Application for Payment identifying total adjusted Contract Sum, previous payments, and sum remaining due.

1.3 FINAL CLEANING

- A. Execute final cleaning prior to final project assessment.
- B. Clean debris from drainage systems.
- C. Clean site; sweep paved areas, rake clean landscaped surfaces.
- D. Remove waste and surplus materials, rubbish, and construction facilities from site.

1.4 PROTECTING INSTALLED CONSTRUCTION

- A. Protect installed Work and provide special protection where specified in individual specification sections.
- B. Provide temporary and removable protection for installed products. Control activity in immediate work area to prevent damage.
- C. Prohibit traffic from grassed areas.

1.5 PROJECT RECORD DOCUMENTS

A. Not used.

1.6 PRODUCT WARRANTIES AND PRODUCT BONDS

A. Not used.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

Not Used.

END OF SECTION

DIVISION 2 - TECHNICAL SPECIFICATIONS

SECTION 31 23 16

BIO-SOLIDS EXCAVATION & DISPOSAL

PART 1 GENERAL

1.1 SUMMARY

- A. Section Includes:
 - 1. Excavating and disposal of reed bed treatment sludge.
- B. Related Sections:
 - 1. Document: Bio-solids Analytics.

1.2 REFERENCES

- A. Local utility standards when working within 24 inches of utility lines.

1.3 SUBMITTALS

- A. Section 01 33 00 - Submittal Procedures: Requirements for submittals.
- B. Excavation Protection Plan: Describe sheeting, shoring, and bracing materials and installation required to protect excavations and adjacent structures and property; include structural calculations to support plan.
- C. Shop Drawings: Indicate soil densification grid for each size and configuration footing requiring soils densification.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

3.1 PREPARATION

- A. Coordinate underground utility locations with Treatment Plant Operator.
- B. Identify required lines, levels, contours, and datum.
- C. Protect utilities indicated to remain from damage.
- D. Protect plant life, lawns, and other features remaining as portion of final landscaping.
- E. Protect benchmarks, survey control points, existing structures, fences, sidewalks, paving, and waste treatment facilities from excavating equipment and vehicular traffic.

3.2 EXCAVATION

- A. Excavate bio-solid material to a depth 2 inches above sand layer. The estimated depth of material to excavate is approximately 30" in the four (4) Reed Sludge Treatment Beds.
- B. Notify Architect/Engineer of unexpected subsurface conditions.
- C. Remove bio-solid material from site and dispose of it at the Broome County Landfill, 286 Knapp Road, Binghamton, NY 13905.
- D. The material has been pre-approved for disposal at the Broome County Landfill.
- E. The material must be at least 20% solid when transported and disposed of at the landfill.
- F. Hauler must maintain a valid New York State Department of Environmental Conservation 364 Waste Transporter Permit during operations.
- G. Tipping fees will be paid for directly by the Town of Windsor and shall not be included in the Stipulated Price.
- H. Prior to excavation of sludge, remove 1000 sf of reed stalk including healthy root, store onsite, and re-plant 250 sf in remaining 2" sludge layer in each of the four (4) Reed Sludge Treatment Beds.
- I. Repair or replace items indicated to remain damaged by excavation.

3.3 FIELD QUALITY CONTROL

- A. Section 01700 - Execution Requirements: Field inspecting, testing, adjusting, and balancing.

3.4 PROTECTION

- A. Protect structures, utilities and other facilities from damage caused by settlement, lateral movement, undermining, washout, and other hazards created by earth operations.
- B. Extra care shall be taken to prevent damage or disturbance to the existing forcemain and underdrain piping located within the Reed Sludge Treatment Beds.

END OF SECTION



Microbac Laboratories, Inc., Pittston Division

CERTIFICATE OF ANALYSIS

T3K0762

**Revised Report:
Amended - See Case
Narrative.**

Town of Windsor

Project Name: Monthly Wastewater

Don Sherwood
124 Main ST
Windsor, NY 13865

Project / PO Number: N/A
Received: 11/06/2023
Reported: 12/14/2023

Case Narrative

Revision 1 - 12/14/2023 - Revised to include results for Full TCLP per requested analysis

Analytical Testing Parameters

Client Sample ID: Reed Beds
Sample Matrix: Solid
Lab Sample ID: T3K0762-01

Collected By: Don Sherwood
Collection Date: 11/06/2023 9:00

Analyses Performed by: Microbac Laboratories Inc., - Marietta, OH

Sample Preparation by TCLP	Result	Limit(s)	RL	Units	Note	Prepared	Analyzed	Analyst
Method: EPA 1311								
Total Solids (TS)	100			%	Y	11/20/23 1705	11/21/23 0945	KJH
General Parameters	Result	Limit(s)	RL	Units	Note	Prepared	Analyzed	Analyst
Method: ASTM D2216-10								
Percent Solids	20.4		1.00	% (by wt.)	Y	11/10/23 1335	11/13/23 0350	LJM
Metals TCLP by AA	Result	Limit(s)	RL	Units	Note	Prepared	Analyzed	Analyst
Method: EPA 7470A								
Mercury	<0.00200		0.00200	mg/L		11/21/23 1549	11/22/23 1115	JDH
Metals TCLP by ICP	Result	Limit(s)	RL	Units	Note	Prepared	Analyzed	Analyst
Method: EPA 6010C								
Arsenic	<0.200	5	0.200	mg/L		11/21/23 0815	11/22/23 1148	JDH
Barium	<0.100	100	0.100	mg/L		11/21/23 0815	11/22/23 1148	JDH
Cadmium	<0.0200	1	0.0200	mg/L		11/21/23 0815	11/22/23 1148	JDH
Chromium	<0.0500	5	0.0500	mg/L		11/21/23 0815	11/22/23 1148	JDH
Lead	<0.200	5	0.200	mg/L		11/21/23 0815	11/22/23 1148	JDH
Selenium	<0.350	1	0.350	mg/L		11/21/23 0815	11/22/23 1148	JDH
Silver	<0.100	5	0.100	mg/L		11/21/23 0815	11/22/23 1148	JDH
Volatile Organic Compounds TCLP by GCMS	Result	Limit(s)	RL	Units	Note	Prepared	Analyzed	Analyst
Method: EPA 8260D								
Benzene	<50.0		50.0	ug/L			11/21/23 2053	CCC
2-Butanone	<100		100	ug/L			11/21/23 2053	CCC
Carbon tetrachloride	<50.0		50.0	ug/L			11/21/23 2053	CCC
Chlorobenzene	<50.0		50.0	ug/L			11/21/23 2053	CCC



Microbac Laboratories, Inc., Pittston Division

CERTIFICATE OF ANALYSIS

T3K0762

Client Sample ID: Reed Beds
Sample Matrix: Solid
Lab Sample ID: T3K0762-01

Collected By: Don Sherwood
Collection Date: 11/06/2023 9:00

Volatile Organic Compounds TCLP by GCMS	Result	Limit(s)	RL	Units	Note	Prepared	Analyzed	Analyst
Chloroform	<50.0		50.0	ug/L			11/21/23 2053	CCC
1,2-Dichloroethane	<50.0		50.0	ug/L			11/21/23 2053	CCC
1,1-Dichloroethene	<50.0		50.0	ug/L			11/21/23 2053	CCC
Tetrachloroethylene	<50.0		50.0	ug/L			11/21/23 2053	CCC
Trichloroethene	<50.0		50.0	ug/L			11/21/23 2053	CCC
Vinyl chloride	<100		100	ug/L			11/21/23 2053	CCC
Surrogate: 4-Bromofluorobenzene	96.8	Limit: 86-115		% Rec			11/21/23 2053	CCC
Surrogate: Dibromofluoromethane	109	Limit: 86-118		% Rec			11/21/23 2053	CCC
Surrogate: 1,2-Dichloroethane-d4	106	Limit: 80-120		% Rec			11/21/23 2053	CCC
Surrogate: Toluene-d8	104	Limit: 88-110		% Rec			11/21/23 2053	CCC
Herbicides TCLP by GC/ECD	Result	Limit(s)	RL	Units	Note	Prepared	Analyzed	Analyst
Method: EPA 8151A								
2,4,5-TP [2C]	<2.00		2.00	ug/L		11/21/23 1800	11/24/23 1544	ECL
2,4-D [2C]	<20.0		20.0	ug/L		11/21/23 1800	11/24/23 1544	ECL
Surrogate: 2,4-Dichlorophenylacetic acid [2C]	47.7	Limit: 20-144		% Rec		11/21/23 1800	11/24/23 1544	ECL
Pesticides TCLP by GC/ECD	Result	Limit(s)	RL	Units	Note	Prepared	Analyzed	Analyst
Method: EPA 8081B								
alpha-Chlordane	<0.500		0.500	ug/L		11/27/23 1120	11/28/23 0431	ECL
Endrin	<0.500		0.500	ug/L		11/27/23 1120	11/28/23 0431	ECL
gamma-Chlordane	<0.500		0.500	ug/L		11/27/23 1120	11/28/23 0431	ECL
gamma-BHC	<0.500		0.500	ug/L		11/27/23 1120	11/28/23 0431	ECL
Heptachlor	<0.500		0.500	ug/L		11/27/23 1120	11/28/23 0431	ECL
Heptachlor epoxide	<0.500		0.500	ug/L		11/27/23 1120	11/28/23 0431	ECL
Methoxychlor	<0.500		0.500	ug/L		11/27/23 1120	11/28/23 0431	ECL
Toxaphene	<10.0		10.0	ug/L		11/27/23 1120	11/28/23 0431	ECL
Surrogate: Tetrachloro-m-xylene	48.4	Limit: 20-130		% Rec		11/27/23 1120	11/28/23 0431	ECL
Surrogate: Decachlorobiphenyl	71.2	Limit: 25-140		% Rec		11/27/23 1120	11/28/23 0431	ECL
Semivolatile Organic Compounds TCLP by GCMS	Result	Limit(s)	RL	Units	Note	Prepared	Analyzed	Analyst
Method: EPA 8270D								
1,4-Dichlorobenzene	<50.0		50.0	ug/L		11/22/23 1210	12/02/23 1555	SCB
2,4-Dinitrotoluene	<50.0		50.0	ug/L		11/22/23 1210	12/02/23 1555	SCB
Hexachlorobenzene	<50.0		50.0	ug/L		11/22/23 1210	12/02/23 1555	SCB
Hexachlorobutadiene	<50.0		50.0	ug/L		11/22/23 1210	12/02/23 1555	SCB
Hexachloroethane	<50.0		50.0	ug/L		11/22/23 1210	12/02/23 1555	SCB
2-Methylphenol	<50.0		50.0	ug/L		11/22/23 1210	12/02/23 1555	SCB
3&4-Methylphenol	<50.0		50.0	ug/L		11/22/23 1210	12/02/23 1555	SCB



Microbac Laboratories, Inc., Pittston Division

CERTIFICATE OF ANALYSIS

T3K0762

Client Sample ID: Reed Beds
Sample Matrix: Solid
Lab Sample ID: T3K0762-01

Collected By: Don Sherwood
Collection Date: 11/06/2023 9:00

Semivolatile Organic Compounds TCLP by GCMS	Result	Limit(s)	RL	Units	Note	Prepared	Analyzed	Analyst
Nitrobenzene	<50.0		50.0	ug/L		11/22/23 1210	12/02/23 1555	SCB
Pentachlorophenol	<250		250	ug/L		11/22/23 1210	12/02/23 1555	SCB
Pyridine	<250		250	ug/L	Q3	11/22/23 1210	12/02/23 1555	SCB
2,4,6-Trichlorophenol	<50.0		50.0	ug/L		11/22/23 1210	12/02/23 1555	SCB
2,4,5-Trichlorophenol	<50.0		50.0	ug/L		11/22/23 1210	12/02/23 1555	SCB
Surrogate: 2-Fluorobiphenyl	52.0	Limit: 43-116		% Rec		11/22/23 1210	12/02/23 1555	SCB
Surrogate: 2-Fluorophenol	28.9	Limit: 19-119		% Rec		11/22/23 1210	12/02/23 1555	SCB
Surrogate: Nitrobenzene-d5	52.5	Limit: 35-114		% Rec		11/22/23 1210	12/02/23 1555	SCB
Surrogate: Phenol-d5	18.7	Limit: 10-120		% Rec		11/22/23 1210	12/02/23 1555	SCB
Surrogate: p-Terphenyl-d14	102	Limit: 10-130		% Rec		11/22/23 1210	12/02/23 1555	SCB
Surrogate: 2,4,6-Tribromophenol	54.3	Limit: 22-142		% Rec		11/22/23 1210	12/02/23 1555	SCB

Results in **bold** have exceeded a limit defined for this project. Limits are provided for reference but as regulatory limits change frequently, Microbac Laboratories, Inc. advises the recipient of this report to confirm such limits and units of concentration with the appropriate Federal, state or local authorities before acting on the data.

Definitions

%:	Percent
% (by wt.):	Percent by Weight
mg/L:	Milligrams per Liter
Q3:	LCS recovery is below acceptance limits. The reported value is estimated.
RL:	Reporting Limit
ug/L:	Micrograms per Liter
ug/mL:	Micrograms per Milliliter
Y:	This analyte is not on the laboratory's current scope of accreditation.

Project Requested Certification(s)

Microbac Laboratories Inc., - Marietta, OH
10861

NY State Department of Health

Microbac Laboratories, Inc., Pittston Division
12150

New York State Department of Health

Report Comments

Samples were received in proper condition and the reported results conform to applicable accreditation standard unless otherwise noted.

The data and information on this, and other accompanying documents, represents only the sample(s) analyzed. This report is incomplete unless all pages indicated in the footnote are present and an authorized signature is included. The services were provided under and subject to Microbac's standard terms and conditions which can be located and reviewed at <https://www.microbac.com/standard-terms-conditions>.

Reviewed and Approved By:

Joseph Palanza
Project Manager

Reported: 12/14/2023 11:46



3821 Buck Drive
Cortland, NY 13045
607.753.3403

2369 Elmira Street, Suite C
Sayre, PA 18840
570.888.0169

1620 North Main Avenue
Scranton, PA 18508
570.348.0775

4359 Linglestown Road
Harrisburg, PA 17112
717.651.9700

CHAIN OF CUSTODY RECORD

Number

Instructions on back

TO BE COMPLETED BY MICROBAC

Temperature Upon Receipt (°C) 3.6

Therm ID 7

Holding Time

Samples Received on Ice? Yes No N/A

Custody Seals Intact? Yes No N/A

Turnaround Time

[] Routine (5 to 7 business days)

[] RUSH* (notify lab)

(needed by)

Report Type

[] Results Only [] Level 1 [] Level 2 [] Level 3 [] Level 4 [] EDD

Lab Report Address

Client Name: Town of Windsor

Address: 124 MAIN ST

City, State, Zip: Windsor NY 13865

Contact: Don Sherwood

Telephone No.: 607 321 1117

Invoice Address

Client Name: Town of Windsor

Address: 124 MAIN ST

City, State, Zip: Windsor NY 13865

Contact:

Telephone No.: 607 655 2026

Send Report via: [] Mail [] Fax [] e-mail (address)

Send Invoice via: [] Mail [] Fax [] e-mail (address)

Project:

Location: Red Beds

PO No.:

Compliance Monitoring? [] Yes [] No
() Agency/Program

Sampled by (PRINT):

Sampler Signature: [Signature]

Sampler Phone No.: 607 321 1117

* Matrix Types: Soil/Solid (S), Sludge, Oil, Wipe, Drinking Water (DW), Groundwater (GW), Surface Water (SW), Waste Water (WW), Other (specify)

** Preservative Types: (1) HNO3, (2) H2SO4, (3) HCl, (4) NaOH, (5) Zinc Acetate, (6) Methanol, (7) Sodium Bisulfate, (8) Sodium Thiosulfate, (9) Hexane, (U) Unpreserved

REQUESTED ANALYSIS

Lab ID	Client Sample ID	Date Collected	Time Collected	No. of Containers	Matrix	Grab / Comp	Preservative Types **	Additional Notes
	TCLP / % Solid	11-6-23	9:00 AM	2		Gr		

Possible Hazard Identification [] Hazardous [] Non-Hazardous [] Radioactive

Comments

Need TCLP and % Solid
for our Red Bed an
THANKS

Relinquished By (signature)

Relinquished By (signature)

Relinquished By (signature)

Sample Disposition [] Dispose as appropriate [] Return [] Archive

Date/Time

11-6-23 9:35 AM

Date/Time

Date/Time

Received By (signature)

11-6-23

Received By (signature)

Received By (signature)

Date/Time

14:10

Date/Time

Date/Time

11/6/23 1748

Page of





Microbac Laboratories, Inc., Pittston Division

CERTIFICATE OF ANALYSIS

T3K0762

Town of Windsor

Project Name: Monthly Wastewater

Don Sherwood
124 Main ST
Windsor, NY 13865

Project / PO Number: N/A
Received: 11/06/2023
Reported: 11/28/2023

Analytical Testing Parameters

Client Sample ID: Reed Beds
Sample Matrix: Solid
Lab Sample ID: T3K0762-01

Collected By: Don Sherwood
Collection Date: 11/06/2023 9:00

Analyses Performed by: Microbac Laboratories Inc., - Marietta, OH

General Parameters	Result	Limit(s)	RL	Units	Note	Prepared	Analyzed	Analyst
Method: ASTM D2216-10								
Percent Solids	20.4		1.00	% (by wt.)	Y	11/10/23 1335	11/13/23 0350	LJM

Results in **bold** have exceeded a limit defined for this project. Limits are provided for reference but as regulatory limits change frequently, Microbac Laboratories, Inc. advises the recipient of this report to confirm such limits and units of concentration with the appropriate Federal, state or local authorities before acting on the data.

Definitions

% (by wt.): Percent by Weight
RL: Reporting Limit
Y: This analyte is not on the laboratory's current scope of accreditation.

Project Requested Certification(s)

Microbac Laboratories Inc., - Marietta, OH
10861
Microbac Laboratories, Inc., Pittston Division
12150

NY State Department of Health
New York State Department of Health

Report Comments

Samples were received in proper condition and the reported results conform to applicable accreditation standard unless otherwise noted.

The data and information on this, and other accompanying documents, represents only the sample(s) analyzed. This report is incomplete unless all pages indicated in the footnote are present and an authorized signature is included. The services were provided under and subject to Microbac's standard terms and conditions which can be located and reviewed at <https://www.microbac.com/standard-terms-conditions>.

Reviewed and Approved By:

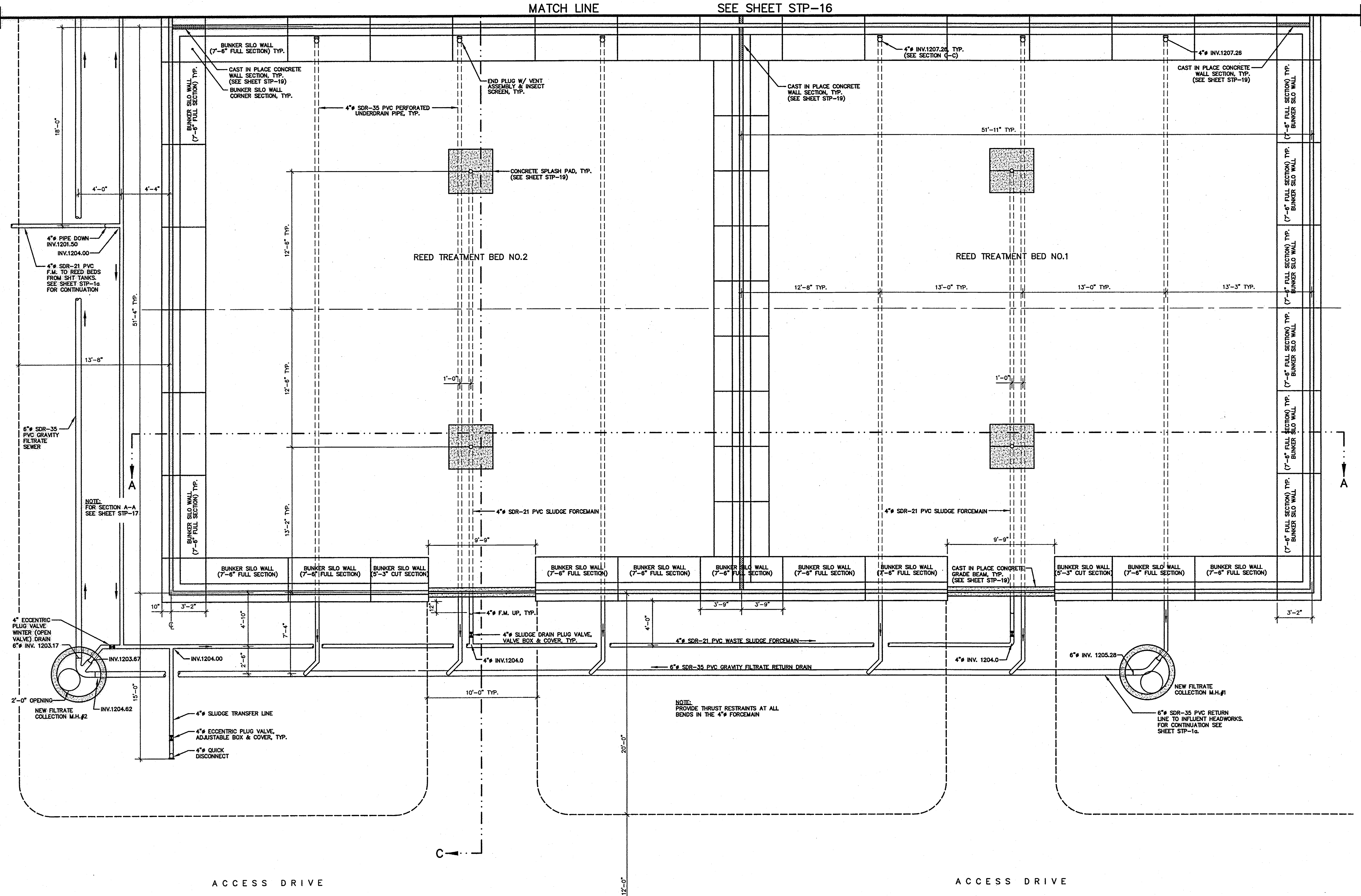
Shannon Weeks

Shannon Weeks
Customer Relationship Coordinator
Reported: 11/28/2023 18:41

DRAWINGS

MATCH LINE

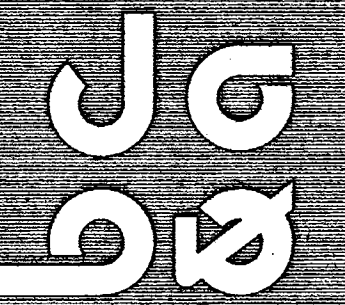
SEE SHEET STP-16



PLAN VIEW-REED SLUDGE TREATMENT BEDS
SCALE 1/4"=1'-0"

THE BERNIER CARR GROUP

BERNIER, CARR & ASSOCIATES, P.C. • MACH ARCHITECTURE + ENGINEERING, P.C.
engineers • architects • planners • surveyors • construction managers



NEW REED SLUDGE TREATMENT BEDS NO.1 & NO.2 PLAN

TOWN OF WINDSOR
WEST WINDSOR SEWER DISTRICT
WASTEWATER TREATMENT FACILITY PROJECT
Town of Windsor- County of Broome - State of New York

Revisions:

- 1/23/2008, DEC SUBMITTAL
- 6/20/2008, DEC SUBMITTAL
- 11/18/2008, DEC SUBMITTAL
- 1/27/2009, BID SET
- 1/7/2011, RECORD DRAWINGS

THE CONTRACTOR SHALL FIELD VERIFY ALL DIMENSIONS AT THE SITE & NOTIFY THE ENGINEER IN WRITING OF ANY DISCREPANCIES.

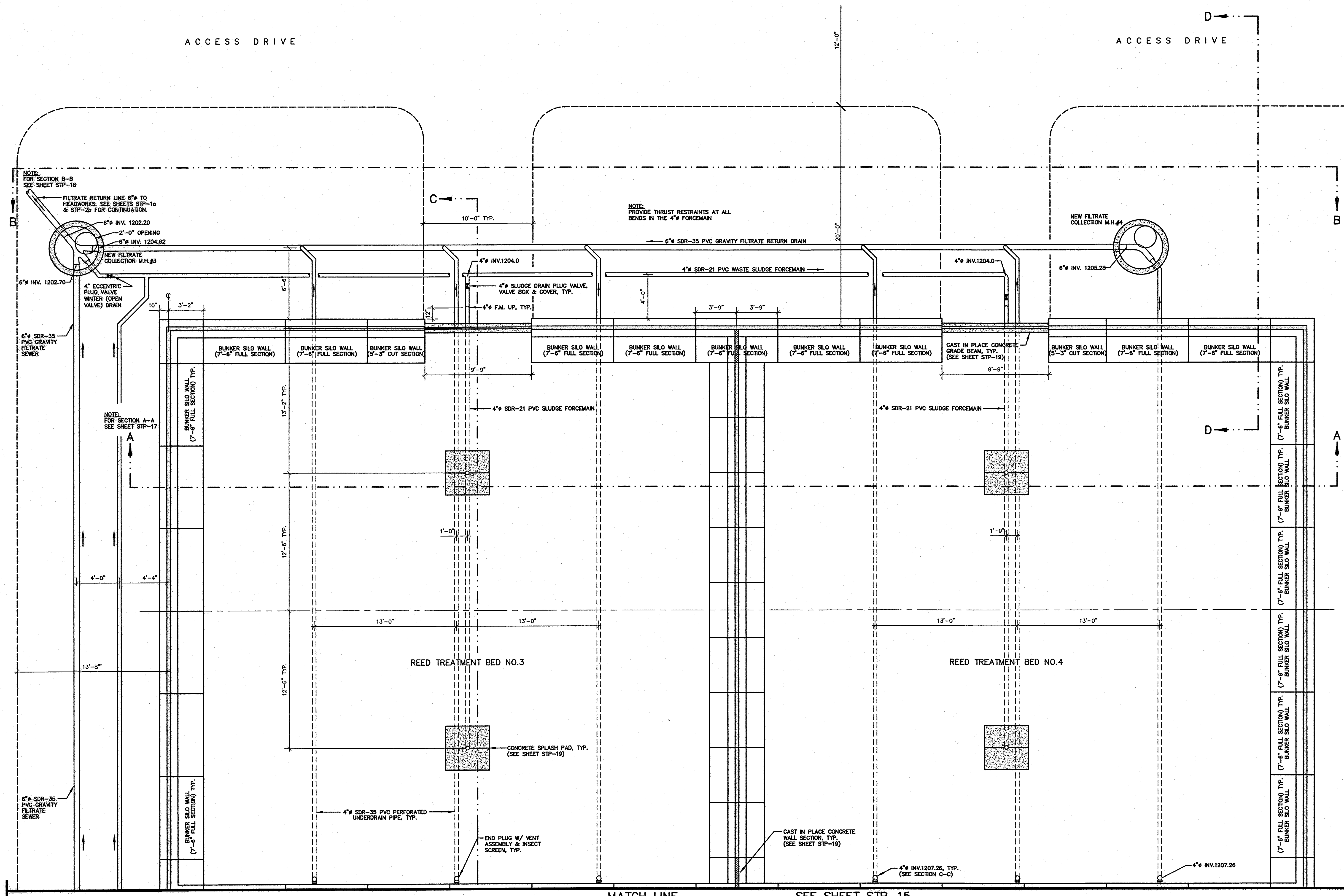
Drawn By: JBC
Scale: AS NOTED
File No.: 2004-168
Checked By: RJC
Date: 2/7/2007
Sheet No.: 168

RECORD DRAWINGS

THESE DRAWINGS HAVE BEEN REVISED TO REFLECT MAJOR CHANGES, IF ANY, WHICH OCCURRED DURING CONSTRUCTION. REVISIONS ARE BASED UPON INFORMATION FURNISHED BY THE CONTRACTOR.

DATE 2/10/11 PER *[Signature]*

STP-15



THE BERNIER CARR GROUP

BERNIER, CARR & ASSOCIATES, P.C. • MACH ARCHITECTURE + ENGINEERING, P.C.

engineers • architects • planners • surveyors • construction managers

NEW REED SLUDGE TREATMENT BEDS NO.3 & NO.4 PLAN

TOWN OF WINDSOR

WEST WINDSOR SEWER DISTRICT

WASTEWATER TREATMENT FACILITY PROJECT

Town of Windsor- County of Broome - State of New York

STP-16

Revisions:

- 1.) 1/23/2008, DEC SUBMITTAL
- 2.) 6/20/2008, DEC SUBMITTAL
- 3.) 11/18/2008, DEC SUBMITTAL
- 4.) 1/27/2009, BID SET
- 5.) 1/7/2011, RECORD DRAWINGS

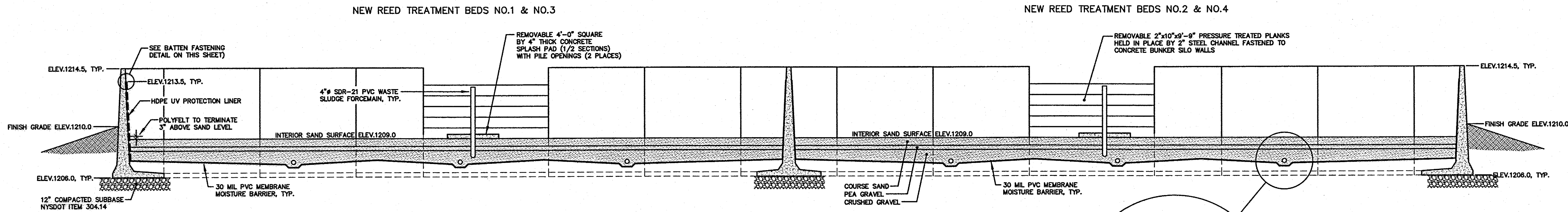
THE CONTRACTOR SHALL FIELD VERIFY ALL DIMENSIONS AT THE SITE & NOTIFY THE ENGINEER IN WRITING OF ANY DISCREPANCIES.

Drawn By JBC	Checked By RJC
Scale AS NOTED	Date 2/7/2007
File No. 2004-168	
Sheet No.	

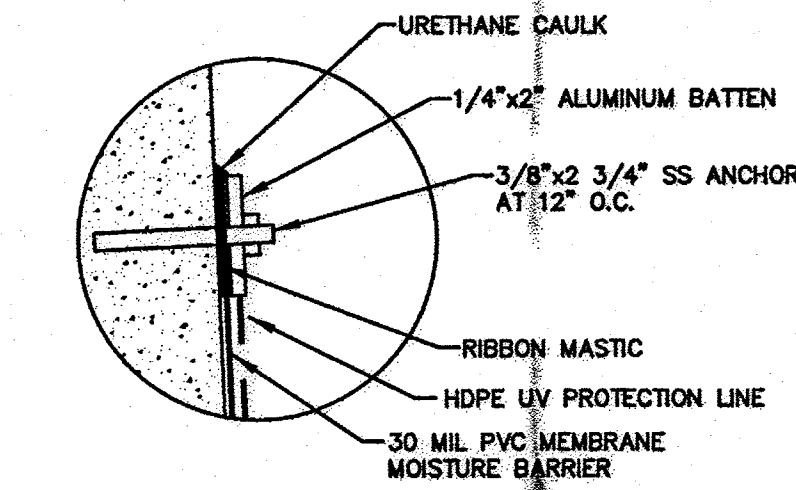
RECORD DRAWINGS

THESE DRAWINGS HAVE BEEN REVISED TO REFLECT MAJOR CHANGES, IF ANY, WHICH OCCURRED DURING CONSTRUCTION. REVISIONS ARE BASED UPON INFORMATION FURNISHED BY THE CONTRACTOR.

DATE 2/10/11 PER Michal Lehman



SECTION A-A - REED SLUDGE TREATMENT BEDS
SCALE 1/4"=1'-0"



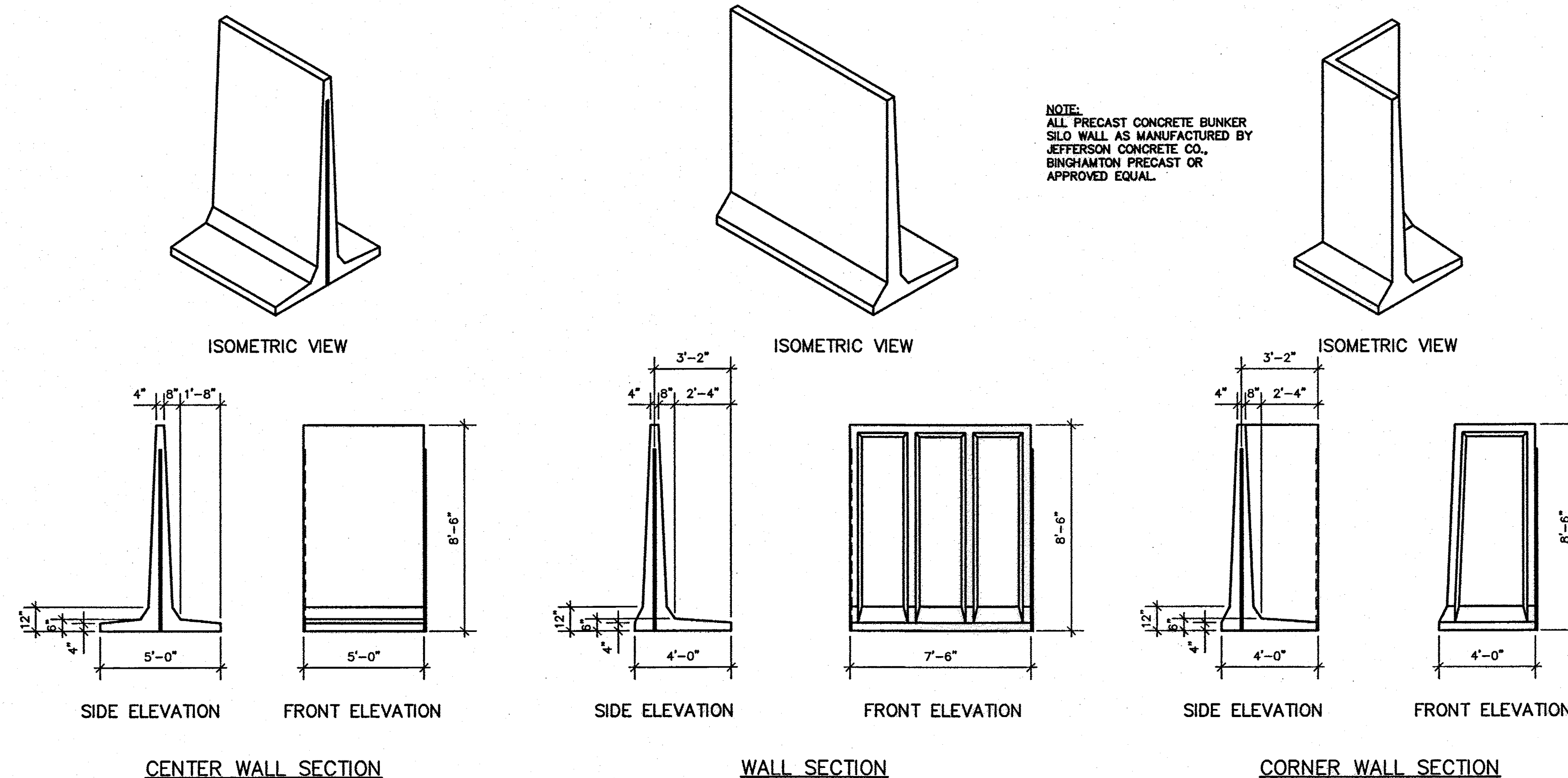
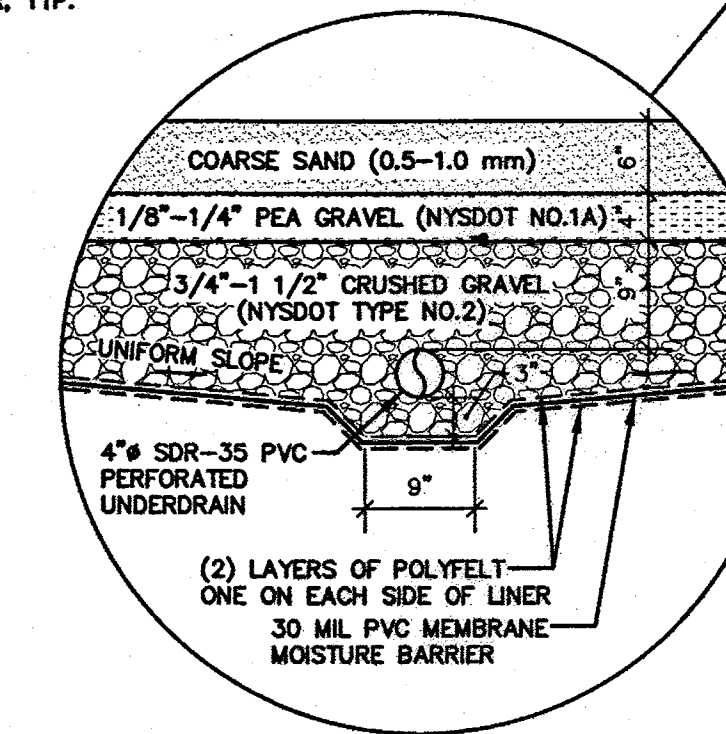
BATTEN FASTENING DETAIL
NOT TO SCALE (ALL INTERIOR WALLS)

NOTES:

1. CONTRACT NO.1 SHALL FURNISH AND INSTALL ENTIRE REED SLUDGE TREATMENT BED SYSTEM INCLUDING PRECAST (STEEL REINFORCED) CONCRETE WALLS, REMOVABLE PLANK/ACCESS OPENINGS, 4" WASTE SLUDGE FORCE MAIN PIPING TO BEDS, 4" UNDERDRAIN PIPING, 6" FILTRATE COLLECTION PIPING, CONCRETE MANHOLE ASSEMBLY, CONCRETE SPLASH PADS, STONE ACCESS RAMPS, CLEANOUTS, VENTS, PVC MEMBRANE AND PROTECTION LINER, ALL FILTER MEDIA AGGREGATES, MATERIALS TESTING, AND VALVING.
2. CONTRACTOR (CONTRACT NO.1) SHALL FURNISH AND INSTALL BURIED 4" PLUG VALVES COMPLETE WITH ADJUSTABLE VALVE BOX, BOX COVER AND VALVE STEM KEY OPERATOR.
3. CONTRACTOR (CONTRACT NO.1) SHALL BE RESPONSIBLE FOR HANDLING, PLACING AND CONNECTING ALL PRECAST CONCRETE SILO BUNKER WALL UNITS IN STRICT ACCORDANCE WITH THE MANUFACTURER'S REQUIREMENTS FOR SITE PREPARATION AND INSTALLATION.
4. CONTRACTOR NO.1 SHALL BE RESPONSIBLE FOR FURNISHING & PLANTING OF REEDS. SEE SPEC. SECTION 44 4616.

NOTES:

1. ALL CRUSHED GRAVEL (FILTER BEDS) SHALL BE "WASHED" FREE OF SILT AND FINES PRIOR TO PLACEMENT IN UNDERDRAIN SYSTEM. IN STRICT ACCORDANCE WITH SPECIFICATION SECTION 44 4616.
2. THE CONTRACTOR SHALL FURNISH AND INSTALL A 30 MIL PVC LINER (AS MANUFACTURED BY ENVIRONMENTAL PROTECTION INC., KALESKA, MI., WATERSAVER OR APPROVED EQUAL.) INSTALLATION SHALL BE IN STRICT ACCORDANCE W/ THE MANUFACTURER'S RECOMMENDATIONS. ON EACH SIDE OF THE PVC LINER THE CONTRACTOR SHALL FURNISH AND INSTALL A PROTECTIVE BARRIER OF 8 OUNCE TS-700 POLY FET, WEBTECH OR APPROVED EQUAL. SEE SPECIFICATIONS SECTION 44 4616.
3. PRIOR TO PLACEMENT OF POLYFELT AND PVC MEMBRANE LINER, PREPARED SURFACES MUST BE FREE OF ALL STICKS, STONES AND OTHER SHARP AND PROTRUDING OBJECTS. ALL INSTALLATION REQUIREMENTS OR RECOMMENDATIONS OF PVC LINER MANUFACTURER MUST BE ADHERED TO. THE CONTRACTOR SHALL UTILIZE FACTORY TRAINED INSTALLERS IN THE PVC LINER INSTALLATION PROCESS.
4. THE PVC LINER SHALL BE INSTALLED IN MANNER WHICH PROVIDES A WATER-TIGHT SYSTEM (DEVOID OF ANY LEAKAGE). ALL PENETRATION BOOTING OF PIPES AND SEAM WELDING, LAPPING, ETC. SHALL BE IN STRICT ACCORDANCE WITH LINER MANUFACTURER REQUIREMENTS.



BUNKER SILO WALL DETAILS
NOT TO SCALE

NOTE:
ALL CONCRETE TO BE MIN. 4000 PSI AT 28 DAYS
AIR ENTRAINMENT 5% - 8%
REINFORCEMENT ASTM A615/A497

RECORD DRAWINGS

THESE DRAWINGS HAVE BEEN REVISED TO REFLECT MAJOR CHANGES, IF ANY, WHICH OCCURRED DURING CONSTRUCTION. REVISIONS ARE BASED UPON INFORMATION FURNISHED BY THE CONTRACTOR.

DATE 2/10/11 PER *Michael J. Lehman*

NEW REED SLUDGE TREATMENT BEDS SECTION & DETAILS

TOWN OF WINDSOR
WEST WINDSOR SEWER DISTRICT
WASTEWATER TREATMENT FACILITY PROJECT
Town of Windsor- County of Broome - State of New York

Revisions:
1.) 1/23/2008, DEC SUBMITTAL
2.) 6/20/2008, DEC SUBMITTAL
3.) 11/16/2008, DEC SUBMITTAL
4.) 1/27/2009, BID SET
5.) 1/7/2011, RECORD DRAWINGS

THE CONTRACTOR SHALL FIELD VERIFY ALL DIMENSIONS AT THE SITE & NOTIFY THE ENGINEER IN WRITING OF ANY DISCREPANCIES.

Drawn By JBE	Checked By RJC
Scale AS NOTED	Date 2/7/2007

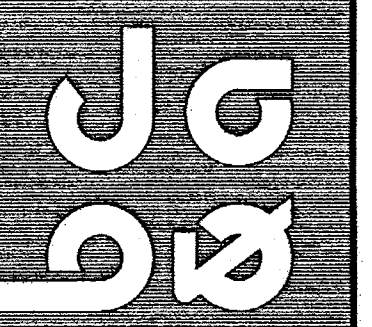
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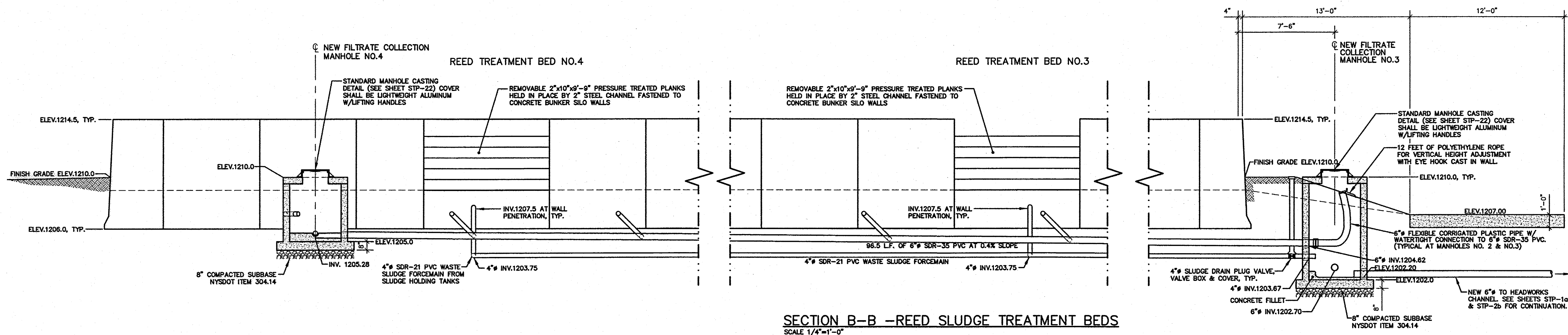
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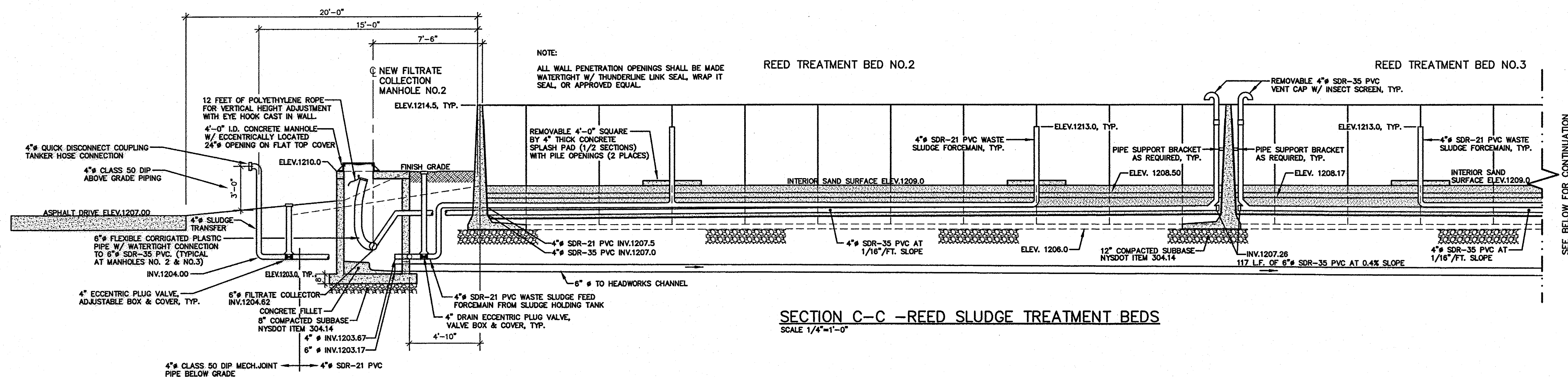
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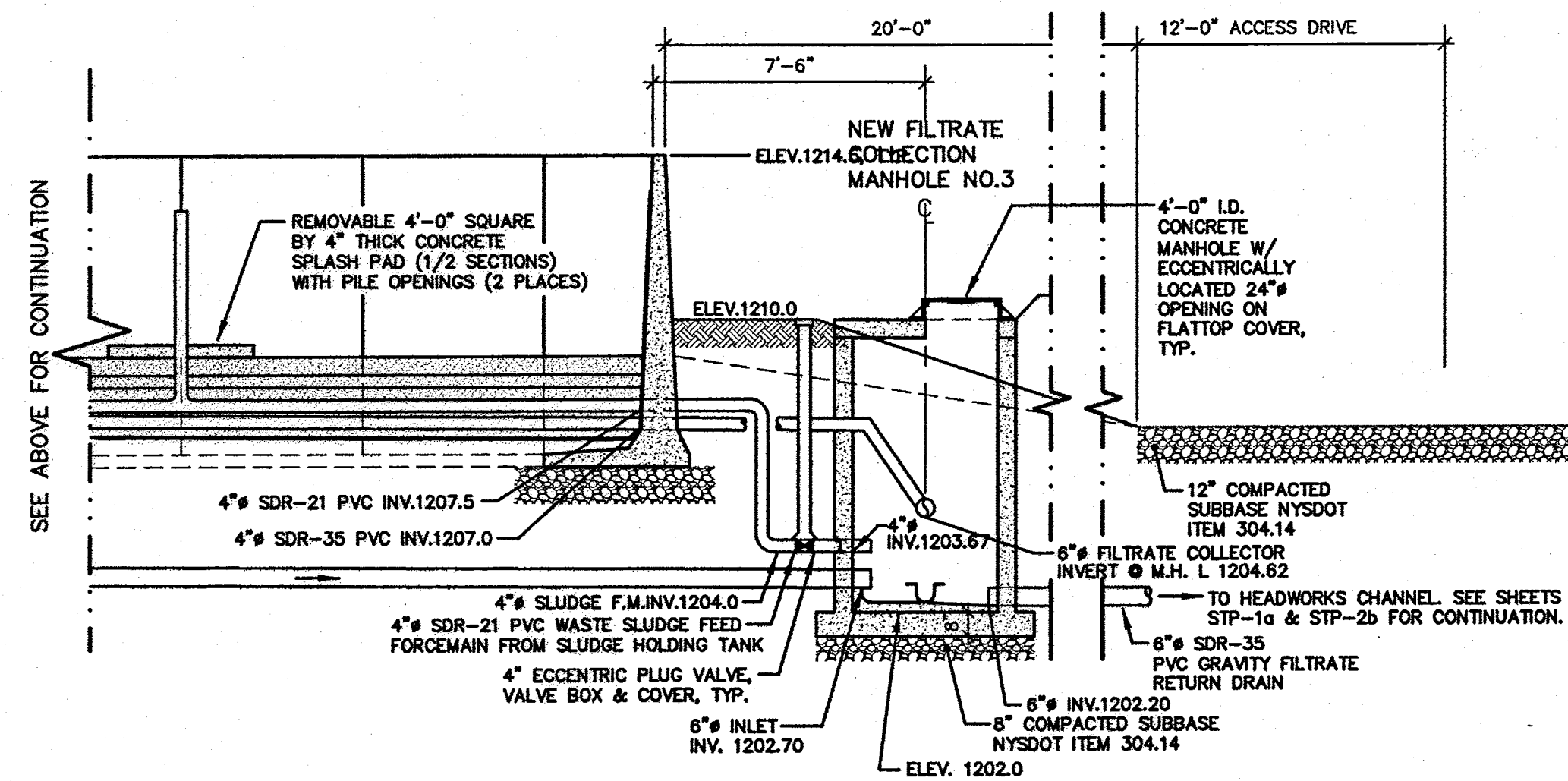
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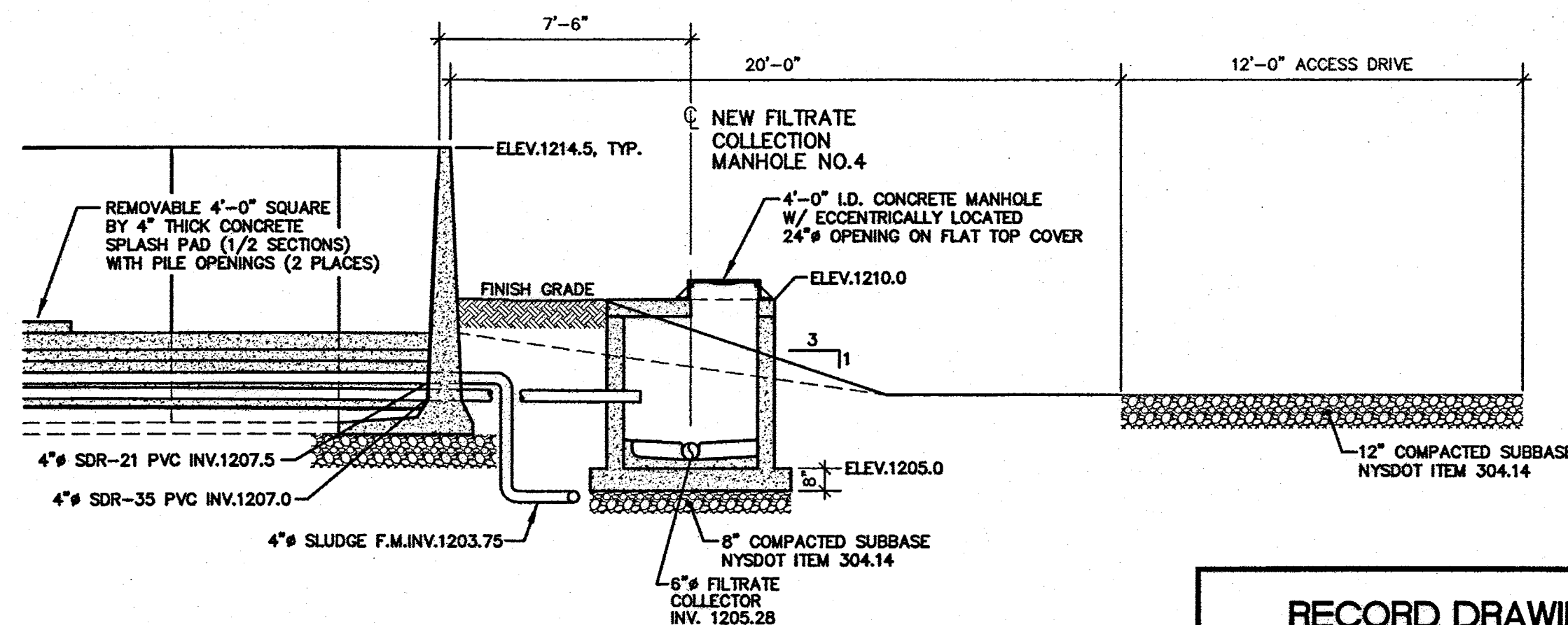
SECTION B-B - REED SLUDGE TREATMENT BEDS
SCALE 1/4\"/>



SECTION C-C - REED SLUDGE TREATMENT BEDS
SCALE 1/4\"/>



SECTION C-C - REED SLUDGE TREATMENT BEDS
SCALE 1/4\"/>



SECTION D-D - REED SLUDGE TREATMENT BEDS
SCALE 1/4\"/>

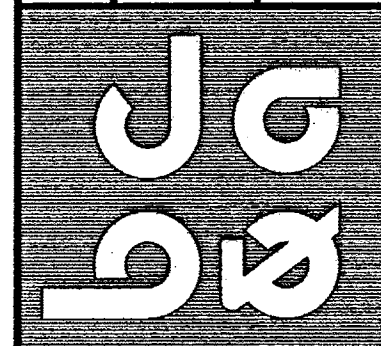
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DATE 2/10/11 PER *[Signature]*

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