C. GENERAL CONDITIONS

May 2015

GENERAL CONDITIONS

Index

1. Contract and Contract Documents
2. Definitions
3. Additional Instructions and Detail Drawings
4. Shop or Setting Drawings
5. Materials, Services, Facilities and Workmanship
6. Contractor's Title to Materials
7. Inspection and Testing of Materials
8. “Or Equal” Clause, Substitutions, and Contractor Options
9. Patents
10. Surveys
11. Contractor's Obligations
12. Weather Conditions
13. Protection of Work and Property
14. Inspection
15. Reports, Records and Data
16. Superintendence by Contractor
17. Extra Work and Change Orders
18. Time for Completion and Liquidated Damages
19. Defective Work
20. Differing Site Conditions
21. Claims for Extra Cost
22. Right of Owner to Terminate Contract
23. Construction Schedule and Periodic Estimates
24. Payments to Contractor
25. Acceptance and Final Payment
26. Payments by Contractor
27. Insurance
28. Contract Security
29. Additional or Substitute Bond
30. Assignments
31. Mutual Responsibility of Contractors
32. Subcontracting
33. Authority of the Engineer and His Representatives
34. Stated Allowances
35. Use of Premises, Removal of Debris, Sanitary Conditions
36. Quantities of Estimate
37. Lands and Rights-of-Way
38. General Guaranty
39. Errors and Inconsistencies in Contract Documents
40. Notice and Service Thereof
41. Required Provisions Deemed Inserted

GENERAL CONDITIONS

42. Protection of Lives and Health
43. OSHA Construction Safety Program
44. Equal Employment Opportunity
45. Interest of Federal, State or Local Officials
46. Other Prohibited Interests
47. Use and Occupancy Prior to Acceptance
48. Suspension of Work
49. [Reserved]
50. [Reserved]
51. [Reserved]
52. Project Sign
53. [Reserved]
54. Public Convenience and Traffic Control
55. Pre-Construction Conference
56. Maintenance During construction
57. Cooperation with Utilities
58. Work Performed at Night, and on Sundays and Holidays
59. Laws to be Observed
60. Permits
61. Control of Pollution
62. Use of Explosives
63. Arbitration by Mutual Agreement
64. Taxes
65. Separate Contracts

GENERAL CONDITIONS

1. Contract and Contract Documents. The plans, information for bidders, bids, advertisement for bids, bid payment and performance bonds, Agreements, change orders, notice to proceed, specifications and addenda, hereinafter enumerated in the Agreement, shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or cast light on the interpretation of the provisions to which they refer.

2. Definitions.

2.1 "Addenda" means written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the Contract Documents, drawings and specifications, by additions, deletions, clarifications or corrections. Such written or graphic instruments will be issued no less than five days before the bid opening.

2.2 "Bid" means the offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the work to be performed.

2.3 "Bidder" means any person, firm or corporation submitting a bid for the work.

2.4 "Bonds" means bid, performance, and payment bonds and other instruments of security, furnished by the Contractor and his surety in accordance with the Contract Documents.

2.5 "Change Order" means a written order to the Contractor authorizing an addition, deletion or revision in the work within the general scope of the Contract Documents, or authorizing an adjustment in the Contract Price or Contract Time.

2.6 "Contract Documents" means the Contract, including any advertisement for bids, information for bidders, bid, bid bond, Agreement, payment bond, performance bond, notice of award, notice to proceed, change orders, drawings, specifications and addenda.

2.7 "Contract Price" means the total monies payable to the Contractor under the terms and conditions of the Contract Documents.

2.8 "Contract Time" means the number of calendar days stated in the Contract Documents for the completion of the Work.

2.9 "Contractor" means the person, firm or corporation with whom the Owner has executed the Agreement.

2.10 "Division" means the state of New Hampshire Department of Environmental Services, Water Division.

2.11 “Drawings” mean the part of the Contract Documents which show the characteristics and scope of the work to be performed and which have been prepared or approved by the Engineer.

2.12 “Engineer” means the person, firm or corporation named as such in the contract documents.

2.13 “Field order” means a written order effecting a change in the work not relating to an adjustment in the contract price or an extension of the contract time and issued by the Engineer to the Contractor during construction.

2.14 “Notice of Award” means the written notice of the acceptance of the Bid from the Owner to the successful Bidder.

2.15 “Notice to Proceed” means the written communication issued by the Owner to the Contractor authorizing him to proceed with the Work and establishing the date of commencement of the Work.

2.16 “Owner” means a public or quasi-public body or authority, corporation, association, partnership, or individual for whom the work is to be performed.

2.17 “Plans” means the contract drawings or exact reproductions thereof which show the scope, character, dimensions and details of the work and which have been prepared or approved by the Engineer.

2.18 “Project” means the undertaking to be performed as provided in the Contract Documents.

2.19 “Resident Project Representative” means the authorized representative of the Owner who is assigned to the Project site or any part thereof.

2.20 “Shop Drawings” means all drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a Subcontractor, manufacturer, supplier or distributor, which illustrates how specific portions of the Work shall be fabricated or installed.

2.21 “Special conditions” means revisions or additions to these general conditions, Supplemental General Conditions or specifications applicable to an individual project.

2.22 “Specifications” means a part of the contract documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.

2.23 “Subcontractor” means an individual, firm or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the site.

2.24 “Substantial Completion” means that date as certified by the Engineer when the construction of the Project or a specified part thereof is sufficiently completed, in

accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it is intended.

2.25 "Supplemental General Conditions" means modifications to these general conditions required by a Federal agency for participation in the PROJECT and approved by the agency in writing prior to inclusion in the CONTRACT DOCUMENTS, or such documents that may be imposed by applicable State laws.

2.26 "Supplier" means any person or organization who supplies materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the site.

2.27 "Work" means all labor necessary to produce the construction required by the contract documents, and all materials and equipment incorporated or to be incorporated in the project.

2.28 "Written Notice" means any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the Work.

3. Additional Instructions and Detail Drawings. The Contractor may be furnished additional instructions and detail drawings as necessary to carry out the work included in the contract. The additional drawings and instructions thus supplied to the Contractor will coordinate with the contract documents and will be so prepared that they can be reasonably interpreted as part thereof.

4. Shop or Setting Drawings. Shop or setting drawings shall be in accordance with the following:

4.1 The Contractor shall furnish 6 copies of the manufacturer's shop drawings, specific design data as required in the detailed specifications, and technical literature covering all equipment and fabricated materials which he proposes to furnish under this contract in sufficient detail to indicate full compliance with the specifications. Shop drawings shall indicate the method of installing, the exact layout dimensions of the equipment or materials, including the location, size and details of valves, pipe connections, etc.

4.2 No equipment or materials shall be shipped until the manufacturer's shop drawings and specifications or other identifying data, assuring compliance with these specifications, are approved by the Engineer.

4.3 The Contractor shall check and verify all field measurements and shall be responsible for the prompt submission of all shop and working drawings so that there shall be no delay in the work.

4.4 Regardless of corrections made in or approval given to such drawings by the Engineer, the Contractor will nevertheless be responsible for the accuracy of such

drawings and for their conformity to the plans and specifications. The Contractor shall notify the Engineer in writing of any deviations at the time he furnishes such drawings. He shall remain responsible for the accuracy of the drawings showing the deviations but not for the acceptance of the deviations from the original design shown in the plans and specification. Approval by the Engineer and the Owner of any deviation in material, workmanship or equipment proposed subsequent to approval of the shop drawings or design data, shall be requested in writing by the Contractor.

4.5 When submitted for the Engineer's review, Shop Drawings shall bear the Contractor's certification that he has reviewed, checked and approved the Shop Drawings and that they are in conformance with the requirements of the Contract Documents.

5. Materials, Services, Facilities and Workmanship shall be furnished as follows:

5.1 Except as otherwise specifically stated in the contract documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

5.2 Unless otherwise specifically provided for in the specifications, all workmanship, equipment, materials and articles incorporated in the work shall be new and the best grade of the respective kinds for the purpose.

5.3 The Contractor shall furnish to the Engineer for approval the manufacturer's detailed specifications for all machinery, mechanical and other special equipment, which he contemplates installing together with full information as to type, performance characteristics, and all other pertinent information as required.

5.4 Materials which are specified by reference to the number or symbol of a specific standard, such as an ASTM standard, a federal specification or other similar standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the advertisement for bids, except as limited to type, class or grade, or modified in such reference. The standards referred to shall have full force and effect as though printed therein.

5.5 For equipment or for materials, when requested by the Engineer, the Contractor shall submit certificates of compliance from the manufacturer, certifying that the equipment or the materials comply with the requirements of the specifications or the standards.

5.6 Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

5.7 Materials, supplies, and equipment shall be in accordance with samples submitted by the Contractor and approved by the Engineer.

6. Contractor's Title To Materials. No material, supplies, or equipment to be installed or furnished under this contract shall be purchased subject to any chattel mortgage or under a conditional sale, lease purchase or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. The Contractor shall warrant good title to all materials, supplies, and equipment installed or incorporated in the work and upon completion of all work, shall deliver the same together with all improvements and appurtenances constructed or placed thereon by him to the Owner free from any claims, liens, or charges. Neither the Contractor nor any person, firm or corporation furnishing any material or labor for any work covered by this contract shall have any right to a lien upon any improvement or appurtenance thereon. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any bond given by the Contractor for their protection or any rights under any law permitting such persons to look to funds due the Contractor in the hands of the Owner. The provisions of this paragraph shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials for the work when formal contract is entered into for such materials.

7. Inspection and Testing of Materials shall be as follows:

7.1 All materials and equipment used in the construction of the project shall be subject to inspection and testing by the Engineer in accordance with accepted standards at any and all times during manufacture or during the project construction and at any or all places where such manufacture is carried on.

7.2 The Contractor shall furnish promptly upon request by the Engineer, all materials required to be tested. All tests made by the Engineer shall be performed in such manner and ahead of scheduled installation, as not to delay the work of the Contractor. When required, testing of concrete, masonry, soils, pipe and pipe materials will be made in accordance with provisions in the specifications.

7.3 Material required to be tested which is delivered to the job site shall not be incorporated into the work until the tests have been completed and approval or acceptance given in writing by the Engineer.

7.4 Each sample submitted by the Contractor for testing shall carry an identification label containing such information as is requested by the Engineer. It shall also include a statement that the samples are representative of the remaining materials to be used on the project.

7.5 Approval of any materials shall be general only and shall not constitute a waiver of the Owner's right to demand full compliance with the contract requirements.

7.6 The Engineer may, at his own discretion, undertake the inspection of materials at the source. In the event plant inspection is undertaken, the following conditions shall be met:

a. The Engineer shall have the cooperation and assistance of the Contractor and the producer with whom he has contracted for materials.

b. The Engineer shall have full entry at all reasonable times to such areas as may concern the manufacture or production of the materials being furnished.

c. If required, the Contractor shall arrange for a building for the use of the inspector; such building to be located near the plant, independent of any building used by the material producer, in which to house and use the equipment necessary to carry on the required tests. Cost for such arrangement shall be paid by the Owner as a stated allowance in the bid.

d. Adequate safety measures shall be provided and maintained at all times.

7.7 Except as otherwise specifically stated in the contract, the costs of sampling and testing will be divided as follows:

a. The Contractor shall furnish the Engineer, without extra cost, all samples required for testing purposes. All sampling and testing including the number and selection of samples shall be determined by the Engineer for his own information and use.

b. When testing of materials is specified in the appropriate section of the specifications, the cost of the same shall be charged to the Owner or Contractor, as detailed in the specifications. However, costs of equipment performance tests shall be borne by the Contractor, as detailed in the appropriate section of the specifications.

c. When the Contractor proposes a material, article or component as equal to the ones specified, reasonable tests may, or may not, be required by the Engineer. If the Engineer requires tests of a proposed equal item, the Contractor will be required to assume all costs of such testing.

d. Any material, article or component which fails to pass tests required by the Engineer or by the specifications, will be rejected and shall be removed from the project site. However, if, upon request of the Contractor, retesting or further tests are permitted by the Engineer, the Contractor shall assume all costs related to such retesting or further tests.

e. Neither the Owner nor the Engineer will in any way be charged for the manufacturer's costs in supplying certificates of compliance.

7.8 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested or approved by someone other than the Contractor, the Contractor will give the Engineer

timely notice of readiness. The Contractor will then furnish the Engineer with the required certificates of inspection, testing or approval.

7.9 Inspections, tests, or approvals by the engineer or others shall not relieve the Contractor from obligations to perform the Work in accordance with the requirements of the Contract Documents.

8. "Or Equal" Clause, Substitutions and Contractor Options.

8.1 Whenever a material, article, or piece of equipment is identified on the plans or in the specifications by reference to manufacturer's or vendor's names, trade names, catalogue numbers, etc., it is intended merely to establish a standard of quality and performance. Any material, article, or equipment of other manufacturers and vendors, which will perform satisfactorily the duties imposed by the general design, shall be considered equally acceptable provided the material, article, or equipment so proposed is, in the opinion of the Engineer, of equal quality and function. The Engineer shall determine equality based on such information, tests, or other supporting data that may be required of the Contractor.

8.2 Upon acceptance and approval by the Engineer of an equal product, it shall remain the responsibility of the Contractor to coordinate installation of the item with all other items to be furnished to assure proper fitting together of all items. Similar responsibility applies to items which are left to the Contractor's option. Any additional cost of equal items and any additional cost incidental to the coordination and/or fitting together of such items shall be borne by the Contractor at no extra cost to the Owner.

8.3 If a specified or equal item is not available to meet the construction schedule, the Contractor may propose a substitute item of less than equal performance and quality. If this substitute is acceptable to the Engineer, any difference in purchase cost or costs incidental to the installation of such item will be negotiated between the parties to the contract.

8.4 Neither equal nor substitute items shall be installed without written approval of the Engineer.

8.5 The Contractor shall warrant that if substitutes are approved, no major changes in the function or general design of the Project will result.

9. Patents. Patent information is as follows:

9.1 The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the contract documents.

9.2 License and/or royalty fees for the use of a process used in wastewater plant design which is authorized by the Owner for the project, must be reasonable, and paid to the holder of the patent, or his authorized licensee.

9.3 If the Contractor uses any design, device or materials in the construction methods for the project covered by patents or copyrights, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device or material. It is mutually agreed and understood, that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the construction of the work or after completion of the work.

10. Surveys. Surveys of land, property and construction shall be as follows:

10.1 The Owner will provide all land surveys and will establish and locate all property lines relating to the project.

10.2 For structures, the Engineer will establish and stake out one or more base lines as needed and will establish bench marks in and around the project site for the use of the Contractor and for the Engineer's own reference in checking the work in progress. For structures such as pipelines, the Engineer will establish the location of the pipe, manholes and other appurtenances, and will establish bench marks along the route of the pipeline at intervals for the using of the Contractor and for his own reference in checking the pipe and manhole inverts and other elevations throughout the project. The Contractor shall utilize the lines and bench marks established by the Engineer to set up whatever specific detail controls he may need for establishing location, elevation lines and grades of all structures. All this work is subject to checking, approval, and continuous surveillance by the Engineer to avoid error. The Contractor shall provide the Engineer with a qualified man or men to assist in this checking as needed and on request of the Engineer.

10.3 For construction other than pipelines and appurtenances in roadways and cross country, the Contractor shall be responsible for the location and setting lines and grades. The Contractor shall establish the location for pump station and wastewater treatment facility structures, associated yard piping including electrical conduits, internal piping and all equipment. Base lines and benchmarks for setting of the lines and grades for the above shall be provided by the Engineer.

10.4 Protection of stakes. The Contractor shall protect and preserve all of the established baseline stakes, bench marks, or other controls placed by the Engineer. Any of these items destroyed or lost through fault of the Contractor will be replaced by the Engineer at the Contractor's expense.

11. Contractor's Obligations are as follows: The Contractor shall and in good workmanlike manner, do and perform all work and furnish and pay for all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this contract, within the time stated in the proposal in accordance with the plans and drawings covered by this contract, and any and all supplemental plans and drawings, in accordance with the directions of the Engineer as given from time to time during the progress of the work, whether or not he considers the direction in accordance with the terms of the contract. He shall furnish, erect, maintain and remove such construction plant and such temporary works as may be required. The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the contract documents, and shall do, carry on and complete the entire work to the satisfaction of the Engineer and Owner.

    Contractor shall carry on the work and adhere to the progress schedule during all disputes, disagreements or unresolved claims with the Owner. No work shall be delayed or postponed pending the resolution of any disputes, disagreements, or claims except as the Owner and Contractor may otherwise agree in writing.

12. Weather Conditions. In the event of temporary suspension of work, or during inclement weather, or whenever the Engineer shall direct, the Contractor and his Subcontractors shall protect their work and materials against damage or injury from the weather. If, in the opinion of the Engineer, any work or material shall have been damaged or injured by reason of failure on the part of the Contractor or any of his Subcontractors to so protect his work, such materials shall be removed and replaced at the expense of the Contractor.

13. Protection of Work and Property shall be provided as follows:

    13.1 The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this contract. He shall at all times safely guard and protect his own work, and that of adjacent property, from damage. The Contractor shall replace or make good any such damage, loss or injury unless caused directly by errors contained in the contract, or by the Owner, or his authorized representatives. The Contractor will notify owners of adjacent utilities when prosecution of the Work may affect them.

    13.2 The Contractor shall take all necessary precautions for the safety of employees on the work site, and shall comply with all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed. He shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of the workmen and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, trenches and other excavations, and falling materials, and he shall designate a responsible member of his organization on the work, whose duty shall be the prevention of accidents. The name and position of any person so designated shall be reported to the

Engineer by the Contractor. The person so designated shall be available by phone during nonworking hours.

13.3 In case of emergency which threatens loss or injury of property, and/or safety of life, the Contractor is allowed to act, without previous instructions from the Engineer. He shall notify the Engineer immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted in writing to the Engineer for approval.

13.4 When the Contractor has not taken action but has notified the Engineer of an emergency threatening injury to persons or damage to the work or any adjoining property, he shall act as instructed or authorized by the Engineer.

13.5 The intention is not to relieve the Contractor from acting, but to provide for consultations between Engineer and Contractor in an emergency which permits time for such consultations.

13.6 The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in Article 17 (extra work and change orders) of the general conditions.

14. Inspection of work for conformance with plans and specifications.

14.1 For purposes of inspection and for any other purpose, the Owner, the Engineer, and agents and employees of the Division or of any funding agency may enter upon the work and the premises used by the Contractor, and the Contractor shall provide safe and proper facilities therefore. The Engineer shall be furnished with every facility for ascertaining that the work is in accordance with the requirements and intention of this contract, even to the extent of uncovering or taking down portions of finished work.

14.2 During construction and on its completion, all work shall conform to the location, lines, levels and grades indicated on the drawings or established on the site by the Engineer and shall be built in a workmanlike manner, in accordance with the drawings and specifications and the supplementary directions given from time to time by the Engineer. In no case shall any work which exceeds the requirements of the drawings and specifications be paid for as extra work unless ordered in writing by the Engineer.

14.3 Unauthorized work and work not conforming to plans and specifications shall be handled as follows:

a. Work considered by the Engineer to be outside of or different from the plans and specifications and done without instruction by the Engineer, or in wrong location, or done without proper lines or levels, may be ordered by the Engineer to be uncovered or dismantled.

b. Work done in the absence of the Engineer or his agent may be ordered by the Engineer to be uncovered or dismantled.

c. Should the work thus exposed or examined prove satisfactory, the uncovering or dismantling and the replacement of material and rebuilding of the work shall be considered as "Extra Work" to be processed in accordance with article 17.

d. Should the work thus exposed or examined prove to be unsatisfactory the uncovering or dismantling and the replacement of material and rebuilding of the work shall be at the expense of the Contractor.

15. Reports, Records and Data shall be furnished as follows: The Contractor shall submit to the Owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as are required by the Contract Documents or as the Owner, Division or any funding agency may request concerning work performed or to be performed under this contract.

16. Superintendence by Contractor shall be furnished as follows: At the site of the work, the Contractor shall employ a competent construction superintendent or foreman who shall have full authority to act for the Contractor. The superintendent or foreman shall have been designated in writing by the Contractor as the Contractor's representative at the site. It is understood that such representative shall be acceptable to the Engineer and shall be the one who can be continued in that capacity for the particular job involved unless he ceases to be on the Contractor's payroll. Such representative shall be present on the site at all times as required to perform adequate supervision and coordination of the Work.

17. Extra Work and Change Orders shall be processed as follows:

17.1 The Engineer may at any time by written order and without notice to the sureties require the performance of such extra work or changes in the work as may be found necessary. The amount of compensation to be paid to the Contractor for any extra work so ordered shall be made in accordance with one or more of the following methods in the order of precedence listed below:

a. A price based on unit prices previously approved; or

b. A lump sum price agreed upon between the parties and stipulated in the order for the extra work;

c. A price determined by adding 15 percent to the "reasonable cost" of the extra work performed, such "reasonable cost" to be determined by the Engineer in accordance with the following paragraph.

17.2 The Engineer shall include the reasonable cost to the Contractor of all materials used, of all labor, both common and skilled, of foreman, trucks, and the fair-market rental rate for all machinery and equipment for the period employed directly on the work. The reasonable cost for extra work shall include the cost to the Contractor of any additional

insurance that may be required covering public liability for injury to persons and property, the cost of workmen's compensation insurance, federal social security, and any other costs based on payrolls, and required by law. The cost of extra work shall not include any cost or rental of small tools, buildings, or any portion of the time of the Contractor, his project supervisor or his superintendent, as assessed upon the amount of extra work, these items being considered covered by the 15 percent added to the reasonable cost. The reasonable cost for extra work shall also include the premium cost, if any, for additional bonds and insurance required because of the changes in the work.

17.3 In the case of extra work which is done by Subcontractors under the specific contract, or otherwise if so approved by the Engineer, the 15 percent added to the reasonable cost of the work will be allowed only to the Subcontractor. On such work an additional percentage of the reasonable cost (before addition of the 15 percent) will be paid to the Contractor for his work in directing the operations of the Subcontractor, for administrative supervision, and for any overhead costs. Such percentage shall be in accordance with the following schedule: reasonable cost up to and including $50,000—10 percent; next $50,000 to and including $100,000—7½ percent; greater than $100,000—5 percent.

17.4 The Engineer may authorize minor changes or alterations in the work not involving extra cost and not inconsistent with the overall intent of the contract documents. These shall be accomplished by a written field order. However, if the Contractor believes that any minor change or alteration authorized by the Engineer entitles him to an increase in the contract price, he may make a claim therefore as provided in article 21.

18. Time For Completion and Liquidated Damages. The following paragraphs address time for completion and liquidated damages:

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

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

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

18.4 The liquidated damages amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing

and ascertaining the actual damages the Owner would in such event sustain. Said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be deducted from time to time by the owner from current periodical payments.

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

a. A preference, priority or allocation order duly issued by the government;

b. An unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather;

c. Any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article:

18.6 The Contractor shall promptly notify the Owner in writing of the causes of the delay. The Owner shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of his decision in the matter.

19. Defective Work. Defective work shall be processed as follows:

19.1 The Contractor shall promptly remove from the premises all materials and work condemned by the Engineer as failing to meet contract requirements, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute his own work in accordance with the contract and without expense to the Owner and shall bear the expense of making good all work of other Contractors which was destroyed or damaged by such removal or replacement.

19.2 All removal and replacement work shall be done at the Contractor's expense. If the Contractor does not take action to remove such condemned work and materials within 10 days after receipt of written notice, the Owner may remove them and store the material at the expense of the Contractor. If the Contractor does not pay the expense of such removal and storage within 10 days time thereafter, the Owner may, upon 10 days written notice, sell such materials at auction or at private sale and shall pay to the Contractor any net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

20. Differing Site Conditions. Claims for differing site conditions shall be processed as follows:

20.1 The Contractor shall promptly and before such conditions are disturbed, notify the Engineer in writing of:

a. Subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or,

b. Unknown physical conditions at the site, differing materially from those ordinarily encountered and generally recognized as inherent in the type of work provided for in this contract.

20.2 The Engineer shall promptly investigate the conditions. If he finds that conditions differ materially and will cause an increase or decrease in the Contractor's cost or the time required to perform any part of the work under this contract whether or not changed as a result of such conditions, the Engineer shall make an equitable adjustment and modify the contract in writing.

20.3 No claim of the Contractor under this clause shall be allowed unless the Contractor has given proper notice as required in paragraph 20.1 of this clause.

20.4 No claim by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

21. Claims For Extra Cost. Claims for extra cost shall be processed as follows:

21.1 No claim for extra work or cost shall be allowed unless the same was done pursuant to a written order by the Engineer, approved by the Owner and the claim presented for payment with the first estimate after the changed or extra work is done. When work is performed under the terms of article 17, the Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost when requested by the Owner and shall allow the Owner access to accounts relating thereto.

21.2 If the Contractor claims that any instructions by drawings or similar documents issued after the date of the contract involve extra cost under the contract, he shall give the Engineer written notice after the receipt of such instruction and before proceeding to execute the work, except in an emergency which threatens life or property, then the procedure shall be as provided for under article 17, “Extra Work & Change Orders.” No claim shall be valid unless so made.

22. Right of Owner to Terminate Contract:

22.1 In the event that any of the provisions of this contract are violated by the Contractor, or by any of his Subcontractors, the Owner may serve written notice upon the Contractor and the surety of its intention to terminate the contract, and unless within 10 days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement for correction be made, the contract shall, upon the expiration of said 10 days cease and terminate. In the event of any such termination, the Owner shall immediately serve notice thereof upon the surety and the Contractor and the surety shall have the right to take over and perform the contract; provided, however, that if the surety does not commence performance thereof within 10 days from the date of the mailing to such surety of notice of termination, the Owner may take over the work and prosecute the same to completion by contract or by force account for the account and at the expense of the Contractor and the Contractor and his surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner

may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

22.2 If the Contractor should be adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should refuse or should fail, except in cases for which extensions of time are provided, to supply enough skilled workmen or materials, or if he should fail to make payments to Subcontractors or for material or labor, so as to affect the progress of the work, or be guilty of a violation of the contract, then the Owner, upon the written notice of the Engineer that sufficient cause exists to justify such action may, without prejudice to any other right or remedy and after giving the Contractor and his surety 7 days' written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools, equipment and other facilities installed on the work and paid for by the Owner, and finish the work by whatever method he may deem expedient. In the case of termination of this contract before completion from any cause whatever, the Contractor, if notified to do so by the Owner, shall promptly remove any part or all of his equipment and supplies at the expense of the Contractor. If such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner as herein provided, and the damage incurred through the Contractor's default, shall be approved by the Engineer.

22.3 Where the contract has been terminated by the Owner, said termination shall not affect or terminate any of the rights of the Owner as against the Contractor or his surety then existing or which may thereafter accrue because of such default. Any retention or payment of monies by the Owner due the Contractor under the terms of the contract, shall not release the Contractor or his surety from liability for his default.

22.4 After ten (10) days from delivery of a Written Notice to the Contractor and the Engineer, the Owner may, without cause and without prejudice to any other remedy, elect to abandon the Project and terminate the Contract. In such case the Contractor shall be paid for all Work executed and any expense sustained plus reasonable profit.

22.5 If through no act or fault of the Contractor, the Work is suspended for a period of more than ninety (90) days by the Owner or under an order of court or other public authority, or the Engineer fails to act on any request for payment within thirty (30) days after it is submitted, or the Owner fails to pay the Contractor substantially the sum approved by the Engineer or awarded by arbitrators within thirty (30) days of its approval and presentation, then the Contractor may, after ten (10) days from delivery of a Written Notice to the Owner and the Engineer terminate the Contract and recover from the Owner payment for all Work executed and all expenses sustained. In addition and in lieu of terminating the Contract, if the Engineer has failed to act on a request for payment or if the Owner has failed to make any payment as aforesaid, the Contractor may upon ten (10) days written notice to the Owner and the Engineer stop the Work until paid all amounts then due, in which event and upon resumption of the Work Change Orders shall be issued for adjusting the Contract Price or Extending the Contract Time or both to compensate for the costs and delays attributable to the stoppage of the Work.

22.6 If the performance of all or any portion of the Work is suspended, delayed, or interrupted as a result of failure of the Owner or Engineer to act within the time specified in the Contract Documents, or if no time is specified, within a reasonable time, an adjustment in the Contract Price or an extension of the Contract Time, or both, shall be

made by Change Order to compensate the Contractor for the costs and delays necessarily caused by the failure of the Owner or Engineer.

23. Construction Schedule and Periodic Estimates shall provide for the following:

23.1 Before starting the work or upon request by the Engineer during its progress, the Contractor shall submit to the Engineer a work plan showing construction methods and the various steps he intends to take in completing the work.

23.2 Before the first partial payment is made, the Contractor shall prepare and submit to the Engineer:

a. A written schedule fixing the dates for submission of drawings; and

b. A written schedule fixing the respective dates for the start and completion of segments of the work. Each such schedule shall be subject to review and change during the progress of the work.

c. Respective dates for submission of Shop Drawings and for the beginning of manufacture, the testing, and the installation of materials, supplies, and equipment.

d. A schedule of payments that the Contractor anticipates will be earned during the course of the Work.

24. Payments to Contractor. Payments to the Contractor shall be made as follows:

24.1 Progress payments. The Owner will once each month make a progress payment to the Contractor on the basis of an estimate of the total amount of work done to the time of the estimate and its value as prepared by the Contractor and approved by the Engineer.

24.2 Retainage by Owner. The Owner will retain a portion of the progress payment, each month, in accordance with the following procedures:

a. The Owner will establish an escrow account in the bank of the Owner's choosing. The account will be established such that interest on the principal will be paid to the Contractor. The principal will be the accumulated retainage paid into the account by the Owner. The principal will be held by the bank, available only to the Owner, until termination of the contract.

b Until the work is 50% complete, as determined by the Engineer, retainage shall be 10% of the monthly payments claimed. The computed amount of retainage will be deposited in the escrow account established above.

c. After the work is 50% complete, and provided the Contractor has satisfied the Engineer in quality and timeliness of the work, and provided further that there is no specific cause for withholding additional retainage no further amount will be withheld. The escrow account will remain at the same balance throughout the remainder of the project, unless drawn upon by the Owner in accordance with articles 19, 22, and 58.

d. Upon substantial or final completion (as defined in article 25), the amount of retainage will be reduced to 2% of the total Contract Price plus an additional retainage based on the Engineer's estimate of the fair value of the punch list items and the cost of completing and/or correcting such items of work, with specified amounts for each incomplete or defective item of work. As these items are completed or corrected, they shall be paid for out of the retainage until the entire project is declared completed (See article 25). The final 2% retainage shall be held during the one-year warranty period and released only after the Owner has accepted the project.

24.3 In reviewing monthly estimates for payments of the value of work done, the Engineer may accept in the estimate, prior to subtracting the retainage, the delivered cost of certain equipment and nonperishable material which have been delivered to the site or off-site location and which are properly stored and protected from damage. With the estimate, the Contractor shall submit to the Engineer invoices as evidence that the material has been delivered to the site. Prior to submitting the next monthly estimate, the Contractor shall provide the Engineer with paid invoices or other evidence that the materials have been paid for. If the Contractor fails to submit such evidence, the Engineer may then subtract the value of such materials or equipment for which the Owner has previously paid, from the next monthly estimate. The type of equipment and material eligible for payment prior to being incorporated in the work will be at the Engineer's discretion. Material and equipment made specifically for the subject job will be eligible for payment.

24.4 All material and work for which partial payments have been made shall thereupon become the sole property of the Owner. This provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or for the restoration of any damaged work, or as a waiver of the right of the Owner to require compliance with all of the terms of the contract.

24.5 Owner's right to withhold payments and make application. The Contractor agrees that he will indemnify and save the Owner or the Owner's agents harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, material men, and furnishers of machinery and parts, equipment, power, tools and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all claims of the nature hereinabove designated have been paid, discharged, or waived. If the Contractor fails to do so, then the Owner may, upon written notice to the Contractor either pay unpaid bills of which the Owner has written notice directly, or withhold from the Contractor's unpaid compensation a sum of money to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged. Payment to the Contractor shall then be resumed in accordance with the terms of this contract but in no event shall the above provisions be construed to impose any obligations upon the Owner to either the Contractor or his surety or any third party. In paying any unpaid bills of the Contractor, the Owner shall be deemed the agent of the Contractor, and any payment so made by the Owner shall be considered as payment made under contract by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

24.6 If the Owner fails to make payment forty-five (45) days after approval by the Engineer, in addition to other remedies available to the Contractor, there shall be added to

each such payment interest at an annual rate of 10% commencing on the first day after said payment is due and continuing until the payment is received by the Contractor.

25. Acceptance and Final Payment provisions shall be as follows:

25.1 Substantial completion and payment.

a. Substantial completion shall be that point, as certified by the Engineer, at which the contract has been completed to the extent that the Owner may occupy and/or make use of the work performed for the purposes for which it was intended. Upon substantial completion there may be minor items, such as seeding, landscaping, etc., yet to be completed or items of work to be corrected.

b. Upon receipt of written notice from the Contractor that the work is substantially complete, the Engineer shall promptly make an inspection, and when he finds the work complies with the terms of the contract and the contract is substantially completed, he will issue a signed and dated certificate, and a list of all items to be completed or corrected, stating that the work required by this contract has been substantially completed and is accepted by him.

c. Upon substantial completion, the entire balance due and payable to the Contractor less 2 percent of the Contract Price, and less a retention based on the Engineer's estimate of the fair value for the cost of completing or correcting listed items of work with specified amounts for each incomplete or defective item of work shall be made.

d. The general guarantee period for the work shall begin on the date certified by the Engineer that the work is substantially completed.

25.2 Final completion shall be that point at which all work has been completed and all defective work has been corrected. Unless the Engineer has issued a certificate of substantial completion, the general guarantee period shall begin upon certification by the Engineer of final completion.

25.3 At the end of the general guarantee period for the entire contract which has been certified finally completed or substantially completed, the Owner, through the Engineer, shall make a guarantee inspection of all or portions of the work. When it is found that the work is satisfactory and that no work has become defective under the terms of the contract, the Owner will accept the entire project and make final payment, including the reimbursement of monies retained pursuant to the guarantee period.

25.4 If the guarantee inspection discloses any work as being unsatisfactory, the Engineer will give the Contractor the necessary instructions for correction of such work, and the Contractor shall immediately execute such instructions. Upon correction of the work, another inspection will be made which shall constitute the guarantee inspection, provided the work has been satisfactorily completed.

25.5 Before issuance of final payment, the Contractor shall certify in writing to the Engineer that all payrolls, material bills, and other indebtedness connected with the work have been paid or otherwise satisfied; except that in case of disputed indebtedness or liens, if the contract does not include a payment bond, the Contractor may submit in lieu of certification of payment a surety bond in the amount of the disputed indebtedness or

liens, guaranteeing payment of all such disputed amounts, including all related costs and interest in connection with said disputed indebtedness or liens which the Owner may be compelled to pay upon adjudication.

25.6 If upon substantial completion, full completion is delayed through no fault of the Contractor, and the Engineer so certifies, the Owner may, upon certificate of the Engineer, and without termination of the contract, make payment of the balance due for that portion of the work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

25.7 The acceptance by the Contractor of final payment shall release the Owner from all claims and all liability to the Contractor for all things relating to this work and for every act and neglect of the Owner and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations of the performance and payment bond under this contract.

26. Payments by Contractor. The Contractor shall pay the costs:

26.1 For all transportation and utility services not later than the 20th day of the calendar month following that in which services are rendered;

26.2 For all materials, tools, and other expendable equipment to the extent of 90 percent of the cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools and equipment are delivered at the site of the work and the balance of the cost thereof not later than the 30th day following the completion of that part of the work in or on which such materials, tools and equipment are incorporated or used; and

26.3 To each of his Subcontractors, not later than the 5th day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the work performed by his Subcontractors to the extent of each Subcontractor's interest therein.

27. Insurance. The Contractor and any Subcontractor shall obtain all the insurance required under this article and such insurance shall be approved by the Owner.

27.1 The Contractor and all Subcontractors shall procure and shall maintain during the life of this contract workmen's compensation insurance as required by applicable state law. The Contractor shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance.

Limits of Liability: $100,000 each accident;
$500,000 disease - policy limit;
$100,000 disease - each employee.

27.2 The Contractor shall procure and shall maintain during the life of this contract Commercial General liability insurance to include contractual liability, explosion, collapse and underground coverages.

Limits of liability: $1,000,000 each occurrence bodily injury and property damage;
$2,000,000 general aggregate - include per project aggregate endorsement;
$2,000,000 products/completed operations aggregate.

If blasting or demolition or both is required by the contract, the Contractor or Subcontractor shall obtain the respective coverage and shall furnish the Engineer a certificate of insurance evidencing the required coverages prior to commencement of any operations involving blasting or demolition or both.

27.3 The Contractor shall procure and shall maintain during the life of this contract comprehensive automobile liability insurance to include all motor vehicles including owned, hired, borrowed and non-owned vehicles.

Limits of liability: $1,000,000 combined single limit for bodily injury and property damage.

27.4 The Contractor shall either:

a. Require each of his Subcontractors to procure and to maintain during the life of his subcontract commercial general liability insurance and comprehensive automobile liability insurance of the type and in the amounts specified in articles 27.2 and 27.3; or

b. Insure the activities of his Subcontractors in his policy.

27.5 The required insurance shall provide adequate protection for the Contractor and his Subcontractors, respectively, against damage claims which may arise from work under this contract, whether such work be by the insured or by anyone employed by him and also against any of the special hazards which may be encountered in the performance of this contract.

27.6 The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. Such insurance shall not be canceled or materially altered, except after 10 days written notice has been received by the Owner.

27.7 For builder's risk insurance (fire and extended coverage) and until the work is completed and accepted by the Owner, the Contractor is required to maintain builder's risk type insurance on a 100 percent completed value basis on the insurable portion of the work for the benefit of the Owner, the Contractor, and Subcontractors as their interests may appear.

27.8 The Contractor shall take out and furnish to the Owner and maintain during the life of this contract, complete Owner's protective liability insurance.

Limits of Liability: $1,000,000 each occurrence;
$2,000,000 aggregate.

28. Contract Security. The Contractor shall within ten (10) days after the receipt of the Notice of Award furnish the Owner with a performance bond and a payment bond in penal sums equal to the amount of the contract price conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions and agreements of the Contract Documents, and upon the prompt payment by the Contractor to all persons supplying labor and materials in the prosecution of the Work provided by the contract Documents. Such Bonds shall be executed by the Contractor and a corporate bonding company licensed to transact business in the state in which the Work is to be performed

and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these Bonds shall be borne by the Contractor.

29. Additional or Substitute Bond. If at any time a surety on any such Bond is declared as bankrupt or loses its right to do business in the state in which the Work is to be performed, or is removed from the list of Surety Companies accepted on Federal Bonds, the Contractor shall within ten (10) days after notice from the Owner to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished such an acceptable bond to the Owner.

30. Assignments. The Contractor shall not assign the whole or any part of this contract or any monies due or to become due hereunder without written consent of the Owner. In case the Contractor assigns all or any part of any monies due or to become due under this contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in this contract.

31. Mutual Responsibility of Contractors. If, through acts of neglect on the part of the Contractor, any other Contractor or any Subcontractor shall suffer loss or damage on the work site, the Contractor agrees to settle with such other Contractor or Subcontractor by agreement or arbitration if such other Contractor or Subcontractors will so settle. If such other Contractor or Subcontractors shall assert any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the Contractor, who shall indemnify and save harmless the Owner against any such claim.

32. Subcontracting. When subcontracting, the Contractor:

32.1 May utilize the services of specialty Subcontractors on those parts of the work which, under usual contracting practices, are performed by specialty Subcontractors.

32.2 Shall be as fully responsible to the Owner for the acts and omissions of his Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

32.3 Shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind Subcontractors to the Contractor by the terms of the contract documents insofar as applicable to the work of Subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.

32.4 Shall not create any contractual relation between any Subcontractor and the Owner.

32.5 Shall not award Work to Subcontractor(s), in excess of fifty percent (50%) of the Contract Price, without prior written approval of the Owner.

33. Authority of the Engineer. In performing his duties, the Engineer or his representative shall:

33.1 Have the authority to suspend the work in whole or in part for such periods as he may deem necessary due to the failure of the Contractor to carry out provisions of the Contract or for failure of the Contractor to suspend work in weather conditions considered by the Engineer to be unsuitable for the prosecution of the work. The Engineer shall give all orders and directions under this contract, relative to the execution of the work. The Engineer shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this contract and shall decide all questions which may arise in relation to the work. The Engineer's estimates and decisions shall be final and conclusive, except as otherwise provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decision of the Engineer shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this contract affected to any extent by such question. The Engineer shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found unclear. Any differences or conflicts in regard to their work which may arise between the Contractor under this contract and other Contractors performing work for the Owner shall be adjusted and determined by the Engineer.

a. The purpose of the above article is not in any way to relieve the Contractor of his responsibilities for the safety of workmen or general public in the execution of the work. Attention is drawn to Article 13 of these Conditions which refers to the safety obligations of the Contractor.

b. The Engineer, acting on behalf of the Owner, has the authority to enforce corrective action for work not in accordance with the specifications.

c. In addition, the Engineer, acting on behalf of the Owner, is to ensure that the work is in accordance with the Contract documents. He is not held responsible, however, for the methods of construction, sequences, schedules and procedures in the execution of the work. The Engineer does have the opportunity under 33.1 to reject the method of construction, work plan schedule, procedures, as he thinks appropriate.

33.2 Appoint assistants and representatives as he desires, and they shall be granted full access to the work under the contract. They have the authority to give directions pertaining to the work, to approve or reject materials, to suspend any work that is being improperly performed, to make measurements of quantities, to keep records of costs, and otherwise represent the Engineer in all matters except as provided below. The Contractor may, however, appeal from their decision to the Engineer himself, but any work done pending its resolution is at the Contractor's own risk. Except as permitted and instructed by the Engineer, the assistants and representatives are not authorized to revoke, alter, enlarge, relax, or release any requirements of these specifications, nor to issue instructions contrary to the plans and specifications. They are not authorized to act as superintendents or foremen for the Contractor, or to interfere with the management of the work by the Contractor. Any advice which the assistants or representatives of the Engineer may give the Contractor shall not be construed as binding the Engineer or the Owner in any way, nor as releasing the Contractor from the fulfillment of the terms of the contract. All transactions between the Contractor and the representatives of the Engineer which are liable to protest or where payments are involved shall be made in writing.

34. Stated Allowances. The Contractor shall include in his proposal for costs of materials not shown in his bid under "cash allowances" or "allowed materials," any cash allowances stated in the supplemental general conditions or other contract documents. The Contractor shall purchase the "allowed materials" as directed by the Owner on the basis of the lowest and best bid of at least 3 competitive bids. If the actual price for purchasing the "allowed materials" is more or less than the "cash allowance," the contract price shall be adjusted accordingly. The adjustment in contract price shall be made on the basis of the purchase price without additional charges for overhead, profit, insurance or any other incidental expenses. The cost of installation of the "allowed materials" shall be included in the applicable sections of the contract specifications covering this work.

35. Use of Premises, Removal of Debris, Sanitary Conditions. In the use of premises or removal of debris, the Contractor expressly undertakes at his own expense: to take every precaution against injuries to persons or damage to property; to maintain sanitary conditions; to store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not interfere with the progress of his work or the work of any other Contractors; to place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work; to clean up frequently all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the site of the work shall present an orderly and workmanlike appearance; before final payment to remove all surplus material falsework, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations, and to put the site in an orderly condition; to effect all cutting, fitting or patching of his work required to make the same conform to the plans and specifications and, except with the consent of the Engineer, not to cut or otherwise alter the work of any other Contractor; to provide and maintain in a sanitary condition such toilet accommodations for the use of his employees as may be necessary to comply with the requirements of the state and local boards of health, or of other bodies or authorities having jurisdiction.

36. Quantities of Estimate. Wherever the estimated quantities of work to be done and materials to be furnished under this contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right is specifically reserved except as herein otherwise specifically limited, to increase or decrease them as may be deemed reasonably necessary by the Owner to complete the work contemplated by this contract, and such increase or decrease shall in no way invalidate this contract, nor shall any such increase or decrease give cause for claims or liability for damages. Such increases or decreases shall not exceed 25 percent of the estimated quantities of work. An increase or decrease in quantities for subsurface materials (e.g. ledge, unsuitable backfill), which overrun or underrun by 25% or more of the bid quantity may be the basis for a contract price adjustment, at the rate of a negotiated adjusted unit rate. Negotiated unit price rates shall be equitable and shall take into account, but not be limited to the following factors; bid unit rate, distribution of rates and bid balance, and the scope of work as affected by the changed quantities. Claims for extra work resulting from changed quantities shall be processed under article 21.

37. Lands and Rights-of-Way. Acquisition and usage of lands and rights-of-way shall be as follows:

37.1 Prior to issuing the Notice to Proceed, the Owner shall legally obtain all lands and rights-of-way necessary for carrying out and completing the work to be performed under this contract.

37.2 The Contractor shall not (except after written consent from the Owner) enter or occupy with men, tools, materials, or equipment, any land outside the rights-of-way or property of the Owner. A copy of the written consent shall be given to the Engineer.

37.3 The Owner shall provide to the Contractor information which delineates and describes the lands owned and the rights-of-way acquired.

37.4 The Contractor shall provide at its own expense and without liability to the Owner any additional land and access thereto that the Contractor may desire for temporary construction facilities, or for storage of materials.

38. General Guarantee. With reference to warranties, neither the final certificate of payment nor any provision in the contract documents, nor partial or entire occupancy of the premises by the Owner, shall constitute an acceptance of work not done in accordance with the contract documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which appear within the warranty period one year or longer if required by the contract, from the certified date of completion or substantial completion of the work. The Owner will give notice of observed defects within two working days of their discovery.

39. Errors and Inconsistencies. With reference to errors and inconsistency in contract documents, any provisions in any of the contract documents which may be in conflict with the paragraphs in these general conditions shall be subject to the following order of precedence for interpretation:

39.1 Drawings will govern technical specifications.

39.2 General conditions will govern drawings and technical specifications.

39.3 Supplemental general conditions will govern general conditions, drawings and technical specifications.

39.4 Special conditions will govern supplemental general conditions, general conditions, drawings and technical specifications.

39.5 The Contractor shall take no advantage of any apparent error or omission in the plans or specifications. In the event the Contractor discovers such an error or omission, he shall notify the Engineer. The Engineer will then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the plans and specifications.

39.6 Figure dimensions on Drawings shall govern over general drawings.

40. Notice and Service Thereof. Any notice to the Contractor from the Owner relative to any part of this contract will be in writing and will be considered delivered and the service completed, when said notice is mailed, by certified registered mail, to the Contractor at

his last given address, or delivered in person to the Contractor or his authorized representative on the work.

41. Required Provisions Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not correctly inserted (example; miswording, etc.), then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

42. Protection of Lives and Health. The work under this contract is subject to the safety and health regulations (CRF 29, part 1926, and all subsequent amendments) as promulgated by the U.S. Department of Labor on June 24, 1974. Contractors are urged to become familiar with the requirements of these regulations.

43. OSHA Construction Safety Program.

43.1 Pursuant to NHRSA 277:5-a, the Contractor shall provide an Occupational Health and Safety Administration (OSHA) 10-hour construction safety program for its on-site employees. All employees are required to complete the program prior to beginning work. The training program shall utilize an OSHA-approved curriculum. Graduates shall receive a card from OSHA certifying the successful completion of the training program.

43.2 Any employee required to complete the OSHA 10-hour construction safety program, and who can not within 15 days provide documentation of completion of such program, shall be subject to removal from the job site.

43.3 The following individuals are exempt from the requirements of the 10-hour construction safety program: law enforcement officers involved with traffic control or jobsite security; flagging personnel who have completed the training required by the Department of Transportation; all relevant federal, state and municipal government employees and inspectors; and all individuals who are not considered to be on the site of work under the federal Davis-Bacon Act, including, but not limited to, construction and non-construction delivery personnel and non-trade personnel.

44. Equal Employment Opportunity. Under equal employment opportunity requirements and during the performance of this contract the Contractor agrees to the following:

44.1 The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, or sex. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, or sex. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

44.2 The Contractor will in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment, without regard to race, creed, color, national origin, or sex.

44.3 The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or worker's representative of the Contractor's commitment under section 202 of executive order no. 11246 of September 24, 1965, and 11375 of October, 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

44.4 The Contractor will comply with all provisions of executive orders no. 11246 and 11375.

44.5 The Contractor will furnish all information and reports required by executive orders no. 11246 and 11375.

44.6 In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part by the Owner or the Department of Labor and the Contractor may be declared ineligible for further government contracts or federally-assisted construction, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the Department of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

44.7 A breach of this article may be grounds for termination of this contract and for debarment as provided in 29 CFR 5.6.

45. Interest of Federal, State or Local Officials. No federal, state or local official shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

46. Other Prohibited Interests. No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, Engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, Engineer or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

47. Use and Occupancy Prior to Acceptance. Use and occupancy of a portion or unit of the project, upon completion of that portion or unit, and before substantial completion of the project, shall be a condition of this contract with the following provisions:

47.1 The Owner will make his request for use or occupancy to the Contractor in writing.

47.2 There must be no significant interference with the Contractor's work or performance of duties under the contract.

47.3 The Engineer, upon request of the Owner and agreement by the Contractor, will make an inspection of the complete part of the work to confirm its status of completion.

47.4 Consent of the surety and endorsement of the insurance carrier must be obtained prior to use and/or occupancy by the Owner. Also, prior to occupancy, the Owner will secure the required insurance coverage on the building.

47.5 The Owner will have the right to exclude the Contractor from the subject portion of the project after the date of occupancy but will allow the Contractor reasonable access to complete or correct items.

47.6 The warranty period shall begin upon substantial completion.

48. Suspension of Work. The Owner may, at any time and without cause, suspend the work or any portion thereof for a period of not more than 90 days by notice in writing to the Contractor and the Engineer. The Owner shall fix the date on which work shall be resumed. The Contractor will be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to any suspension if he makes a claim therefore as provided in articles 17 and 21.

49. [Reserved]

50. [Reserved]

51. [Reserved]

52. Project Sign. Furnish and erect a sign at the project site to identify the project and to indicate that the State Government is participating in the development of the project. Place the sign in a prominent location as directed by the Engineer. Do not place or allow the placement of other advertising signboards at the project site or along rights-of-way furnished for the project work. See Exhibit 1 for details of construction.

53. [Reserved]

54. Public Convenience and Traffic Control requirements:

54.1 The Contractor shall at all times so conduct his work as to assure minimal obstruction to traffic. The safety and convenience of the general public and the residents along the work site route and the protection of property shall be provided for by the Contractor. The Contractor shall be responsible for timely notification to local residents before causing any interruptions of their access.

54.2 Fire hydrants and water holes for fire protection on or adjacent to the work site shall be kept accessible to fire apparatus at all times, and no obstructions shall be placed within 10 feet of any such facility. No footways, gutters, drain inlets, or portions of highways adjoining the work site shall be obstructed. In the event that all or part of a roadway is officially closed to traffic during construction, the Contractor shall provide and maintain safe and adequate traffic accessibility, satisfactory to the Engineer, for residences and businesses along and adjacent to the roadway so closed.

54.3 When the maintenance of traffic is considered by the Engineer to be minimal, the contract may not show this work as a pay item. In such cases, the Contractor shall bear all expense of maintaining traffic over the sections of road undergoing improvement and of constructing and maintaining such approaches, crossings, intersections, and other features as may be necessary, without direct reimbursement.

55. Pre-Construction Conference. The Contractor shall not commence work until a pre-construction conference has been held at which representatives of the Contractor, Engineer, Division and Owner are present. The pre-construction conference shall be scheduled by the Engineer.

56. Maintenance During Construction.

56.1 The Contractor shall maintain the work during construction and until it is accepted by the Owner. This maintenance shall be continuous and effective work prosecuted day by day, with adequate equipment and forces, to the end that roads or structures are kept in satisfactory condition at all times.

56.2 All cost of maintenance during construction and before the work is accepted by the Owner shall be included in the unit prices bid on the various pay items and the Contractor shall not be paid an additional amount for such maintenance.

56.3 If the Contractor, at any time, fails to comply with the provisions above, the Engineer may direct the Contractor to do so. If the Contractor fails to remedy unsatisfactory maintenance within the time specified by the Engineer, the Engineer may immediately cause the project to be maintained and the entire cost of this maintenance will be deducted from money to become due the Contractor on this contract.

57. Cooperation with Utilities.

57.1 The Owner will notify all utility companies, all pipe line owners, or other parties affected, and have all necessary adjustments of the public or private utility fixtures, pipe lines, and other appurtenances within or adjacent to the limits of construction made as soon as practicable.

57.2 Water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cableways, signals, and all other utility appurtenances within the limits of the proposed construction which are to be relocated or adjusted are to be moved by the owners of such utilities at their expense, except as may otherwise be provided for in the special conditions or as noted on the plans.

57.3 It is understood and agreed that the Contractor has considered in his bid all of the permanent and temporary utility appurtenances in their present or relocated positions as shown on the plans and as evident on the site, and that no additional compensation will be allowed for any delays, inconvenience, damage sustained by him due to any interference from such utility appurtenances or the operation of moving them.

57.4 The Contractor shall cooperate with the Owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication of rearrangements may be reduced to a minimum, and that services rendered by those parties will be minimal.

57.5 In the event of interruption to a water or utility service as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with said authority in the restoration of services. If water service is interrupted, repair work shall be continuous until the service is restored. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority. If any utility service is interrupted for more than 4 hours, the Contractor shall make provisions for temporary service at his own expense until service is resumed.

58. Work Performed at Night and on Sundays and Holidays shall comply with the following:

58.1 No work will be permitted at night or on Sundays or holidays except as approved in writing by the Engineer, and provided such work is not in violation of a local ordinance. When working at night, the Contractor shall provide flood lighting sufficient to insure the same quality of workmanship and the same conditions regarding safety as would be achieved in daylight.

58.2 Whenever Memorial Day or Fourth-of-July is observed on a Friday or a Monday and during the weekend of Labor Day, the Contractor may be required to suspend work for the 3 calendar days. Prior to the close of work, the work site shall be placed in a condition acceptable to the Engineer for the comfort and safety of the traveling public. An arrangement shall be made for responsible personnel acceptable to the Engineer to maintain the project in the above conditions.

59. Laws to be Observed. With reference to laws that shall be observed:

59.1 The Contractor shall keep fully informed of all federal and state laws, all local laws, ordinances, and regulations, and all orders and decrees of tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work. He shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the state and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by himself or his employees.

59.2 Indemnification

The Contractor will indemnify and hold harmless the Owner and the Engineer and their agents and employees from and against all claims, damages, losses, and expenses including attorney's fees arising out of or resulting from the performance of the Work, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the Contractor, and Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

In any and all claims against the Owner or the Engineer, or any of their agents of employees, by any employees of the Contractor, and Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by disability benefit or other employee benefit acts.

The obligation of the Contractor under this paragraph shall not extend to the liability of the Engineer, his agents or employees arising out of the preparation or approval of maps, Drawings, opinions, reports, surveys, Change Orders, designs or Specifications.

60. Permits. Permits to be obtained by the Contractor shall be in accordance with the following:

60.1 Permits and licenses of a temporary nature necessary for the prosecution of the work shall be obtained and paid for by the Contractor. Permits, licenses and easements for permanent structures or permanent changes in existing facilities will be secured and paid for by the Owner. Permits may include:

a. New Hampshire Department of Transportation Highway Trench Permits.

b. RSA 485-A:17 and 483-A N.H. DES Wetlands Bureau Dredge and Fill Permit.

c. RSA 485-A:17 - N.H. DES Site Specific Permit (Water Quality)

d. RSA 149-M:10 N.H. DES Solid Waste Management Bureau - disposal of construction debris and/or demolition waste.

e. N.H. Department of Environmental Services Air Resources Division (burning permits).

f. Other permits, as required by State and Local laws and ordinances.

g. Notice of intent for coverage under EPA's General NPDES Permit for construction dewatering activities.

61. Control of Pollution due to construction shall comply with the following:

61.1 During construction, the Contractor shall take precautions sufficient to avoid the leaching or runoff of polluting substances such as silt, clay, fuels, oils, bitumens, calcium chloride and any other polluting materials which are unsightly or which may be harmful to humans, fish, or other life, into groundwaters and surface waters of the State.

61.2 In waters used for public water supply or used for trout, salmon, or other game or forage fish spawning or nursery, control measures must be adequate to assure that turbidity in the receiving water will be increased not more than 10 standard turbidity units (s.t.u.) in the absence of other more restrictive locally-established limitations, unless otherwise permitted by the Division. In no case shall the classification for the surface water be violated.

61.3 In water used for other purposes, the turbidity must not exceed 25 s.t.u. unless otherwise permitted by the Division.

62. Use of Explosives.

62.1 When the use of explosives is necessary for the prosecution of the Work, exercise the utmost care not to endanger life or property. The Contractor shall be responsible for any and all damage resulting from the use of explosives.

62.2 Store all explosives in a secure manner, in compliance with all State and local laws and ordinances, and legally mark all such storage places. Storage shall be limited to such quantity as may be needed for the work underway.

62.3 Designate as a "Blasting Area" all sites where electric blasting caps are located and where explosive charges are being placed. Mark all blasting areas with signs as required by law. Place signs as required by law from each end of the blasting area and leave in place while the above conditions prevail. Immediately remove signs after blasting operations or the storage of caps is over.

62.4 Notify each property Owner and public utility company having structures in proximity to the site of the work sufficiently in advance to enable the companies to take such steps as they may deem necessary to protect their property. Such notice shall not relieve the Contractor of any of his responsibility for damage resulting from his blasting operation. Warn all persons within the danger zone of blasting operations and do not perform blasting work until the area is cleared. Provide sufficient flagmen outside the danger zone to stop all approaching traffic and pedestrians. Provide watchmen during the loading period and until charges have been exploded. Place adequate protective covering over all charges before being exploded.

63. Arbitration by Mutual Agreement.

63.1 All claims, disputes, and other matters in question arising out of, or relating to, the Contract Documents or the breach thereof, except for claims which have been waived by making an acceptance of final payment as provided in Section 25, may be decided by arbitration if the parties mutually agree. Any agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

63.2 Notice of the request for arbitration shall be filed in writing with the other party to the Contract Documents and a copy shall be filed with the Engineer. Request for arbitration shall in no event be made on any claim, dispute, or other matter in question which would be barred by the applicable statute of limitations.

63.3 The Contractor will carry on the Work and maintain the progress schedule during any arbitration proceedings, unless other wise mutually agreed in writing.

64. Taxes. The Contractor shall pay all sales, consumer, use, and other similar taxes required by the laws of the place where the Work is performed.

65 Separate Contracts.

65.1 The Owner reserves the right to let other contracts in connection with this Project. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their Work, and shall properly connect and coordinate the Work with theirs. If the proper execution or results of any part of the Contractor's Work depends upon the Work of any other Contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such Work that render it unsuitable for such proper execution and results.

65.2 The Owner may perform additional Work related to the Project or the Owner may let other contracts containing provisions similar to these. The Contractor will afford the other Contractors who are parties to such Contracts (or the Owner, if the Owner is performing the additional Work) reasonable opportunity for the introduction and storage of materials and equipment and the execution of the Work, and shall properly connect and coordinate the Work with theirs.

65.3 If the performance of the additional Work by other Contractors or the Owner is not noted in the Contract Documents prior to the execution of the Contract, written notice shall thereof be given to the Contractor prior to starting such additional Work. If the Contractor believes that the performance of such additional Work by the Owner or others involves it in additional expense or entitles it to an extension of the Contract Time, the Contractor may make a claim thereof as provided in Sections 17 and 18.