

# THE CITY OF PERTH AMBOY

## INSTRUCTIONS, SPECIFICATIONS, AND PROPOSALS FOR

### THE REPLACEMENT OF CATCH BASINS – 2025 PROJECT

NJDEP PROJECT NO. S340435-21

THE CITY OF PERTH AMBOY  
260 HIGH STREET  
PERTH AMBOY, NJ 08861  
MIDDLESEX COUNTY  
732-826-5335

A circular professional engineer seal for the State of New Jersey. The seal contains the text "STATE OF NEW JERSEY" at the top, "THEODORE GASSMAN" in the center, and "LICENSED PROFESSIONAL ENGINEER" at the bottom. A handwritten signature in black ink is written over the seal. Below the seal, the license number "24GE04461300" is printed.

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**Theodore Gassman, P.E.**  
Professional Engineer – N.J. Lic. No. 24GE04461300

**The City of Perth Amboy**

**The Replacement of Catch Basins Project – NJDEP Project No S340435-21**

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**THE CITY OF PERTH AMBOY**  
**THE REPLACEMENT OF CATCH BASINS – 2025 PROJECT**

**NJDEP PROJECT NO. S340435-21**

**NOTICE TO BIDDERS**

NOTICE is hereby given that sealed bids will be received by Utility Service Affiliates – Perth Amboy – Inc. on behalf of the City of Perth Amboy (hereinafter called the “Owner”) for:  
**THE REPLACEMENT OF CATCH BASINS - 2025 PROJECT**

**NJDEP PROJECT NO. S340435-21**

Sealed Bids for the above-named Contract, which comprises the replacement of catch basins and within the City of Perth Amboy, Middlesex County, New Jersey (“Owner”), will be received at City Hall, 260 High Street, Perth Amboy, New Jersey 08861 on July 14, 2026 at 10:00 A.M prevailing time, at which time they will be publicly unsealed and the contents publicly announced.

A non-mandatory pre-bid meeting will be held at the same location on July 2, 2026 at 10:00 A.M prevailing time at City Hall, 260 High Street, Perth Amboy, NJ, Middlesex County, Second Floor. The meeting is to clarify any question bidders may have and have an opportunity to visit the sites where work will take place and familiarity with the area to have a better idea of obstacles they may find and take into consideration when preparing the bid.

The work includes the furnishing of all labor, materials and equipment necessary to complete the work as shown on the Drawings and as describe in the Specifications. The work consists of replacing approximately ninety-one (91) catch basins.

The work is located within the City of Perth Amboy and includes site work and general construction. The work shall be completed within 200 calendar days of the Contractor’s receipt of written Notice to Proceed.

No bid will be received unless in writing on the forms furnished, and unless accompanied by bid security in the form of a bid bond, cashier’s check, or a certified check made payable to The City of Perth Amboy in an amount equal to 10% of the amount of the total bid, but not exceeding \$20,000.

The bid shall be accompanied by a Certificate of Surety on the form included in the Contract Documents, from a surety company licensed to do business in the State of New Jersey, which shall represent that the surety company will provide the Contractor with required bonds in the sums required in the Contract Documents and in a form satisfactory to the Owner’s Attorney and in compliance with the requirements of law.

The successful bidder must furnish 100 percent Performance Bond, a 100 percent Payment Bond, and an Environmental bond with a Surety Company licensed in the State of New Jersey, and meets the requirements of P.L. 1096, Chapter 384. The Surety Company should also be listed in the latest version of the U.S. Department of Treasury Circular 570.

Bidders must use the prepared bid form which is contained in the Contract Documents. Each individual proposal must be separately enclosed in a sealed envelope addressed to Alma Y. Benavides Perez, Purchasing Agent, 260 High Street, Perth Amboy, New Jersey 08861 marked on the outside with the project number and the name of the project being bid on.

No bids will be received after the time and date specified, and no bids will be received by mail. The owner shall award the Contract or reject all bids within 60 days of bid opening, except that the bids of any bidder, whose consent thereto may, at the request of the Owner, be held for consideration for such longer period as may be agreed.

The Owner will evaluate bids and any award will be made to the lowest, responsive, responsible bidder. The Owner reserves the right to reject any or all bids and to waive minor informalities or irregularities in bids received.

All bid security except the security of the three apparent lowest responsible bidders shall be returned, unless otherwise requested by the bidder, within ten (10) days after the opening of the bids, Sundays and holidays excepted, and the bids of the bidders whose bid security is returned shall be considered withdrawn.

Each bidder must submit with his bid a signed certificate stating that he owns, leases or controls all necessary equipment required accomplishing the work shown and described in the Contract Documents. Should the bidder not be the actual owner or lease of such equipment, his certificate shall state the source from which the equipment will be obtained and, in addition, shall be accompanied by a signed certificate from the owner or person in control of the equipment definitely granting to the bidder the control of the equipment required during such time as may be necessary for the completion of that portion of the Contract for which it is necessary. The bidder shall comply with the documentation requirements set forth in the Article of the Information for Bidders, entitle, "Bidders Responsibility".

Successful bidders will be required to submit bonds and proof of insurance on or before execution of their respective Contracts as explained in the Contract Documents.

Bidders are required to comply with all relevant Federal and State Statutes, Rules and Regulations including but not limited to the applicable provisions of Title VII of the Civil Rights Act of 1964, as amended (42 USC 2000d-2000D-4A), the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law against Discrimination, N.J.S.A. 10:5-1, et seq., the rules and regulations promulgated pursuant thereto, the State requirements for bidders to supply statements of ownership (N.J.S.A. 52:25-24.2) and the State requirement for submission of the names and addresses of certain subcontractors (N.J.S.A. 40A:11-16).

Bidders are required to comply with the requirements of the Socially and Economically Disadvantage (SED) contractors and vendors.

The City of Perth Amboy (the City) promotes equal employment opportunities by prohibiting discrimination and requiring affirmative action in the performance of contracts awarded by the City with financial assistance from a Federal Grant Program. The City provides equal opportunities for the Socially and Economically Disadvantaged (SED) and has adopted policies to this affect.

#### **SCOPE AND PURPOSE**

- (a) This subchapter establishes procedures for providing opportunities for socially and economically disadvantaged ("SED") contractors and vendors to supply materials and services under State financed construction contracts for environmental infrastructure facilities. To implement the policies established in N.J.S.A. 58:11B-26, 40:11A-41 et seq.,

and 52:32-17 et seq., this subchapter applies to environmental infrastructure projects receiving financial assistance from the Department and the Trust pursuant to N.J.A.C. 7:22-3, 4 and 6 and 7:22A-6 and 7. Under the provisions of N.J.A.C. 7:22-3, 4 and 6 and 7:22A-6 and 7, the Department and the Trust require recipients of Trust and Fund loans and other assistance to establish such programs for socially and economically disadvantaged small business concerns, to designate a project compliance officer, and to submit to the Department and Trust procurement plans for implementing the SED program.

#### **DEFINITIONS**

N.J.A.C. 7:22-3 .17(f)

"In accordance with the provisions of N.J.S.A. 58:11B-26, N.J.A.C. 7:22-3.17(a)24 and 4.17(a)24, the contractor (subcontractor) shall comply with all of the provisions of N.J.A.C. 7:22-9."

#### **CONTRACTORS/SUBCONTRACTORS OBLIGATION -SED UTILIZATION GOAL**

All prime Contractors are required to submit an SED Utilization Plan to the City no later than thirty (30) days after notification that they are the successful bidder. The Contractor shall award no less than ten (10) percent of the total amount of all contracts for building, materials, equipment or services for a project to SEDs.

N.J.A.C. 7:22-9.1(a)

"N.J.A.C. 7:22-3.17(a)24, 4.17(a)24, 6.17(a)24 and 7:22A-2.4(a) provide that a goal of not less than 10 percent be established for the award of contracts to small business concerns owned and controlled by one or more socially and economically disadvantaged individuals. The goal of 10 percent applies to the total amount of all contracts for building, materials and equipment, or services (including planning, design and building related activities) for a construction project." "The project sponsor has identified that the SED utilization goal for this project is:10%".

#### **THE CITY OF PERTH AMBOY OBLIGATIONS AND REQUIRED FUNDING AWARD**

The City will assist both the Contractor and SEDs in meeting the requirements of the Utilization Plan. A list of certified SEDs will be available and included on the Bid Package for interested firms. Bid packages will be available for participating SEDs.

N.J.A.C. 7:22-9.7 (b)- Awards will be made only to socially and economically disadvantaged business concerns that are certified by the New Jersey Commerce, Economic Growth and Tourism Commission, the New Jersey Department of Transportation, the Port Authority of New York and New Jersey, New Jersey Transit or other agencies deemed appropriate by the Office as eligible minority businesses or female businesses." "The invitation to bid is on an unrestricted basis whereby the successful bidder must fulfill the SED utilization requirements."

The Contract Documents may be obtained by contacting the Office of the Owner's representative, Utility Service Affiliates – Perth Amboy, Inc., 590 Smith Street, Perth Amboy, New Jersey at 732-826-5335 between the hours of 9:00 A.M. and 4:00 P.M. Bid documents will be available in electronic form only.

Any questions can be send by email to [tgassman@middlesexwater.com](mailto:tgassman@middlesexwater.com) not later July 10, 2026. No questions will be accepted after this date.

Pursuant to N.J.S.A. 10:5-33, bidders are required to comply with the requirement of P.L. 1975 c. 127, NJAC 17:27.

The successful bidder shall be required to comply with the provisions of the New Jersey Prevailing Wage Act, Chapter 150 of Laws of 1963, effective January 1, 1974, section 109 of P.L. 94-369. The Higher of State or Federal wage rates shall be applied to this project.

Each Bidder must submit with his bid an "Ownership Disclosure Statement" and "Non-Collusion Affidavit" on the forms included in the Contract Documents.

Bidders and their subcontractors of any tier must comply with all applicable provisions of the Public Works Contractor Registration Act, P.L. 1999, c 238 (N.J.S.A. 34:11-56.48) and the New Jersey Prevailing Wage Act (N.J.S.A. 34:11-56.25).

The Contract is expected to be funded in part with the funds from the New Jersey Department of Environmental Protection and the New Jersey Environmental Infrastructure Trust. Neither the State of New Jersey, the New Jersey Environmental Infrastructure Trust, nor any of their departments, agencies, or employees is, or will be, a party to the Contract or any lower tier contract or subcontract. This Contract or Subcontract is subject to the provisions of N.J.A.C. 7:22-3, 4, 5, 9, and 10.

All bids shall include a commitment to the use of small, minority, women's and labor surplus area business and shall be in conformity with N.J.A.C. 7:22-3.17(a)(24) with a goal of not less than 10% participation of small business enterprises owned and controlled by socially and economically disadvantaged individuals (SED's). Further details regarding required SED participation are included in the Information for Bidders and the Supplemental General Conditions.

It is the purpose of this Notice to Bidders to summarize some of the more important provisions of the Contract Documents. Prospective bidders are cautioned not to rely solely on this summary, but to read the Contract Documents in their entirety.

Alma Y. Benavides Perez  
Purchasing Agent  
City of Perth Amboy  
260 High Street  
Perth Amboy, NJ 08861  
[abenavides@perthamboynj.org](mailto:abenavides@perthamboynj.org)  
Telephone: (732) 826-0290 Ext. 4010  
Facsimile: (732) 826-1160

END OF SECTION

**NOTICE OF AWARD**

TO: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Project Description: The Replacement of Catch Basin Project

**NJDEP PROJECT #: S340435-21**

**CONTRACT AMOUNT: \$** \_\_\_\_\_

The OWNER has considered the Proposal submitted for the above described WORK in response to its Advertisement for Bids dated Wednesday, May 20, 2026, and Information for Bidders.

You are required by the Contract Documents to execute the Contract and furnish the Performance Bond, Certificates of Insurance (with copies of the policies including all endorsements), within twenty-one (21) days, Sundays and holidays excepted, from the date of this Notice of Award.

If you fail to execute the Contract to furnish satisfactory bonds, evidences of insurance and other required documents within twenty-one (21) days, Sundays and holidays excepted, from the date of this Notice of Award, or within such further time period as you and OWNER may in writing agree, the OWNER will be entitled to consider all your rights arising out of the OWNER's acceptance of your bid as abandoned as a forfeiture of your bid security. The OWNER will also be entitled to such other rights as may be provided by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2026.

City of Perth Amboy  
OWNER

BY: \_\_\_\_\_  
Theodore Gassman, P.E.

TITLE: Assistant Director of Operations

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE OF AWARD is hereby acknowledged by: \_\_\_\_\_

On this \_\_\_ day of \_\_\_\_\_, 2026.

By \_\_\_\_\_ Title \_\_\_\_\_

**NOTICE TO PROCEED**

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_, 2026

PROJECT: **S340435-21**

You are hereby notified to commence WORK in accordance with the Contract dated \_\_\_\_\_, 2026 on or before \_\_\_\_\_, 2026 and you are to complete all WORK within **two hundred (200)** consecutive calendar days thereafter. The date of completion of all WORK is therefore \_\_\_\_\_, 2026 .

The City of Perth Amboy  
OWNER

BY: \_\_\_\_\_

TITLE: Assistant Director of Operations

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE OF AWARD is hereby acknowledged by: \_\_\_\_\_ On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By \_\_\_\_\_ Title \_\_\_\_\_

## SPECIAL NOTES

### 1. General

The Contractor is warned that the project is in a Commercial/Residential Area. All construction activity must be done with minimum interference to residential establishments to the project area. This Contract shall be completed within 200 consecutive calendar days, which will begin upon receipt of the Notice to Proceed. Mobilization shall be coordinated with the City, County, and Police.

### 2. Traffic Control

The Contractor shall maintain traffic control on accordance with local and county requirements and shall include the cost in the unit price bid for the lining work. All traffic control shall be performed by uniformed police officers from the City of Perth Amboy and, should be paid for by the Contractor in accordance with N.J.S.A.40A:11-23.1(c). The Contractor is cautioned to include such costs in his bid price. The Police Department shall be responsible to determine the number of officers required.

### 3. Pedestrian Control and Protection

The Contractor shall take whatever measures are necessary to protect the health and welfare of pedestrians on the streets. Such measures shall include, but not limited to surrounding all open trenches with snow fencing, plating after hours, barricades, with operable flash lights, traffic cones, etc., around stockpile materials and equipment. Pedestrian traffic must be maintained and protected. The Engineer reserves the right to order additional pedestrian protection without additional compensation to the Contractor. At least one means of pedestrian thoroughfare will be left available by the Contractor for every area of work.

### 4. Permits and Bonding for County and City Streets

The Contractor shall be responsible for obtaining and paying for all road opening permits and bonding as required. Prior to bid, the Contractor shall make himself fully aware of the requirements of the costs associated with road opening permits for the County and the City and the type of bonding that is required prior to bidding this project. Bonding requirements for road opening permits shall be included in the various unit bid items. The Contractor shall also make himself familiar with the requirements of trench restoration for county vs. City roads.

## 5. Award of Contract

Bidders shall be prepared to submit bonding, insurance, construction schedule, shop drawings, and all else required by Contract Documents immediately upon notification that he is the successful Bidder. Any delay in the submission of complete and correct documentation may jeopardize the completion date, and the Contractor will be subject to liquidated damages as stated in the Contract section of the Specifications.

## 6. Bonds

The Bidder to whom the Owner proposes to award the Contract shall furnish and deliver with ten (10) days of the date of the acceptance of the Proposal, Surety Corporation Bonds, from reputable sureties authorized and licensed to do business in New Jersey and acceptable to the Owner for a) 100% Performance Bond, and b) 100% Maintenance Bond.

**NOTE: Approved Performance Bond and Maintenance Bond supplied by a New Jersey licensed Surety Company may be submitted in lieu of the enclosed Performance and Maintenance Bond Forms.**

Any change in the plans, specifications or quantities shall in no way vitiate said bond. Said bond shall be in the sum not less than the amount of the bid and shall be maintained by the Contractor until the final acceptance of the work. Date of acceptance of the work shall be determined by the Owner after it shall have duly considered the acceptance report of the Engineer and authorized final payment. The Owner shall not unreasonably withhold acceptance.

## 7. Owner Information

The City's representative agent for this contract is Utility Service Affiliates – Perth Amboy (USA-PA), who is identified in the Contract as representative of the "Owner". USA-PA operates and manages the sewer system of the City of Perth Amboy under a long-term contract with the City. However, all improvements constructed under this contract will be owned by and are subject to acceptance and approval by the City of Perth Amboy

City of Perth Amboy  
Water Department  
590 Smith Street  
Perth Amboy, NJ 08861  
Phone - (732) 442-2397 or (732) 826-5335  
FAX - (732) 442-8714

**TEMPORARY HYDRANT USAGE PERMIT APPLICATION**

Effective rental start date: \_\_\_\_\_

Date hydrant meter is returned: \_\_\_\_\_

Name of Applicant: \_\_\_\_\_

Company Name: \_\_\_\_\_

Billing Address: \_\_\_\_\_

Company Telephone No.: \_\_\_\_\_

Location where meter will be used: \_\_\_\_\_

Hydrant No.: \_\_\_\_\_

Reason for Permit: \_\_\_\_\_

Name of person(s) operating the hydrant: \_\_\_\_\_

Day(s) the hydrant meter will be used: \_\_\_\_\_

Notes: 1. Person authorized to operate the hydrant must carry a copy of this permit when operating the hydrant.

2. Applicant must bring with them the following:

- a. Check for **\$2,000** (refundable when meter is returned undamaged)
- b. Check for **\$25.00** for the first week (Monday thru Sunday) regardless on how many days meter is used (non-refundable) and \$25.00 weekly rental fee there after regardless on how many days meter is used.
- c. Check for **\$1,442.79** for Flat Rate charges up to first 500 Cubic Feet of water (non-refundable) and at actual water rates (\$288.56) for every 100 cubic feet thereafter up to 1,000 cubic feet. Water supplied in excess of 1,000 cubic feet up to 10,000 cubic feet will be charged at \$7.42 per 100 cubic feet of water used. Any consumption in excess of 10,000 cubic feet will be charged at \$7.54 per 100 cubic feet of water used. Meter readings will be taken every 30 days.

**\*Checks must be made out to City of Perth Amboy- Water Department.**

3. Only the authorized hydrant can be used. The permit will be revoked if caught using a hydrant other than the one listed above.
4. Contractor is responsible for damages caused to the hydrant and/or meter.
5. Extreme caution must be exercised when opening and closing the hydrant so as not to cause any disturbance to the system.
6. No one, with the exception of the Fire Utility, will be allowed to use water through fire hydrants for any purpose, except upon written permission from the Director of the Water Utility. In the event that permission is granted to use a fire hydrant, the person to whom permission has been granted, shall be responsible for paying all fees as stated on the hydrant usage permit. The fees include a refundable check in the amount of one and one half (1 1/2) times the cost of the hydrant meter, the water usage at actual rates, and weekly rental fees. Rental fees will be charged on a weekly basis only, regardless if the meter will be used for less than a calendar week. Copy of the permit must be available on site whenever the fire hydrant assigned is being used. The permit application will be available at the Water Utility Office. Any damages caused to the fire hydrant and or pipes when using the fire hydrant shall be the responsibility of the person to whom the permit was issued. Any costs incurred during repairs of the fire hydrant, main, or any part of the system damaged as a consequence of the usage of said fire hydrant shall be the responsibility of the person to whom the permit was issued.

Meter# \_\_\_\_\_ Initial Reading \_\_\_\_\_

Final Reading \_\_\_\_\_ Consumption \_\_\_\_\_

Print Name \_\_\_\_\_ Signature \_\_\_\_\_

## **ARTICLE 1 - ABOUT THE BIDDING DOCUMENTS**

- 1.1 Defined terms used in the Advertisement, these Instructions to Bidders, and the Information for Bidders, have specific intent and meanings assigned, as stated in the Glossary of the General Conditions Section. The Glossary also provides information on how to construe any reference to an Article or Paragraph made in these instructions to Bidders
- 1.2 Unless the context requires otherwise, the term "Bidder" may be interpreted to mean and include prospective Bidders as well as prospective subcontractors, suppliers or other parties considering submission of sub-bids to a Bidder(s).
- 1.3 Whenever in the Bidding Requirements the expression "the Apparent Low Bidder" is used concerning an action, obligation or event, it shall cover even; if not stated, actions, obligations of, or events involving, any other Bidder wishing to remain contention for the award, if the context will permit.
- 1.4 Neither the Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents in preparing Bids. The Owner and Engineer make Bidding Documents available only for obtaining Bids, and neither the Owner nor Engineer grants a license for any other use of the Bidding Documents.

## **ARTICLE 2 - QUALIFICATIONS SUBMITALS**

- 2.1 Within ten (10) days after the date of Bid Opening, the Apparent Low Bidder shall submit to the Owner any information and data concerning the Bidders qualifications. That is specifically requested by the Owner and/or Engineer.
- 2.2 Preliminary qualification of bidders may have been performed by OWNER in determining eligibility for the invitation of bids for the work. This preliminary qualification does not insure that the Bidder will be awarded the work, or preclude OWNER from investigating and further reviewing BIDDER'S qualifications and capabilities to perform the work.
- 2.3 All Bidders shall be prepared to submit within five (5) days of OWNER'S or ENGINEER'S request written evidence of information and data requested and necessary to assist with the qualification process and to make this determination
- 2.4 The investigation of a Bidder will seek to determine whether the organization is adequate in size, is authorized to do business in the jurisdiction where the project is located, has had experience of similar work to the project, and whether available equipment and financial resources are adequate to assure OWNER that the Work will be completed in accordance with the terms of the Agreement. The amount of other work to which the Bidder is committed may also be considered.
- 2.5 OWNER reserves the right to reject any Bid if the evidence submitted by, or the investigation of, such Bidder fails to satisfy the OWNER that such Bidder is properly qualified to carry out the obligations of the Contract Documents and to complete the Work.

- 2.6 STATUS OF OTHER CONTRACTS: The bidder shall disclose with the bid documents any and all outstanding and/or anticipated claims, which may exist on previous contracts between the Company and the Bidder based on work performed by the date of submission of bids. The Owner reserves the right to evaluate the status of claims under previous contracts as a consideration in the award of the bid.

### **ARTICLE 3 - BIDDING DOCUMENTS; SITE CONDITIONS; LAWS**

- 3.1 It is the responsibility of each Bidder, before submitting a Bid, to:
- a. Examine the Bidding Documents thoroughly.
  - b. Visit the site.
  - c. Study and correlate the Bidder's observations with the Bidding Documents.
  - d. Submit written questions or inquiries about the Bidding Documents or the Work, as provided in Article 4, promptly after discovering any conflicts, ambiguities, errors, or omissions in the Bidding Documents.
- 3.2 It is also the responsibility of each Bidder, in the preparation of its Bid, to:
- a. Become fully acquainted with the physical conditions under which the Work will be performed and the condition of all existing facilities, including those which may not be a part of the Work, but could be affected by the performance of the Work.
  - b. Account for all general, local, and prevailing conditions at or near the site that may in any manner affect the cost, schedule, progress, performance or furnishing of the Work. Examples of such conditions include, but are not limited to:
    - i. The nature and location of the Work.
    - ii. Conditions related to the transportation, disposal, handling and storage of materials.
    - iii. The availability and suitability of labor, materials, water, electric power, telephone, sanitary services and roads.
    - iv. Daily and monthly weather variations, including any related subsurface conditions, river stages or similar conditions.
    - v. The character, quality and quantity of surface and subsurface conditions at the site, including but not limited to ground water table variations, and the location, configuration and condition of existing facilities and Underground Utilities.
    - vi. The character of equipment and facilities needed preliminary to and during Work performance.
    - vii. Conditions related to maintaining the uninterrupted operation of existing services or facilities.
    - viii. The extent to which the nature, characteristics and use of any adjacent or nearby lands, rights-of-way and easements, and facilities (in all cases, inclusive of properties and fixtures) may affect activities at the site or elsewhere.
- 3.3 Any prospective bidder who wishes to challenge a bid specification shall file such challenges, in writing, with the contracting agent no less than three business days prior to

the opening of the bids. Challenges filed after that time shall be considered void and having no impact on the contracting unit or the award of the contract.

3.4 It is also the responsibility of each Bidder to inform itself of, and the Bidder awarded the Contract shall comply with, all applicable laws, including, but not limited to laws affecting cost, schedule, progress, performance or furnishing of the Work. Examples of those laws include, but are not limited to those relating to protection of public and employee health and safety, environmental protection, building codes, fire protection, use of explosives, vehicular traffic, restoration of lands and property under the control of the State or a local governing body, nuisance control, taxes, permits and licensing.

3.5 Information to Bidders, identifies:

a. Reports of explorations and tests of subsurface conditions.

b. Drawings of physical conditions of existing surface and subsurface facilities that have been used by the Engineer in the preparation of the Bidding Documents. Bidders may rely upon the general accuracy of any technical data contained in those reports and drawings, as may have been authorized, but those reports and drawings are part of the Bidding Documents. Neither the Owner nor the Engineer warrants the identification of all existing relevant documents.

3.5.1 Bidders may not rely upon the adequacy or completeness of those reports and drawings or of any such authorized technical data for purposes of bidding or performing the Work. Nor may Bidders rely upon non-technical information or data, interpretations or opinions contained in those reports or drawings. The Owner, Engineer and their respective consultants do not assume any responsibility for any conclusions or interpretations any Bidder makes based on any such technical data, non-technical information or data, interpretations or opinions made available under the specifications.

3.5.2 The specs may also identifies additional reports of explorations and tests of subsurface conditions and reference documents reflecting physical conditions of existing surface and subsurface facilities that have not been used by the Engineer in the preparation of the Bidding Documents, and are made available solely to allow Bidders to have access to the same information available to the Owner and Engineer.

3.6 The specifications may also identify information and data shown or indicated in the Bidding Documents or underground utility drawings about existing underground utilities. Such information and data about existing underground utilities is on information and data obtained from record documents of previous construction or furnished to the Owner by the owners of those underground utilities or by others.

3.7 The Section General Conditions contains provisions concerning:

a. Responsibilities or underground utilities.

- b. Changes that may be ordered because of incidents with differing site conditions.
  - c. The adequacy and completeness of the technical data about subsurface conditions and exiting subsurface and surface facilities made available to Bidders.
- 3.8 It is the responsibility of each Bidder, at the Bidder's own expense, to make or obtain any additional examinations, explorations, and drawings and to obtain any additional information and data relating to subsurface conditions, surface and subsurface facilities and underground utilities at or contiguous to the site or otherwise that may affect cost, schedule, progress performance, or furnishing of the Work and that the Bidder considers necessary for determining that Bidder's Bid.
- 3.9 If requested by a Bidder within a reasonable time before Bid opening the Owner will provide access to the site when and as designated by the Owner, to allow that Bidder to conduct those reasonable explorations and tests the Bidder considers necessary for the preparation and submission of its Bid. Any such explorations and tests conducted by that Bidder shall comply with the requirements of the Owner, any public utilities involved and any governing body with jurisdiction. If access to the site is granted, that Bidder shall fill all holes and clean up and restore the site to its former condition upon completion of those explorations and tests to the Owner's satisfaction.
- 3.10 The successful bidder shall be responsible for obtaining any lands, rights-of-way and easements, in addition to those furnished by the Owner, that the successful bidder considers necessary for temporary facilities, ingress and egress, storage, disposal of spoil waste material or any other purpose. Neither the Owner nor Engineer assumes any responsibility for site conditions at any lands, rights-of-way and easements obtained by the successful bidder.
- 3.11 Materials and equipment purchased for permanent installation as part of the Work will be exempt from the New Jersey Sales and Use Tax. Section General Conditions specify the successful bidder's responsibilities for the cost of and the time required to obtain permits, approvals, licenses and fees necessary for the start, prosecution, and completion of the Work.
- 3.12 If other contractors are performing other work at the site under contracts with the Owner during the time allowed for completion of the Work, the Bidding Documents will contain related provisions. Before submitting Bid, each Bidder shall examine:
- a. Related conditions at the site.
  - b. Requirements for coordination and cooperation between the Work and other work.
  - c. Related sequences of Work indicated in or required by the Bidding Documents.
  - d. Related Contract Times.
- 3.13 The submission of a Bid constitutes a binding representation by the Bidder that:
- a. The Bidder has complied with every requirement of this Article and the Bidding Documents.
  - b. The Bidder has examined and agrees with the Progress Schedule requirements contained in the General Conditions, including, but not limited to requirements concerning the administration of early completion schedules, responsibilities for delays

- within available Total Float and Contract Float and the cost loading of Progress Schedule Activities.
- c. Without exception, the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and in accordance with those means and methods indicated in or required by the Bidding Documents.
  - d. The Bidder considers the Bidding Documents to be sufficient in scope and detail to indicate a clear understanding of all terms and reasonable foreseeable conditions applicable to the Work, and how such terms and conditions may affect the cost, schedule, progress, performance, and furnishing of the Work.
- 3.14 Any failure of a Bidder to take the actions described and acknowledged in this Article will not relieve that Bidder of the responsibility for:
- a. Properly estimating the difficulty, cost of and schedule for successfully performing and furnishing the Work.
  - b. Upon award, performing and furnishing the Work successfully at no increase in Contract Price or Contract Time.
- 3.15 Neither the Owner nor Engineer assumes any responsibility for any conclusions or interpretations made by any Bidder based on the information made available by the Bidding Documents. Nor does the Owner or Engineer assume any responsibility for any understanding reached or representation made about conditions that may in any ways affect cost, schedule, progress, furnishing or performance of the Work, unless that understanding or representation is expressly stated or indicated in the Bidding Documents (including Addenda).
- 3.16 The lands in which the work is to be performed and the right-of-way for access thereto and other lands designated for use by the Contractor in performing the Work are identified in the Contract Documents and/or the Drawings.

#### **ARTICLE 4 – INTERPRETATIONS: ADDENDA**

- 4.1 All questions or inquiries about the Bidding Documents and/or the Work, including, but not limited to request for information, requests for clarification or interpretation of the Bidding Documents and/or proposals for any modifications to the Bidding Documents shall be submitted in writing to the Engineer at the address provided in the Advertisement. Questions or inquiries made orally will not be considered. Any and all notice of revisions or addenda to bid documents shall be provided in accordance with N.J.S.A. 40A:11-23.
- 4.2 Any interpretation, clarification, addition, or deletion to the Bidding Documents will be binding only if given by written Addenda. Interpretations, clarifications, corrections, additions or deletions made orally or in any other manner are not binding and shall not be relied upon by the Bidders. Addenda will be sent in accordance with P.L. 1997, c. 243 N.J.S.A. 40A:11-23 to all parties who, according to the Engineer's records, have obtained full sets of the Bidding Documents and have furnished to the Engineer a valid street address (not a post office box) for receiving Addenda. Addenda also may be issued to modify the Bidding Documents as considered advisable by the Owner or Engineer.

- 4.3 It is the responsibility of each Bidder to ensure that it has received all Addenda before submission of the Bid. Each Bidder agrees that its Bid shall be binding on the Bidder, whether the Bidder completes the acknowledgement of Addenda table in the Bid Form or not.
- 4.4 Any quantities of the Unit Price Work given on the Bid Form, whether shown or indicated in the Bidding Documents or contingent upon actual conditions, are approximate only, and are to be used solely for comparing Bids received and establishing the Contract Price. Payments will be made only for actual quantities of Unit Price Work performed. Actual quantities of Unit Price Work may vary from those given in the Bid Form without necessarily invalidating any of the unit process bid.
- 4.5 All questions about the meaning or intent of the Bidding Documents are to be submitted to ENGINEER in writing. Interpretations or clarifications considered necessary by ENGINEER in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by ENGINEER as having received the Bidding Documents. Questions received less than twelve (12) days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Any and all revisions, interpretations, or supplemental instructions will be in the form of written addenda to the Contract Documents which, if issued, will be sent by certified mail, return receipt requested, or by certified facsimile transmission (meaning that sender's facsimile machine produces a receipt showing the date and time of transmission and that the transmission was successful), or by a delivery service that provides certification of delivery to the sender, to each of the persons who has received a bid package, at the respective address furnished for such purpose, not later than seven (7) days – Saturdays, Sundays and holidays excepted – prior to the date fixed for opening of bids. Failure of any bidder to receive any such addenda shall not relieve the bidder from any obligation under such addenda. All addenda so issued shall become part of the Contract Documents. If any addenda materially change the solicitation, the Owner may postpone the date for the opening of bids. Oral and other interpretations or clarifications will be without legal effect. It is noted that NJDEP approval is necessary for any and all addenda **prior to** sending Notice to Bidders.
- 1.01 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by OWNER or ENGINEER.

## **ARTICLE 5 – BID SECURITY**

- 5.1 In accordance with N.J.A.C. 7:22-3.17 (g) and 7:22-4.17 (g), all surety bonds required in connection with the advertisement and award of building contracts or sub-agreements must be written by a surety company listed on the United States Federal Treasury List (Department Circular 570-Surety Companies Acceptable on Federal Bonds), incorporated herein by reference.
- 5.2 Bid Security shall be made payable to the “City of Perth Amboy” in the form of a certified or cashier’s check drawn upon a bank insured by an agency of the Federal Government, or in the form of a Bid Bond (using the form found in Page B-22). A Bid Bond shall name the Bidder as Principal, shall be executed by a surety licensed by the State of New Jersey and qualified to write Bonds of the character and amount provided under the Bidding

Documents, and shall attach a certified copy of power of attorney to sign Bid Bonds. Failure by any Bidder to enclose with its Bid a certified or cashier's check, or a duly executed Bid Bond, shall justify the disqualification of that Bidder from consideration for the award.

- 5.3 If Bid Security is in the form of a certified or cashier's check, the Bid shall include a certificate from an acceptable surety stating that the surety will provide for the Bidder a Performance and payment Bond, as required in Page PB-1, if the Bidder is awarded the Contract. The Owner may reject any such Bid if it is not satisfied with the sufficiency of the surety.
- 5.4 The Bid Security of the Successful Bidder will be retained until that Bidder has executed the Agreement and furnished the required Performance and Payment Bond and delivered evidence of insurance. If that Bidder fails to do so, within the specified deadline, the Owner may annul the Notice of Award, and the Bid Surety of that Bidder will be fortified to the Owner as liquidated damages. If the Owner incurs any collection costs in the enforcement of the Bid Security requirement, that Bidder and the Bidder's surety, if any, agree jointly and severally to reimburse all Owner's costs of collection including reasonable fees and charges of attorneys and others, court or hearing costs incurred with or without suit and interest.
- 5.5 The Bid Security of the Apparent Low Bidder and the next two apparent lowest Bidders will be retained by the Owner until the end of the period for holding Bids stated in the Advertisement, or until three Business Days after the Owner executes the Agreement, whichever last occurs. The Bid Securities of all other Bidders shall be returned within ten Business Days after the date of Bid Opening.

#### **ARTICLE 6 – CONTRACT TIME; LIQUIDATED DAMAGES**

- 6.1 The Contract Times, i.e. the number of days within or dates by which the Work of any part of the Work shall be completed are specified in the Agreement and may be supplemented, also as provided in the Agreement. The Contract Times specified are of the essence of the Agreement.
- 6.2 If a Bidder believes that any of the Contract Times specified are insufficient or excessive, that Bidder shall advise the Engineer in accordance with the requirements of Article 4.
- 6.3 Liquidated damages are specified in the Agreement and may be supplemented, also as provided in the Agreement.

#### **ARTICLE 7 – ITEMS NAMED OR SPECIFIED; “OR EQUIVALENTS” OR SUBSTITUTES**

- 7.1 Whenever materials or equipment are described in the Bidding Documents by using a certain brand, make supplier, manufacturer, or by specification, such naming or specification shall be regarded as a standard and be intended to convey function, design

features, general style, type, materials of construction, character and quality of material or equipment, serviceability and such other desired essential characteristics.

- 7.2 The Contract will be awarded on the basis that only materials and equipment named or specified in the Bidding Documents or “or equivalents” will be furnished. Submission of a Bid constitutes a binding representation by that Bidder that (a) the Bid reflects materials and equipment named or specified or “or equivalents” only, and (b) the Bidder has examined the requirements of the Bidding Documents and agrees that no substitution will be considered or accepted by the Engineer unless the proposed substitution and substitute item meet the requirements for “or equivalent” items specified in Article 5.3 of Section General Conditions.
- 7.3 If the Bidding Documents state that an “or equivalent” or substitute item of material or equipment, or an “or equivalent” or substitute means and method, may be furnished or used in the execution of the work, if acceptable to the Engineer until after the date the Owner executes the Agreement.

## **ARTICLE 8 – SUBCONTRACTORS**

- 8.1 Each Bidder shall nominate each Subcontractor to whom that Bidder intends to award a Sub-agreement for: plumbing and gas fitting and all kindred Work; steam power plants, steam and hot water heating and ventilating apparatus and all kindred work; electrical work; structural steel and ornamental iron work; and comply with any specialty licensing Laws. One Subcontractor shall be nominated for each specialty trade, unless Bidder intends to self-perform that specialty trade or intends to award more than one subcontractor for any specialty trade.
- 8.2 If the Owner has an objection to any nominated Subcontractor, the Owner, before making the award, may request removal or replacement of that Subcontractor. In that event, the Apparent Low Bidder shall nominate a substitute Subcontractor or self-perform the trade involved, if qualified. In either case, there will be no extension in the period when the Apparent Low Bidder’s Bid shall remain open, nor any increase in the Bidder Bid. If the Apparent Low Bidder declines, that Bidder shall not be awarded the Contract; however, it’s declining to make the substitution and self-perform that trade will not constitute grounds for forfeiting the Bidder’s Bid Security.
- 8.3 Except as otherwise provided, List of Subcontractors, or by Law, the Apparent Low Bidder shall not remove, replace or add a nominated Subcontractor after the date of Bid opening without good cause shown, as determined solely by the Owner. Before award, no removal, replacement or addition of a nominated Subcontractor will be considered by the Owner unless the Apparent Low Bidder furnishes written notice with all required data in time to allow evaluation of the substitute Subcontractor.
- 8.4 The provisions of this Article shall not be construed to create or impose any duty or liability on the Owner to exercise this authority for the benefit of any Bidder, any nominated or newly nominated Subcontractor or any other party.

## **ARTICLE 9 – BID FORM AND BID FORM ATTACHMENTS**

- 9.1 The Bidding Documents include one bound and one unbound set of the Bid Form and Bid Form Attachments. If the Bid Form or any Bid Form Attachments are modified by Addendum, revised forms will be reissued. Bids shall be submitted on the latest revision of the forms issued. All blank spaces shall be properly and legibly printed in ink or typed as required in these Instructions to Bidders and in each of the forms. Bid prices shall be printed or typed in both words and figures.
- 9.2 If the Bidder is a corporation, partnership, limited partnership, limited liability corporation, limited liability partnership, or a subchapter S corporation, the Bidder in compliance with P.L. 1977, Chapter 33, shall submit, with his bid, a statement setting forth the names and addresses of all stockholders or individual partners who own ten percent (10%) or more of its stock or interest. If one or more such stockholder or partner itself is a corporation, partnership, limited partnership, limited liability corporation, limited liability partnership or a subchapter S corporation, the stockholders holding ten percent (10%) or more of that corporation's stock, or the individual partners owning ten percent (10%) or greater interest in that partnership, as the case may be, shall also be listed.
- 9.3 Bids by individuals shall state the name and business address of the individual and shall be signed by the person making that Bid, or the Bid shall enclose a power-of-attorney evidencing authority to sign the Bid in the individual's name.
- 9.4 Bids by partnerships shall be signed in the name of the partnership. The name, signature, and designation (general or managing) of the partner(s) authorized to sign shall be entered where indicated. Evidence of authority to sign and the official address of the partnership also shall be provided.
- 9.5 Bids by corporations shall be signed in the legal corporate name. The signature of the president or authorized officer shall be entered below the corporate name, followed by the attesting signature of the secretary of the corporation or of an authorized officer other than the officer signing the Bid. Evidence of authority to sign and the corporate address and state of incorporation also shall be provided.
- 9.6 Bids by joint ventures shall be signed by all or one of the joint ventures'. If one joint venturer signs, the Bid shall be accompanied by a certified copy of the power of attorney authorizing the individual signing to bind all the joint venturers.

## **ARTICLE 10 – PREPARATION AND SUBMISSION OF BIDS**

- 10.1 Bids shall be hand delivered. Bids submitted by mail, orally, by telephone, by facsimile, or by e-mail, are invalid and will be rejected without consideration.
- 10.2 Each bid shall be enclosed in an opaque sealed bid envelope, marked with the Bidder's name, address, and telephone number clearly marked as a bid for the subject contract. The Bidder's address shall be a valid street address and not a post office (P.O.) box. The bid envelope shall contain the completed Bid Form, Bid Form Attachments, and any other documents submitted by the Bidder. If the Bidding Documents require the enclosure of documents separate from the Bid Form and Bid Form Attachments, the bid envelope shall contain such documents in a separate envelope.

- 10.3 For each Unit Price Work item listed on the Bid Form, the Bidder shall bid a unit price and enter, in the appropriate column, the computation of the Bid Form quantities multiplied by the Bidder's unit price. Bid prices for each lump sum or One Each item listed on the Bid Form shall be entered only in the appropriate Bid Price column. The Bidder shall show the sum representing the Bidder's Bid and, if alternates are listed, the sum of the Bidder's Bid plus the Bid Prices for alternates, in the spaces provided for that purpose.
- 10.4 The Bidder's Bid and alternates shall include, and payment for completed Work shall be compensation in full for, all labor, materials, devices, equipment, and appurtenances, royalties and license fees, supervision, temporary offices, construction equipment, mobilization, close-out, bonds, insurance, taxes, overhead and profit and all connections, appurtenances and any other incidental items of any kind or nature as are necessary to complete the entire Work, in a neat, first quality, workmanlike and satisfactory manner in accordance with the Drawings and Specifications and as otherwise required to fulfill the objectives of the Project and the intent of the Bidding Documents. Bids shall not contain any recapitulations of the Work. Alternates will not be considered unless they are itemized on the Bid Form and specified in the Bidding Documents.
- 10.5 Before submission of a Bid, a Bidder may alter or revise any price or information the Bidder has entered on the Bid Form or on any Bid Form Attachment by (a) crossing out the entry, (b) legibly printing in ink or typing the new price or information, and (c) placing the initials of the person who signs the Bid adjacent to each change. Ambiguities arising from any alterations or revisions will be resolved against the Bidder, in the Owner's sole discretion.
- 10.6 In the event of any conflicts between the itemization in the Bidder's Check List, Attachment A on the Section Instructions to Bidders, and the corresponding requirements specified in the other parts of the Bidding Documents, the requirements of the Bidding Documents taken as a whole, as determined by the Engineer, shall be binding on the Bidders.
- 10.7 Bidder Responsibility
- The prime Contractor (the bidder) shall perform on the site and with its own organization, work equivalent to at least 51% of the total amount of work to be performed under this Contract. This percentage may be reduced by a supplemental agreement to this Contract if during the performance of the work the Contractor requests a reduction and the Owner and the NJDEP determines that the reduction would be to the advantage of the Owner.

## **PART I**

### **Items Mandatory for Bid Proposal**

The bidder shall submit with the Bid Proposal, the following Items Mandatory for Bid Proposal. In order to be considered an adequate submission, each item must meet the requirements of the relevant statute and must be legally binding on the bidder.

The following items shall be mandatory for submission with the Bid Proposal:

- A. A guarantee to accompany the bid pursuant to Section 21 of P.L. 1971, c. 198 (N.J.S.A. 40A:11-21), duly executed in behalf of principal and surety.
- B. A certificate from a surety company pursuant to Section 22 of P.L. 1971. C. 198 (N.J.S.A. 40A:11-22).
- C. A statement of corporate ownership pursuant to Section 1 of P.L. 1977, c. 33 (N.J.S.A. 52:25-24.2).
- D. A listing of subcontractors pursuant to Section 16 of P.L. 1971, c. 198, last Amended by L. 1997, c. 408 (N.J.S.A. 40A:11-16).
- E. A document provided by the Owner for the bidder to acknowledge the bidder's receipt of any notices, revisions or addenda to the advertisement of bid documents pursuant to P.L. 1999 c. 39 (N.J.S.A. 40A:11-23.1).
- F. Bid Proposal is legally executed on behalf of the bidder.
- G. Non-Collusion Affidavit is correctly filled out, signed on behalf of Bidder and notarized (N.J.S.A. 52:34-15).
- H. Bidder's Certificate (regarding Discrimination, Affirmative Action and SED Utilization) completed.
- I. Certification of Nonsegregated Facilities.
- J. Certificate of Registration under the Public Works Contractor Registration Act (where applicable) or copy of registration application with Department of Labor (N.J.S.A. 34:11-56.25).
- K. Affirmative Action Affidavit.
- L. Certification for American Iron and Steel Requirements.

## **PART II**

### **Items Directory for**

### **Bid but Mandatory for Award**

The Bidder is directed to submit the following items with the Bid Proposal. The failure of the bidder to provide any of these items in proper form by the time set for award may result in the rejection of the Bid Proposal.

The following items shall be mandatory for award:

- A. Prices in words and numbers inserted for each Bid Item in Proposal.
- B. Total Price bid inserted in Proposal in words and numbers.

- C. Details of bid security inserted in Proposal Pages.
- D. Signature of Bidder on Proposal is witnessed.
- E. Names of signers and witnesses are typed or printed below signatures.
- F. For corporate bidders, corporate seal is affixed to signature Page Proposal.
- G. Corporate acknowledgement on Certificate of Surety and evidence of authority of the signer is attached to Certificate of Surety (N.J.S.A. 40A:11-20).
- H. Certificate of Bidder's Status on State Treasurer's List has been completed and submitted.
- I. Equipment Certification in completed (N.J.S.A. 40A:11-20).
- J. Duly acknowledged Powers of Attorney are attached to Proposal Pages for Proposals signed by Attorney-in-Fact.
- K. For Corporate bidders, corporate resolution authorizing the Bid is attached to Proposal Pages.
- L. For Joint Venture Bidders, separate Ownership Disclosure Statements are included in the Proposal Pages for each member (N.J.S.A. 52:25-24.2).

### **PART III**

#### **Bidder Responsibility**

The Bidder shall submit the following information on the issue of Bidder Responsibility upon receipt of notice of intention to make award of Contract by the Owner.

The following items shall be mandatory for award:

- A. A tabulation of other work now under contract, giving location, type, size, total cost, required date of completion and the percentage of completion (to the date of this bid) of each job.
- B. Compliance with all legal requirements for the bidder to bid and enter into the contract (e.g., plumbing contractor compliance with N.J.S.A. 45:14C-2(b)).
- C. The bidder's Annual Financial Statement (for the bidder's last full fiscal year), prepared by a certified public accountant and containing such public accountant's opinion, on the basis of an audit, review or compilation of the bidder's financial records, that such Financial Statement fairly represents the financial condition of the bidder.
- D. Evidence, in the case of a corporation organized under the laws of any other state, that the bidder has been issued a certificate of authority to transact business in this State.
- E. Evidence, in the case of a partnership, as to whether the partnership is general or limited and identifying the names and address of all partners and indicating whether they are general or limited partners.
- F. Evidence, in the case of a joint venture bidder, as to the parties to the joint venture, a statement of the individual responsibilities of each party to the joint venture agreement and such other information as may be pertinent to each of the joint ventures' responsibility to fulfill the obligations of the Contract. All information and certification required in the Contract Documents shall be separately stated for each member of the joint venture.

- G. A statement of the largest amount of construction work which the bidder has done in any one year (state the year). Describe experience with similar projects over the last five (5) years. State and describe the projects of equal or greater value during the last five (5) years.
- H. At least one bank reference.
- I. At least two credit reference.
- J. Such additional information as may be required to established that the bidder is responsible and is adequately prepared to fulfill the requirements of the Contract.

The owner and the Engineer may in addition make such investigations as they deem necessary to verify the responsibility of the bidder to perform the Contract, and the bidder shall furnish the Owner with all additional information and data for this purpose as may be requested. The Owner reserves the right to reject any bid if the evidence submitted by the bidder, or the investigation of such bidder fails to satisfy the Owner that such bidder has the responsibility to properly carry out the obligations of the Contract.

Before taking final action to reject a low bid for lack of bidder responsibility, the Owner shall notify the low bidder and afford such bidder an opportunity to request a hearing before the Owner to present any additional information concerning the low bidder's responsibility.

10.8 Sealed bids will be received up to and no later than the date and time prescribed and at the place indicated in the Notice to Bidders. **Proposals must be enclosed in a sealed envelope addressed to Alma Y. Benavides Perez, 260 High Street, Perth Amboy, New Jersey 08861 marked on the outside with the number of the contract and name of the project being bid on.**

10.9 Bids will be publicly unsealed and the contents publicly announced on the date and time specified in the Notice to Bidders.

10.10 At the time of the opening of bids, each bidder will be conclusively presumed to have read and to be thoroughly familiar with the Contract Documents, including all addenda and I interpretations issued. The failure or omission of any bidder to receive or examine the Contract Documents and any addenda thereto or interpretations thereto shall in no way relieve the bidder from any obligation in respect of his bid. Failure of the bidder to acknowledge the bidder's receipt of any notice or revisions or addenda to the advertisement or bid documents, in the document set forth on page B-5 of the Proposal pages of the Contract Documents, entitled "Bidder's Acknowledgement of Receipt of Notices, Revisions or Addenda to the Advertisement of Bid Documents" shall be deemed a fatal defect that shall render the bid proposal unresponsive and that cannot be cured by the Owner.

## **ARTICLE 11 – BID WITHDRAWAL; BID MODIFICATION**

11.1 Any Bidder may withdraw its Bid before the time for receiving Bids has expired by submitting a signed document requesting the withdrawal of the Bid, in the same manner in which a Bid shall be signed and delivered. Withdrawal of a Bid before the time for receiving bids has expired will not prejudice the right of the Bidder to submit a new, modified Bid. After the time for receiving Bids has expired, no modification, alteration,

or revision to any Bidder's Bid Form or Bid Form Attachment(s) will be accepted except as provided under Article 14.5.

- 11.2 After the time for receiving bids has expired, N.J.S.A. 40A:11-23.3 authorizes Bidder to request withdrawal of a public works bid due to a mistake on the part of the Bidder. A mistake is defined by N.J.S.A. 40AL:11-2(42) as a clerical error that is an unintentional and substantial computational error or an unintentional omission of a substantial quantity of labor, material or both from the final bid computation.

A Bidder claiming a mistake under N.J.S.A. 40A:11-23.3 must submit a request for withdrawal, in writing, by certified or registered mail to the Owner. The Bidder must request withdrawal of a bid due to a mistake, as defined by law, within five (5) business days after the receipt and opening of the bids. Since the bid withdrawal request shall be effective as of the postmark of the certified or registered mailing, the Owner may contact all bidders, after bids are opened to ascertain if any bidders wish to, or already have exercised a request to withdraw their bid pursuant to N.J.S.A. 40A:11-23.3.

- 11.3 The request shall include evidence, including any pertinent documents, demonstrating that a mistake was made and was of so great a consequence that:

- a. The enforcement of the contract, if actually made, would be unconscionable.
- b. The mistake relates to a material feature of the bid.
- c. The mistake occurred notwithstanding the fact that the Bidder exercised reasonable care in preparation of the bid.
- d. The Bidder making the mistake is able to get relief by way of withdrawing the bid without serious prejudice to the contracting unit, except for the loss of the bargain for the contracting unit.

- 11.4 If the Owner or its designated staff using statutory criteria of N.J.S.A. 40A:11-23.3 determining that the error meets with the requirements set forth in this Article and the Owner suffers no prejudice, except loss of bargain the Owner shall accept the withdrawal of the Bid and shall return the Bidder's Bid Security. If a Bidder withdraws a bid, the Bidder shall be disqualified from future bidding on the same project including whenever all bids are rejected pursuant to Section 21 of P.L. 1999, c.440 (C.40A:11-13.2). The Owner shall review and act on the request no later than the next meeting of the Authority.

## **ARTICLE 12 – BID OPENING; OBJECTION TO THE AWARD**

- 12.1 Each Bidder bears responsibility for delivering its Bid at the place, and before the closing time for receipt of Bids, designated in the Advertisement. Any Bid received after the closing time will not be considered.
- 12.2 Promptly after evaluation of those Bids opened a tabulation of the Bids will be made available to the Bidders. If any Bidder who submitted a Bid has an objection to the award of the Contract to the Apparent Low Bidder, the objecting Bidder shall within two Business Days after the Bid tabulation is made available file a written protest with the Owner. The

protest shall describe in detail the basis for the protest and request a determination under this Article.

- 12.3 If a written protest is filed in a timely fashion, the Owner will review the basis for the protest and the relevant facts under such terms and conditions as the Owner considers proper. Upon completion of the review, the Owner will notify the Bidders involved of the Owner's decision to dismiss or uphold the protest. The decision of the Owner shall be final and binding on the objecting Bidder,

### **ARTICLE 13 – BIDS TO REMAIN OPEN**

- 13.1 Bids shall remain open for acceptance by the Owner for the period stated in the Advertisement. The Bid of any Bidder, who consents to an extension may, at the request of the Owner, be held for consideration for such longer period as may be agreed. Any consent shall be based upon no increase in the Bidder's Bid or any Contract Times stated in days. If the Apparent Low Bidder refuses to consent to any such extension, that Bidder shall be disqualified from consideration for the award. However, failure to agree to any extension will not constitute grounds for forfeiting the Bid Security.
- 13.2 The City of Perth Amboy reserves the right to consider bids for sixty (60) days after opening of bids,
- 13.3 The Contract will be awarded to the Bidder whose qualifications and bid responsiveness overall best meet the needs of the Owner for performance of the work as set forth under this contract. The basis for award shall be the lowest responsible bid.
- 13.4 The OWNER reserves the right to reject any or all Bids, including without limitation nonconforming, non-responsive, unbalanced or conditional Bids. OWNER further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. The Owner may reject the bid only when it has sound, documented reasons which are in the best interest of the Owner and the Project and the New Jersey Environmental Infrastructure Finance Program. The OWNER also reserves the right to waive all informalities not involving price time or changes in the Work and to negotiate contract terms with the Successful Bidder.
- 13.5 OWNER may reject bids which are incomplete, conditional, or obscure, or which contain additions not call for, erasures not properly initialed, alterations, or irregularities of any kind. Alterations by erasure or interlineations must be explained or noted in the bid over the signature of the bidder.
- 13.6 In the event that there is a discrepancy between prices written in words and written in figures, prices written in words shall govern. No bid will be accepted which does not contain a price for every bid item contained in the Proposal forms.
- 13.7 Penalties for the submission of false, deceptive, or fraudulent statements or information by bidders are provided by Local Public Contract Laws (N.J.S.A. 40A:11-33 and 34). No contract for work shall be awarded to a contractor or subcontractor who is included on the New Jersey State Treasury's list of debarred, suspended and disqualified bidders.

### 13.8 UNBALANCED BIDDING

- A. The work has been divided into Items in order to enable the Bidder to bid for the different portions of the work, in accordance with their estimate of costs. This division of the work is intended to allow fair compensation to the Contractor for the specific items of work as they are performed and based on actual quantities completed.
- B. Unbalancing of bids, where the bid costs do not reflect reasonable true costs for the specific work, in the opinion of the Engineer, may be sufficient cause for the rejection of the entire bid or specific portions of the proposal deemed to be unbalanced by the Engineer.

### **ARTICLE 14 - SALES AND USE TAXES**

- 14.1 The Contractor shall not include in the Proposal any costs for federal, state or local property, license, privilege, sales, use, excise, gross receipts, value added, or other like taxes which may now or hereafter be applicable to, measured by, or imposed upon, or with respect to the transaction, the property, its sale, its value, or its use, or any services performed in connection therewith. Such taxes, which the contractor is required to pay, will be reimbursed by the Owner.
- 14.2 The Owner holds a valid Direct Payment Permit, which allows the owner to make payment of New Jersey Sales and Use Tax directly to the New Jersey Division of Taxation. The Owner shall furnish the Contractor with a form ST-6A State of New Jersey Sales Tax Direct Payment Certificate.

### **ARTICLE 15 - GUARANTEE**

- 1.02 The Contractor shall guarantee all materials and equipment furnished and Work performed for a period of one year from the date of Substantial Completion except where a longer guarantee period is required in the contract documents.

### **ARTICLE 16 - SPECIAL REQUIREMENTS**

- 16.1 Funding Requirements - The Owner is applying for funding for the work from the New Jersey Environmental Infrastructure Trust and requires compliance with the associated requirements as described in the contract documents.
- 16.2 The Owner is extremely interested and sensitive to maintaining good relationships with the community and its customer during this extensive rehabilitation program. The contract documents have been prepared to require the Contractor's assistance with maintaining with this relationship, and to provide a quality of work that is better than average for this work. The Contractor must understand and be willing to partner with the OWNER and ENGINEER to successfully fulfill this goal.
- 16.3 Small Business Concerns Owned and Controlled by Socially Economically Disadvantaged Individuals  

The Owner is required to comply with NJAC 7:22-3.17(a) 24 and 7:224.17(a), or 7:22-6.17(a) 24 which requires that no less than 10% of the total amount of all contracts related to the project shall be awarded to SEDs

## **ARTICLE 17 – BID EVALUATION AND AWARD**

- 17.1 If the Owner elects to award the Contract, the Owner will make the award to the lowest responsible Bidder who had Bid according to the Bidding Documents, as determined solely by the Owner and Engineer's evaluation of the appropriate Bid Form, Bid Form Attachments, Bidder-provided documents, and other required data. The Apparent Low Bidder may be required to attend a pre-award conference.
- 17.2 Non-conformance with the Bidding Documents, for which corrective action is not already provided in the Bidding Documents, or which do not conflict with legal or statutory requirements, may be waived by the Owner, in its sole discretion, except in circumstances where the non-conformance was due to lack of good faith or fair dealing on the Bidder's part, or where such a waiver would lead to a determination obviously in error or inconsistent with the Bidding Documents.
- 17.3 The following may be considered as additional and sufficient grounds for determining that a Bidder is not responsible, or for objecting to any of the Bidder's nominated Subcontractors or Suppliers (even if holding valid licenses):
- a. Being debarred or suspended from consideration for award of contracts by the State or any Federal agency.
  - b. A felony conviction in any state (including this State) within the last three years before the date of the Bid Opening.
  - c. Lack of adequate experience or demonstrated qualifications or capability to perform the classification of Work provided under the Bidding Documents.
  - d. Reasonable doubt concerning the ability to maintain adequate construction equipment or financing during the period allowed for the completion of the Work.
  - e. Failure to pay any and all Federal, State, and local taxes.
  - f. Failure, neglect, or refusal to comply with local ordinances.
  - g. Ineligibility to enter into a contract with the Owner for any reason, including, but not limited to an account of a termination for cause within the last three years before Bid Opening.
  - h. Concealment, misrepresentation, or misstatement of any material fact.
- 17.4 If the Owner intends to disqualify the Apparent Low Bidder, the Owner will give written notice of the impending disqualification (including reasons for the disqualification) to that Bidder and any other Bidder remaining under consideration for the award. If the disqualified Bidder has any objection to the disqualification, that Bidder shall, within business days, file a written protest. If a written protest is filed in a timely fashion, the Owner will conduct a hearing at which the Apparent Low Bidder shall be afforded the opportunity to refute the reason the matter under such conditions as the Owner deems proper. Upon receipt of authority to act from the Owner, the Engineer will notify the Apparent Low Bidder and any other Bidders involved of the Owner's decision to dismiss or uphold the protest. The decision of the Owner shall be binding on the Apparent Low Bidder.
- 17.5 Except in circumstances leading to a determination obviously in error or inconsistent with the Bidding Documents, discrepancies or non-conformance on the Bid Form or Bid Form Attachments shall be resolved as follows:

- a. Between words and figures, the written words are binding on the Bidder.
  - b. Between any sum, computed by the Bidder, and the correct sum, the correct sum is binding on the Bidder.
  - c. Between the product, computed by the Bidder, of any quantity and bid unit price and the correct product of the unit price by the quantity of Unit Price Work, the unit price bid and correct product is binding on the Bidder.
  - d. Between a stipulated allowance and the amount printed or typed, the allowance is binding on the Bidder.
  - e. If a Bidder fails or neglects to bid a unit price for an item of Unit Price Work but shows a "Bid Price" for that item (or fails or neglects to show a "Bid Price" for such an item but bids a unit price), the missing unit price (or "Bid Price") will be computed from the respective quantity and the Bid Price shown (or unit price bid).
  - f. If a Bidder fails or neglects to enter a Bid Price in both words and figures, the Bid Price printed or typed, whether in words or figures, will be binding on the Bidder.
- 17.6 If there are reasonable grounds for believing that collusion or unlawful agreements exist between any Bidders, that a Bidder is interested in more than one bid, or that any Bids are not genuine, those Bidders will be disqualified and their Bids will be rejected without consideration.
- 17.7 Neither the Owner nor Engineer assumes any responsibility for costs any Bidder incurs, however caused, in preparing and submitting its Bid, in withdrawing its Bid, or in objecting to the award or to being disqualified or the award. All costs incurred by a Bidder in responding to requests made pursuant to any Bidding Requirement, whether or not sufficient, shall neither justify an increase in the Bidder's bid nor provide any basis for increase in Contract Price or Contract Time.

## **ARTICLE 18 - SPECIAL REQUIREMENTS**

- 18.1 Funding Requirements - The Owner is applying for funding for the work from the New Jersey Environmental Infrastructure Trust and requires compliance with the associated requirements as described in the contract documents.
- 18.2 The Owner is extremely interested and sensitive to maintaining good relationships with the community and its customer during this extensive rehabilitation program. The contract documents have been prepared to require the Contractor's assistance with maintaining with this relationship, and to provide a quality of work that is better than average for this work. The Contractor must understand and be willing to partner with the OWNER and ENGINEER to successfully fulfill this goal.
- 18.3 Small Business Concerns Owned and Controlled by Socially Economically Disadvantaged Individuals  
 The Owner is required to comply with NJAC 7:22-3.17(a) 24 and 7:224.17(a), or 7.22-6.17(a) 24 which requires that no less than 10% of the total amount of all contracts related to the project shall be awarded to SEDs.
- 18.4 The successful bidder shall be required to comply with the provisions of the New Jersey Prevailing Wage Rate Act, Chapter 150 of Laws of 1963, effective January 1, 1974, section 109 of P.L. 94-369.

- 18.5 In accordance with the provisions of N.J.S.A. 58:11B-26, N.J.A.C. 7:22-3.07 (a) 24 and 4.17 (a) 24, the Contractor (Subcontractor) shall comply with all of the provisions of N.J.A.C. 7:22-9.
- 18.6 The NJDEP and/or the Environmental Infrastructure Trust have the right to stop the work at any time in accordance with N.J.A.C. 7:22-3.23, 4.23 and False Statements in accordance with LPC 40A:11-33 and 34.

## **ARTICLE 19 – ADDITIONAL LEGAL REQUIREMENTS**

- 19.1 The Contractor agrees that “construction” work (as defined by the Secretary of Labor) shall be subject to the following labor standards provisions, to the extent applicable:
- a. Davis-Bacon Act (40 U.S.C. 276a-276a-7).
  - b. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-33).
  - c. Copeland Anti-Kickback Act (18 U.S.C. 874).
  - d. Executive Order 11246 (equivalent employment opportunity)
  - e. Labor Standards Provisions for Federally – Assisted construction Contracts (Appendix 1 – EPA Form 5720-4 and Attachment 6 – Wage Rate Requirements) at the time of execution of this Contract.
- 19.2 The New Jersey Department of Labor and Industry has determined the prevailing hourly rate of wages for each type of worker that may be employed in the performance and furnishing of the Work and such prevailing wage determination is attached.
- 19.3 The New Jersey Prevailing Wage Act, P.L. 1963, Chapter 150 is hereby made a part of the Bidding Documents. By executing the Agreement, the Successful Bidder guarantees that neither the Successful Bidder nor any Subcontractors are listed or are on record in the Office of the Commissioner, Department of Labor and Industry, as one who has failed to pay prevailing wages in accordance with the provisions of this Act.
- 19.4 The State of New Jersey Affirmative Action Requirements, issued pursuant to P.L. 1975, Chapter 127, is hereby made a part of the Bidding Documents. By executing the Agreement, the successful Bidder guarantees to comply with all such requirements, which are included in Section General Conditions.
- 19.5 The New Jersey “Buy American” regulation N.J.S.A. 40A:11-18, is hereby made a part of the Bidding Documents. By executing the Agreement, the Successful Bidder guarantees to comply with all such requirements, which are included in Section General Conditions.
- 19.6 The New Jersey Public Works Contractor Registration Act N.J.S.A. 34:11-56.50 et. Seq. is applicable to this Contract and is made part of the Bidding Documents. Proof of registration is required with the Bid. All Bidders must comply with the terms of this Act.
- 19.7 P.L. 2004, c.57 requires that all business organizations that do business with a local contracting agency are required to be registered with the State and provide proof of that registration to the contracting agency before the contracting agency may enter into a contract with that business. The proof required is the Business Registration Certificate issued by the New Jersey Department of Community Affairs. The registration and the

Business Registration Certificate is separate from the Public Works Contractor Registration Act, which is described in Article 15.6 P.L. 2004, c.57 also applies to all subcontractors.

- 19.8 Pursuant to N.J.S.A. 19:44A- 20.4 and N.J.S.A 19:44a-20.13 (P.L. 2005, c271, s.3), companies receiving contracts in excess of \$50,000 from public entities in a calendar year must file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission. It is the responsibility of the Bidder to determine if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us).
- 19.9 New Jersey Local Public Contracts Law N.J.S.A. 40A:11-1 et seq. is hereby made a part of the Bidding Documents. By executing the Agreement, the Successful Bidder guarantees to comply with all such requirements, which are included in Section General Conditions.

## **ARTICLE 20 – EXECUTION OF THE AGREEMENT**

- 20.1 The Owner will send the Notice of Award to the successful bidder. The Notice of Award will establish the Contract Price and itemize those alternatives that the Owner, in its sole discretion has accepted. The Notice of Award will also attach three/for unsigned originals of the Agreement, three/for blank Performance and Payment Bond Forms and three/for On-Site Hazardous/Non Hazardous Substances Safety Precautions Certificates).
- 20.2 Within seven days after receiving the Notice of Award, the Successful Bidder shall:
- a. Sign the Notice of Award and three/for originals of the Agreement.
  - b. Execute the Performance and payment bond in the full amount of the Contract Price and attach to the bond a certified copy of Power of Attorney.
  - c. Return to the Owner the executed Notice of Award, Agreement, Bond Forms, Certificate, evidence of insurance and any other documents the successful Bidder is required to submit to the Owner when returning the executed Notice of Award. Any delay in the delivery of any of these documents shall be good cause for extending the 21 day limitation for signing the Agreement imposed by the New Jersey Law.
- 20.3 Evidence of Insurance shall consist of certificates of insurance (using a form acceptable to the Owner) confirming that the insurance the Contractor has obtained including limits of coverage and endorsements provided, are in full compliance with the insurance requirements in Article 7 of the General Conditions. Certificates shall contain a statement confirming that coverage shall not be cancelled, adversely changed or renewal refused until at least 30 days prior written notice has been delivered or mailed to the Owner and Contractor.
- 20.4 The Owner will sign the Agreement with 14 days after receipt of the properly executed four originals of the Agreement and Performance and payment Bond form (with Power of Attorney), and evidence of insurance, and shall subsequently compile four sets of Contract Documents.
- 20.5 Each full set of Contract Documents shall consist of:

- a. Two or more volumes containing a fully executed original of the Agreement executed Performance and Payment Bond and Power of Attorney and On-Site Hazardous/Non-Hazardous Substances Safety Precautions Certificate; Contractor's Bid Form and Bid Bond and other Bid Form Attachments, including all revisions received after Bid Opening; executed Notice of Award; and the remainder of the Bidding Documents, including all Addenda.
- b. A separate volume with Qualification Submittals that the Owner, in its sole discretion, includes as part of the Contract Documents. The Owner will deliver one full set of the Contract Documents to the Contractor with the Notice to Proceed or at the Pre-Construction Conference, as the Owner may decide.

#### **ARTICLE 21 - PRE-BID CONFERENCE**

21.1 A non-mandatory Pre-Bid Conference to discuss the work in detail, and discuss the requirements of the Contract Documents will be held at City Hall Council Chamber, 260 High Street, Perth Amboy, New Jersey. Although bidder attendance is not mandatory, it is highly recommended for the bidder to attend the meeting to clarify any questions before submitting the bid. The date and time for the Pre-Bid Meeting is provided in the Notice to Bidders.

#### **ARTICLE 22 – MOBILIZATION PAY ITEM**

- 22.1 If the Bid Schedule lists a “Mobilization Pay Item”, such mobilization pay item shall be intended to cover, at least in part, up-front payments for:
- a. Reasonable costs of establishing temporary site office and other facilities specified in the specifications.
  - b. Permits required to commence the work.
  - c. Reasonable cost of transporting to the site, unloading and assembling construction equipment necessary for the work that arrives on site promptly after the Date of Commencement of the Contract Time.
  - d. Premiums for the Performance and payment Bond, for any other Bonds required by the Contract Documents and for policies of insurance purchased by the Contractor to comply with the contract Documents.
  - e. For the installation of the Project Sign as specified under this contract.
- 22.2 Measurement for payment under the Mobilization Pay Item shall be in accordance with the price bid on the “Bid Schedule” on the Contractor’s Bid Form and on the items on the finalized Schedule of Values, but the total payment for this item shall not exceed the limits as indicated below in accordance with N.J.A.C. 7:14-2.9 of the Contractor’s Bid.

17:14-2.9 Mobilization: unit price contracts for sewer construction

- a. Mobilization shall consist of the cost of initiating the contract. Payment for mobilization will be made at the lump sum price bid for this item in the proposal, which price shall include the cost of initiating the contract. The provisions for payment for the item mobilization supersede any provisions elsewhere in the specifications for including the costs of these initial services and facilities in the prices bid for the various

items scheduled in the proposal. The lump sum price bid for mobilization shall be payable to the contractor whenever he shall have completed 10 percent of the work of the contract. For the purposes of this item, 10 percent of the work shall be considered completed when the total of payments earned, exclusive of the amount bid for this item, shown on the monthly certificates of the approximate quantities or work done, shall exceed 10 percent of the total price bid for the contract.

b. The lump sum price bid for mobilization is limited to the following maximum amounts:

**Original Contract Amount (Including Mobilization)**

<b>From More than</b>	<b>To and including</b>	<b>Max. Amnt. For Mobilization Item</b>
\$0	\$100,000	\$3,000
100,000	500,000	15,000
500,000	1,000,000	30,000
1,000,000	2,000,000	60,000
2,000,000	3,000,000	90,000
3,000,000	4,000,000	120,000
4,000,000	5,000,000	125,000
5,000,000	6,000,000	150,000
6,000,000	7,000,000	175,000
7,000,000	10,000,000	200,000
10,000,000	--	2.5% of Bid Amount

In accordance to N.J.A.C. 7:14- 2.9, the lump sum price bid for Mobilization is limited to the amount given in the Table above (Base on Original Contract Amount) and therefore, no additional compensation will be approved for any excess incurred (Which the Contractor considers to be Mobilization costs) under the Mobilization item.

**ARTICLE 23 TEMPORARY FACILITIES**

**PART 1 – GENERAL**

**23.01 WORK INCLUDED**

Contractor shall provide and maintain temporary facilities as specified below.

**23.02 TEMPORARY ELECTRICAL SERVICE**

A. The contractor shall be responsible for providing all labor and materials, permit applications, breakers, contactors, cable, etc. necessary to provide all temporary electric power for the contractor’s tools, equipment, and the field office; and any power required for by-pass pumping.

### 23.03 TEMPORARY SANITARY FACILITIES

- A. The contractor shall provide, maintain and remove when no longer required, an adequate number of temporary, prefabricated, chemical type toilets with proper enclosures for the use of workmen during construction.
- B. Keep toilets clean and supplied with toilet paper at all times. Comply with all local state health requirements and sanitary regulations.
- C. Permanent plumbing fixtures within the Owner's existing building shall not be used during construction.
- D. Contractor shall provide these facilities as soon as a work force is active at the site.

### 23.04 TEMPORARY FIRE PROTECTION

- A. Fire extinguishers shall be portable, dry chemical or carbon dioxide filled and shall be the recommended type for extinguishing Class B and Class C fires.
- B. When working in existing structures the Contractor shall locate and become familiar with Owner's existing fire protection facilities. Contractor shall determine the adequacy of existing facilities relative to the work being performed and provide additional standby fire protection equipment.
- C. Fire extinguishers shall be new, or shall have been inspected and certified for proper operation within the previous twelve months.

### 23.05 PROJECT SIGN

- A. A project sign must be posted on the City's web page and at a site as indicated by the Engineer.

### 23.06 WATER SUPPLY

- A. The contractor shall coordinate use of water with the water company (Utility Service Affiliates –Perth Amboy, Inc.). Is the contractor's responsibility to contact, make arrangements for, and pay for all water used on the project. See details on next pages.
- B. The water company may have restrictions on the volumetric rate at which water can be taken from the water distribution system. This effort and any result in productivity on the Contractor's effort is solely the responsibility of the Contractor.

## **ARTICLE 24 – SED GOAL REQUIREMENTS**

- 24.1 Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (SED's) – This project is being financed by the New Jersey Department of Environmental Protection Agency's New Jersey Environmental Infrastructure Trust Fund. As part of the requirement of their program, the Owner and therefore the successful bidder have a requirement to comply with N.J.A.C. 7:22-3.17 (a) and 7:22-4.17 (a), or 7:22-6.17 (a) 24, which require that no less than 10 percent of the total amount of all contracts related to the project shall be awarded to SED's.

## **ATTACHMENT A - TO SECTION INSTRUCTIONS TO BIDDERS**

### **BIDDER'S CHECK LIST**

#### **BEFORE BID OPENING:**

Written questions or inquiries about the Bidding Documents or the Work received less than ten days before receipt of bids may not be answered. **CONTENTS IN AND MARKING OF OPAQUE SEALD BID ENVELOPE:**

1. Completed Section Bid Form
  - 1.1 If the Bidder intends to provide proof of evidence of authority to the Owner in the form of a certification as to corporate principal resolution of corporate partnership authority or other document, the Bidder shall complete the Certificate of Principal and the Resolution of Corporate Authority or Certificate of Partnership Authority, or equivalent acceptable document(s) indicating authority, and shall attach the completed document(s) to the Bid Form.
2. Completed Bid Proposal and Consent of Surety, including evidence of Power of Attorney and evidence the surety is licensed to do business in the State of New Jersey, if the Bid includes a Bid Bond. If the Bid includes a certified or cashier's check, attach that check and the certification required on the Instructions to Bidders.
3. Completed– Questionnaire, including Bidder-furnished attachments.
4. Completed– List of Subcontractors.
5. Completed Non- Collusion Statement.
6. Completed Ownership Statement.
7. Completed Certification of Compliance.
8. The Bidder's name, valid street, address (no post office box), telephone number, and the contract number shall be marked on the BID ENVELOPE.
9. Public Works Contractor's Registration Certificate.
10. Business Registration Certificate.

This Check List is provided solely to aid the Bidder in submitting a Bid. It shall not be relied on to include all items necessary to insure a complete Bid. The Bidder is solely responsible for including all items as required by the Bidding Documents, including any items required by Addenda, which may not be listed in this Check List.

## **INFORMATION FOR BIDDERS**

### **1.0 – SUBSURFACE CONDITIONS**

1.1 The Reports of explorations and tests of subsurface conditions itemized immediately below have been used by the Engineer in the preparation of the Bidding Documents. Those reports are not a part of the Bidding Documents and are available for review if requested.

Not Applicable

1.1.1 Information or data contained in those reports that may be properly considered authorized technical data concerning subsurface conditions include: (NOTE: All other information or data excluded from the list below represent non-technical information or data, interpretations or opinions.)

Not Applicable

### **2.0 – OTHER PHYSICAL CONDITIONS**

2.1 The Drawings and Technical Specifications and those drawings itemized immediately below contain information or data that have been used by the Engineer in the preparation of the Bidding Documents, and that may be properly considered authorized technical data concerning physical conditions of existing surface and subsurface facilities

Not Applicable

**ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA**

The undersigned Respondent hereby acknowledges its receipt of the below-listed notice(s) of revisions, clarifications and/or addenda to the RFP. By indicating the date of receipt, the Respondent hereby acknowledges that its submitted Response takes into account all of the provisions contained in such listed notices of revisions, clarifications and/or addenda. The Respondent hereby acknowledges and agrees that the City's record of notices of revisions, clarifications and/or addenda shall take precedence over the Respondent's accounting of such notices. The Respondent further acknowledges and agrees that any failure of the Respondent to include and specifically reference its receipt of any such notices of revisions, clarifications and/or addenda on this document as part of its Response, may be cause for rejection of the Response.Replacement

City of Perth Amboy Revision/Addenda Title/Number	Method of Receipt (Mail, Fax, Delivery)	Date Received
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**CHECK HERE IF NONE.**

**RESPONDENT'S ACKNOWLEDGEMENT:**

Respondent' Name: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_, \_\_\_\_\_  
(print name) (print title)

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## STATEMENT OF OWNERSHIP DISCLOSURE

N.J.S.A. 52:25-24.2 (P.L. 1977, c.33, as amended by P.L. 2016, c.43)

**This statement shall be completed, certified to, and included with all bid and proposals submissions. Failure to submit the required information is cause for automatic rejection of the bid or proposal.**

Name of Business: \_\_\_\_\_

Address of Business: \_\_\_\_\_

Name of Person Completing this Form: \_\_\_\_\_

N.J.S.A. 52:25-24.2 Submission of Statement required for Bidding on Public Contracts.

No corporation, partnership, or limited liability company shall be awarded any contract nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with or out of any public funds, by the State, or any county, municipality or school district, or any subsidiary or agency of the State, or of any county, municipality or school district, or by any authority, board, or commission which exercises governmental functions, unless prior to the receipt of the bid or accompanying the bid, of said corporation, said partnership, or said limited liability company there is submitted a statement setting forth the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be.

If one or more such stockholder or partner or member is itself a corporation or partnership or limited liability company, the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every non-corporate stockholder, and individual partner, and member, exceeding the 10 percent ownership criteria established in this act, has been listed.

To comply with this section, a bidder with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest.

The Attorney General has advised that provisions of N.J.S.A. 52:25-24.2, which refer to corporations and partnerships, apply to limited partnerships, limited liability partnerships, and Subchapter S Corporations.

This Ownership Disclosure Certification form shall be completed, signed and notarized.

**Failure of the bidder/proposer to submit the required information is cause  
for automatic rejection of the bid or proposal**

**Part I Check the box that represents the type of business organization:**

- Sole Proprietorship (skip Parts II and III, execute certification in Part IV)
- Non-Profit Corporation (skip Parts II and III, execute certification in Part IV)
- For-Profit Corporation (any type)    Limited Liability Company (LLC)
- Partnership    Limited Partnership    Limited Liability Partnership (LLP)
- Other (be specific) \_\_\_\_\_

**Part II**

- The list below contains the contains the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own 10 percent or greater interest therein, as the case may be. **(COMPLETE THE LIST BELOW IN THIS SECTION)**

**or**

- No one stockholder in the corporation owns 10 percent or more of its stock, of any class, or no individual partner in the partnership owns a 10 percent or greater interest therein, or no member in the limited liability company owns a 10 percent or greater interest therein, as the case may be. **(SKIP TO PART IV)**

**(Please attach additional sheets if more space is needed):**

Name of Individual or Business Entity	Home Address (for individuals) or Business Address

**Part III: Disclosure of 10% or Greater Ownership in the Stockholders, Partners or LLC Members Listed in Part II**

- Pages attached with the name and address of each publicly traded entity as well as the name and address of each person that holds a 10 percent or greater beneficial interest.

or

- Submit here the links to the websites (U.R.L.S.) containing the last annual filings with the Federal Securities and Exchange Commission or the foreign equivalent.

\_\_\_\_\_  
\_\_\_\_\_

and

- Submit here the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest.

\_\_\_\_\_  
\_\_\_\_\_

**Part IV: Certification**

I, being duly sworn upon my oath, hereby represent that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge: that I am authorized to execute this certification on behalf of the bidder/proposer; that the <name of contracting unit> is relying on the information contained herein and that I am under a continuing obligation from the date of this certification through the completion of any contracts with <type of contracting unit> \_\_\_\_\_ to notify the <type of contracting unit> \_\_\_\_\_ in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement (s) with the, permitting the <type of contracting unit> \_\_\_\_\_ to declare any contract (s) resulting from this certification void and unenforceable.

SUBSCRIBED AND SWORN  
BEFORE ME THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
(Type or Print Name of Affiant under Signature)

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES:  
\_\_\_\_\_, 20\_\_\_\_\_.

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

**EXHIBIT A**  
**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**

**N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)**

**N.J.A.C. 17:27**

**GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS**

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality 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 by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable 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 age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2, or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

**EXHIBIT A**

**(CONT)**

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate based on age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but before execution of a goods and services contract, one of the following three (3) documents:

- Letter of Federal Affirmative Action Plan Approval;
- Certificate of Employee Information Report; or
- Employee Information Report Form AA-302 (electronically provided by the Division and distributed to the public agency through the Division's website at: [http://www.state.nj.us/treasury/contract\\_compliance](http://www.state.nj.us/treasury/contract_compliance))

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU EEO Monitoring Program for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code** at N.J.A.C. 17:27.

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**NEW JERSEY ANTI-DISCRIMINATION PROVISIONS  
N.J.S.A. 10:2-1 ET SEQ.**

Pursuant to N.J.S.A. 10:2-1, if awarded a contract, the contractor agrees that:

- a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractors or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- c. There may be deducted from the amount payable to the contract by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
- d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

**Acknowledged:**

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## AMERICANS WITH DISABILITIES ACT OF 1990

### Equal Opportunity for Individuals with Disability

The contractor and the City of Perth Amboy, (hereafter "owner") do hereby agree that the provisions of Title 11 of the Americans with Disabilities Act of 1990 (the "Act") (42 U.S.C. SJ 21 OJ et seq.), which prohibits discrimination based on disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant there unto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the owner pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act. If the contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the contractor shall defend the owner in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the owner, its agents, servants, and employees from and against all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The contractor shall, at its own expense, appear, defend, and pay all charges for legal services and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner's grievance procedure, the contractor agrees to abide by any decision of the owner that is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the owner, or if the owner incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the contractor shall satisfy and discharge the same at its own expense.

The owner shall, as soon as practicable after a claim has been made against it, *give* written notice thereof to the contractor along with complete particulars of the claim, if any action or administrative proceeding is brought against the owner or any of its agents, servants, and employee, the *owner shall* expeditiously forward or have forwarded to the contractor every demand, complaint, notice, summons, pleading, or other process received by the owner or its representatives.

It is expressly agreed and understood that any approval by the owner of the services provided by the contractor pursuant to this contract will not relieve the contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the owner pursuant to this paragraph.

It is further agreed and understood that the owner assumes no obligation to indemnify or save harmless the contractor, its agents, servants, employees, and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the contractor from any liability, nor preclude the owner from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

#### Acknowledged:

Name: \_\_\_\_\_ Signature : \_\_\_\_\_

Date: \_\_\_\_\_

**NON-COLLUSION AFFIDAVIT**

STATE OF NEW JERSEY

SS:

COUNTY OF UNION

I, \_\_\_\_\_ (name) of full age, being duly sworn according to law, on my oath depose and say:

I am the \_\_\_\_\_ (title)

of \_\_\_\_\_ (name of bidder), the bidder for the above named project, and that I executed the said bid with full authority so to do; that the bidder has not, directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the RFP, and that all statements contained in the proposal and in this affidavit are true and correct, and made with full knowledge that the City of Perth Amboy relies upon the truth of the statements contained in the proposal and in the statements contained in this affidavit in awarding a contract for said engagement.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies of the respondent. (N.J.S.A. 52:34-25)

SUBSCRIBED AND SWORN

BEFORE ME THIS \_\_\_\_\_ DAY

OF \_\_\_\_\_, 20 \_\_\_\_\_.

NOTARY PUBLIC \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_

(Type or Print Name of Affiant under Signature)

**EQUIPMENT CERTIFICATION**

The undersigned Bidder hereby certifies as follows:

The bidder owns or controls all the necessary equipment required to accomplish the work described in the specifications.

Name of Bidder: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Name of above: \_\_\_\_\_

(Print)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**REQUEST FOR REFERENCES**

- 1. Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_  
Email address \_\_\_\_\_  
Contact Individual \_\_\_\_\_
  
- 2. Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_  
Email address \_\_\_\_\_  
Contact Individual \_\_\_\_\_
  
- 3. Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_  
Email address \_\_\_\_\_  
-  
Contact Individual \_\_\_\_\_
  
- 4. Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_  
E-mail address \_\_\_\_\_  
Contact Individual \_\_\_\_\_
  
- 5. Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_  
E-mail address \_\_\_\_\_

**CITY OF PERTH AMBOY**

**CERTIFICATION OF COMPLIANCE WITH THE  
CITY OF PERTH AMBOY'S LOCAL PAY TO PLAY ORDINANCE**

(Article I, Contributions by Public Contractors, §98.1 et seq., Perth Amboy City Code,  
attached)

Name of Respondent \_\_\_\_\_

Address \_\_\_\_\_

I, \_\_\_\_\_, of full age, certify as follows:

1. I am an authorized representative of the above named Professional Business Entity.
2. On behalf of the above named Respondent, I have read Article I, Contributions by Public Contractors, §98.1 et seq., of the Perth Amboy City Code (the "City Pay-to-Play Ordinance"), attached hereto, and certify, under penalty of perjury, that:
  1. I understand the definition of "Professional Business Entity," contained in the City Pay-to-Play Ordinance, and acknowledge that the above-named Respondent is a Professional Business Entity in accordance with therewith;
  - b. The above-named Respondent has not made a contribution in violation of the attached City Pay-to-Play Ordinance, and if awarded a contract, will comply with the City Pay-to-Play Ordinance during the term of the contract.

In accordance with §98.3 of the City Code, I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Print Name

Date \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Title

**DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN**

RESPONDENT'S NAME: \_\_\_\_\_

Pursuant to Public Law 2012, c. 25, any person or entity that submits a bid or response or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that the person or entity, or one of the person or entity's parents, subsidiaries, or affiliates, is not identified on a list created and maintained by the Department of the Treasury as a person or entity engaging in investment activities in Iran. If the Director finds a person or entity to be in violation of the principles which are the subject of this law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the person or entity.

**I certify, pursuant to Public Law 2012, c. 25, that the person or entity listed above for which I am authorized to bid/renew: (Please check all statements that are true)**

is not providing goods or services of \$20,000,000 or more in the energy sector of Iran, including a person or entity that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran, **AND**

is not a financial institution that extends \$20,000,000 or more in credit to another person or entity, for 45 days or more, if that person or entity will use the credit to provide goods or services in the energy sector in Iran.

**In the event that a person or entity is unable to make the above certification because it or one of its parents, subsidiaries, or affiliates has engaged in the above-referenced activities, a detailed, accurate and precise description of the activities must be provided in part 2 below to the Division of Purchase under penalty of perjury. Failure to provide such will result in the response being rendered as non-responsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.**

**PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN**

You must provide, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran outlined above by completing the boxes below.

NAME: \_\_\_\_\_

Relationship to Bidder \_\_\_\_\_

Description of Activities \_\_\_\_\_

Duration of Engagement \_\_\_\_\_ Anticipated Cessation Date \_\_\_\_\_

Respondents Contact Name \_\_\_\_\_ Contact Phone Number \_\_\_\_\_

Certification: I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I attest that I am authorized to execute this certification on behalf of the above-referenced person or entity. I acknowledge that the City of Perth Amboy is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the City to notify the City of Perth Amboy in writing of any changes to the answers of information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the City of Perth Amboy, New Jersey and that the City at its option may declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print) \_\_\_\_\_ Signature: \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_



### CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED ACTIVITIES IN RUSSIA OR BELARUS

Pursuant to N.J.S.A. 52:32-60.1, et seq. ([L. 2022, c. 3](#)) any person or entity (hereinafter "Vendor") that seeks to enter into or renew a contract with a State agency for the provision of goods or services, or the purchase of bonds or other obligations, must complete the certification below indicating whether or not the Vendor is identified on the Office of Foreign Assets Control (OFAC) Specially Designated Nationals and Blocked Persons list, available here: <https://sanctionssearch.ofac.treas.gov/>. If the Department of the Treasury finds that a Vendor has made a certification in violation of the law, it shall take any action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

I, the undersigned, certify that I have read the definition of "Vendor" below, and have reviewed the Office of Foreign Assets Control (OFAC) Specially Designated Nationals and Blocked Persons list, and having done so certify:

*(Check the Appropriate Box)*

A. That the Vendor is not identified on the [OFAC Specially Designated Nationals and Blocked Persons list on account of activity related to Russia and/or Belarus](#).

*OR*

B. That I am unable to certify as to "A" above, because the Vendor is identified on the [OFAC Specially Designated Nationals and Blocked Persons list on account of activity related to Russia and/or Belarus](#).

*OR*

C. That I am unable to certify as to "A" above, because the Vendor is identified on the [OFAC Specially Designated Nationals and Blocked Persons list](#). However, the Vendor is engaged in activity related to Russia and/or Belarus consistent with federal law, regulation, license or exemption. A detailed description of how the Vendor's activity related to Russia and/or Belarus is consistent with federal law is set forth below.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(Attach Additional Sheets If Necessary.)*

_____ Signature of Vendor's Authorized Representative	_____ Date
_____ Print Name and Title of Vendor's Authorized Representative	_____ Vendor's FEIN
_____ Vendor's Name	_____ Vendor's Phone Number
_____ Vendor's Address (Street Address)	_____ Vendor's Fax Number
_____ Vendor's Address (City/State/Zip Code)	_____ Vendor's Email Address

<sup>i</sup> Vendor means: (1) A natural person, corporation, company, limited partnership, limited liability partnership, limited liability company, business association, sole proprietorship, joint venture, partnership, society, trust, or any other nongovernmental entity, organization, or group; (2) Any governmental entity or instrumentality of a government, including a multilateral development institution, as defined in Section 1701(c)(3) of the International Financial Institutions Act, 22 U.S.C. 262r(c)(3); or (3) Any parent, successor, subunit, direct or indirect subsidiary, or any entity under common ownership or control with, any entity described in paragraph (1) or (2).

## GENERAL CONDITIONS

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## **ARTICLE 1 - CONTRACT DOCUMENTS**

### **1.1 Use of Terms**

- 1.1.1 Defined terms used in these General Conditions, the Agreement, Performance and Payment Bond and any other Contract Forms have specific intent and meanings assigned, as stated in GC-92 - Glossary. The Glossary also provides information on how to construe any reference to an Article or a paragraph made in these General Conditions.
- 1.1.2 Whenever the term "the Contractor" is used concerning an action, obligation or event, it shall cover, even if not expressly stated, actions or obligations of, or events involving, any subcontractor, supplier, or anyone for whom any of them may be liable, unless the context requires otherwise.

### **1.2 Intent of the Contract Documents**

- 1.2.1 It is the intent of the Contract Documents to describe a complete, functional Project (or part of a Project) to be constructed in accordance with the Contract Documents. In addition to Work expressly called for in the Contract Documents, the Contractor shall provide, without any changes in the Work and at no increase in Contract Price or Contract Time, any other Work reasonably inferable from the Contract Documents, which, if not provided, would prevent or impair use of the Work, or affected Work, for its intended purpose. The Contract Documents are complementary; anything shown or mentioned in a part of the Contract Documents shall be of like effect as if called for in all parts of the Contract Documents.
- 1.2.2 Unless otherwise provided (a) words with an accepted technical or trade meaning shall be interpreted in accordance with that meaning, and (b) reference to standard specifications, manuals or codes of any technical society, organization or association, whether specifically or by implication, means those in effect on the date of the Bid Opening.
- 1.2.3 The breakdown of the Work by Divisions and Sections or the identification of any Drawings shall not delineate, or be construed to delineate, Work to be performed by anyone trade, or control the manner in which Work may be divided by the Contractor among Subcontractors or Suppliers.
- 1.2.4 It is intended that use of the terms "as ordered," "as directed," "as required," "as allowed," "as approved," or similar terms, or the adjectives "reasonable", "suitable", "acceptable," "proper," or "satisfactory" or similar adjectives, to describe a requirement, direction, review or judgment of the Engineer or Resident Engineer as to the Work will be solely to evaluate the Work for compliance with the Contract Documents. No use of any such term or

adjective, or provision of any standard specification, manual or code (whether expressly incorporated by reference in the Contract Documents or not), or Suppliers' instructions, shall be effective to (a) change the duties and responsibilities of the Resident Engineer or Engineer, or of any of their consultants, agents or employees from those assigned in the Contract Documents, or (b) to assign to the Owner (by act or omission of the Resident Engineer or otherwise) or Engineer, or any of their consultants, agents or employees, any authority or duty to supervise or direct execution of the Work or assume responsibility contrary to the provisions of the Contract Documents.

- 1.2.5 Whenever a provision obligates the Contractor to reimburse the Owner for costs incurred by the Owner, the Owner is entitled to withhold a corresponding amount from any payment, and to amend the Contract Price accordingly.
- 1.2.6 The technical specifications are written in imperative and abbreviated form. This imperative language of the technical sections is directed at the Contractor, unless specifically noted otherwise. Incomplete sentences shall be completed by inserting "shall," "the Contractor shall," and "shall be," and similar mandatory phrases by inference in the same manner as they are applied to notes on the drawings. The words "shall be" shall be supplied by inference where a colon (:) is used within sentences or phrases. Except as worded to the contrary, fulfill (perform) all indicated requirements whether stated imperatively or otherwise. .

### **1.3 Priority of the Contract Documents**

- 1.3.1 In resolving conflicts, the Contract Documents shall be given the priority determined by the Engineer that results in Work consistent with and reasonably inferable from their intent. When not in contradiction with this priority rule, the Contract Documents shall be given priority by the Engineer in the order in which they are listed in the Contract Documents. In addition, if the issue of priority involves the Specifications and Drawings, figured dimensions shall govern over scaled dimensions. Work not expressly shown or specified shall be the same as similar Work shown or specified. Detail Drawings shall govern over general Drawings, and Drawings shall govern over Shop Drawings. Whenever notes, specifications, dimensions, details or schedules in the Specifications or Drawings, or between the Specifications and Drawings, or between Change Order or Change Authorization Drawings and Contract Drawings, conflict, the Contractor shall furnish the higher performance requirement determined by the Engineer.
- 1.3.2 Compliance with the priority rules set forth in Paragraph 1.3.1 above shall not justify any changes in the Work, or any increases in Contract Price or

Contract Time, unless any such compliance results in Work that is not consistent with or is not reasonably inferable from the intent of the Contract Documents.

#### **1.4 Interpretation of Indemnification Provisions**

- 1.4.1 A provision requiring the Contractor to defend, indemnify and hold harmless the Owner and Engineer against all claims, or covering liability of the Owner or Engineer, shall include claims caused in part by the negligence or other liability-creating conduct or omissions of the Owner (by acts or omissions of the Resident Engineer or otherwise) or Engineer. The Contractor shall not be required to indemnify the Owner or Engineer against liability for loss or damage resulting from the sole negligence of the Owner or Engineer. Such indemnification obligation shall be further construed as covering not only the Owner and Engineer, but also the Resident Engineer and the Owner and Engineer's respective consultants, agents, directors, officers, Shareholders, employees and any combination of any of them. Use of the expression "against all claims" in any such indemnification obligation shall be construed as covering all claims, costs, losses and damages, whether direct, indirect or consequential (including, but not limited to, charges of engineers, architects, attorneys and others and all court, hearing, and other dispute resolution costs).

#### **1.5 Subsurface and Physical Conditions**

- 1.5.1 Except for reasonable reliance on the general accuracy of authorized technical data concerning subsurface conditions and physical conditions of existing surface and subsurface facilities, neither the Owner nor Engineer assumes any responsibility for the adequacy or completeness of such technical data relating to any aspects of (a) the means and methods chosen by the Contractor, (b) any safety precautions and programs, or (c) any other of the Contractor's purposes in executing the Work.
- 1.5.2 The Owner and Engineer assume no responsibility for the accuracy, adequacy or completeness of information and data of physical conditions of existing Underground Utilities, whether the information and data are shown or indicated in the Contract Documents.

#### **1.6 Interpretation of Delay and Cost Provisions**

- 1.6.1 A provision that specifies "the Owner shall authorize the necessary change in Contract Time only," shall be construed as covering unreasonable delay under the circumstances, which arises from unforeseeable causes, and which is not caused in whole or in part by acts or omissions within the control of the Owner (by acts or omissions of the Resident Engineer or otherwise), Engineer or Contractor. Any change in Contract Time authorized under

that provision shall be the Contractor's sole and exclusive remedy against the Owner, and the Contractor shall be responsible for all resulting direct, indirect and consequential costs of the Contractor.

- 1.6.2 If a provision specifies that the Contractor shall be responsible for any delay and all costs, the Contractor shall not be entitled to any increase in Contract Price or Contract Time, and the Contractor shall assume all resulting direct, indirect and consequential costs, of both the Contractor and Owner.
- 1.6.3 A provision that specifies that the Contractor shall be responsible for any resulting delay and delay costs shall be interpreted as covering (a) delay, (b) acceleration instead of or to overcome delay, or both, and (c) all related direct, indirect or consequential costs, of both the Contractor and Owner, resulting from the events contemplated by that particular provision.

## **1.7 Ownership and Use of the Contract Documents**

- 1.7.1 Except as otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor four copies of the Contract Documents at no cost.
- 1.7.2 Neither the Contractor nor any subcontractor or supplier shall have or acquire title to or ownership rights in any of the Drawings, Specifications or Documents, and they shall not reuse any of them on extensions of the Project or any other project without prior written consent of the Owner and Engineer. The Contractor, subcontractors and suppliers are granted a limited license to use and reproduce portions of the Contract Documents as appropriate for the execution of the Work. Copies made under this license shall bear any copyright notices shown on the Contract Documents.

## **1.8 Forms**

- 1.8.1 The Owner and Contractor shall either employ the following forms or in the Owner's discretion employ equivalent forms:
  - 1.8.1.1 Certificate of Substantial Completion
- 1.8.2 The Contractor shall have printed sufficient copies of the following forms for use during the duration of the project:
  - 1.8.2.1 Request for Information (RFI)
  - 1.8.2.2 Contractor's Submittal
  - 1.8.2.3 Daily Field Reports

## ARTICLE 2 - GENERAL PROVISIONS

### 2.1 Availability of Lands (Including Properties)

- 2.1.1 The Contract Documents indicate the lands upon which the Work is to be performed and those rights-of-way and easements for access furnished by the Owner. Easements for permanent structures or for permanent changes in existing facilities will be obtained by the Owner, unless otherwise stated.
- 2.1.2 The Contractor shall obtain, at no increase in Contract Price or Contract Time, any additional lands, rights-of-way and easements that the Contractor, in its sole discretion, requires for temporary facilities, ingress and egress, storage, disposal of spoil or waste material or any other purpose. The Owner shall obtain (a) all required permits from the United States Government, the State and any local Governing Body and public utility with jurisdiction, or (b) permission by written agreement, if private property, with the exception of State of New Jersey Uniform Construction Code (UCC) permits, which shall be obtained by the Contractor. The Contractor shall submit copies of all such UCC permits to the Owner.
- 2.2.1 The Owner shall establish those reference points that the Engineer considers necessary to enable the Contractor to proceed with the Work. The Contractor shall be responsible for laying out the Work, protecting/preserving reference points, and shall make no changes without the prior written approval of the Resident Engineer. The Contractor shall report to the Resident Engineer if any reference point is lost, destroyed or requires relocation, and shall replace and relocate any lost or destroyed reference point accurately, with professionally qualified personnel, if so directed by the Resident Engineer.
- 2.2.2 The Contractor shall be responsible for any loss, destruction, replacement and/or relocation of reference points (including any delay and all costs resulting from any such events), if the loss, destruction, replacement and/or relocation of reference points result in whole or in part from acts of omissions within the control of the Contractor.

### 2.3 Stop Work Order

- 2.3.1 If Work is *defective*, or the Contractor fails to provide sufficient skilled workers or suitable materials or equipment, or fails to execute Work so that the completed Work will conform to the Contract Documents, the Owner may order the Contractor to stop all or part of the Work until the problem is corrected. The Contractor shall be responsible for any delay and all costs resulting from any such stop Work order. The Owner's authority to stop Work shall not create or impose any duty or responsibility on the Owner to exercise any such authority for the benefit of the Contractor or any other party.

## **2.4 Rights to Data**

2.4.1 All plans, drawings, designs, specifications, software, reports, operating manuals and other data developed, delivered, produced or paid for under the requirements of the Contract Documents shall be the property of the Owner. The Owner maintains all rights to such data including the right to use, duplicate, and disclose the data, in whole or in part, in any manner and for any purpose. If that data is copyrightable, the Contractor may copyright it subject to the Owner's rights. The Owner reserves a royalty-free, nonexclusive and irrevocable license to use, duplicate, publish and disclose such data, in whole or in part, and to authorize others to do so. The Contractor shall include, implement, and enforce these provisions in all sub-agreements that may produce copyrightable data.

## **2.5 The Owner's Representative**

- 2.5.1 The Owner will designate a person to serve as Resident Engineer and who will act as the Owner's representative during the period allowed for the completion of the Work. The Resident Engineer's duties, responsibilities and limits of authority set forth in the Contract Documents shall not be changed without the prior written consent of the Owner. Use of the term "the Owner" to describe duties, responsibilities or limits of authority as to the Work, shall cover, even if not expressly stated, duties, responsibilities or limits of authority of the Resident Engineer, unless the context requires otherwise.
- 2.5.2 Written communications from the Owner to the Contractor will generally be issued through the Resident Engineer. Written communications from the Contractor to the Owner shall be issued to the Resident Engineer; from subcontractors or suppliers shall be issued through the Contractor.
- 2.5.3 The Owner may issue unilaterally, or negotiate, in its sole discretion, Change Orders and Change Authorizations. The Owner also may unilaterally delay the entire Work or any part of the Work for its convenience. Except as recognized under Paragraph 10.1.3 and 8.8.2 of this section, only the Owner is empowered to order or cause changes in the Work, or to cause delay to all the Work or any part of the Work, respectively.
- 2.5.4 The Owner will employ one, or more, if warranted by the scope of the project, environmental inspector(s) to ensure that the requirements of the specifications relating to environmental and cultural resource protection and restoration are effectively carried out. Individuals designated as environmental inspector by the Owner must possess at a minimum the education/experience qualifications of an Environmental Specialist employed with the New Jersey Department of Environmental Protection. The New

Jersey Department of Environmental Protection will also conduct environmental inspections to oversee the conduct of the protection/restoration measures. Responsibilities of the Owner's environmental inspector(s) include the following:

- 2.5.4.1 Daily inspections of active work areas and periodic inspection of maintenance or restoration areas sufficient to ensure performance of protection measures in accordance with Contract Documents.
- 2.5.4.2 The maintenance of a daily job diary in which they shall record the progress of the work and of any problems encountered. The environmental inspectors shall notify the Contractor in writing immediately upon noticing that environmental specifications are not being met.
- 2.5.4.3 At frequent intervals during construction, the Owner, the Resident Engineer, the environmental inspectors, and the New Jersey Department of Environmental Protection inspectors shall meet to review progress and to resolve difficulties that might result in unnecessary delays in the work. The New Jersey Department of Environmental Protection shall notify the Owner if deficiencies are not immediately corrected. The Owner shall then direct compliance with the environmental requirements.

## **2.6 Limitations on the Owner's Responsibilities**

- 2.6.1 The Owner is not responsible for the Contractor's means and methods, safety precautions and programs related to safety, or the Contractor's failure to execute the Work in accordance with the Contract Documents. Nor is the Owner responsible for any acts or omissions of the Contractor or of any subcontractor or any supplier or anyone for whose acts the Contractor or any subcontractor or supplier may be liable.
- 2.6.2 The Owner is not responsible for verifying whether any of the Contractor's Progress Schedule Submittals, any certificates and/or policies of insurance Submittals, or any other Submittals concerning the Contractor's means and methods or safety precautions and/or programs are in accordance with the Contract Documents, or for verifying their accuracy or completeness in any way. Neither the Owner's authority to review any of these Submittals, nor the Owner's decision to raise or not raise any objections about any such Submittals shall create or impose any duty or responsibility on the Owner to exercise any such authority or decision for the benefit of the Contractor, any subcontractor or supplier or any other party.

## **ARTICLE 3 - STATUS OF THE RESIDENT ENGINEER AND ENGINEER**

### **3.1 Project Representation**

- 3.1.1 The Engineer shall act as the Owner's consultant in support and through the Resident Engineer. The Engineer's duties and responsibilities and limits of authority set forth in the Contract Documents shall not be changed without the prior written consent of the Owner and Engineer.
- 3.1.2 The Resident Engineer will make on-site observations at intervals appropriate to the stages of construction to observe the quality of in-progress and completed Work, and to determine whether the Work is being executed so that the Work, when completed, will be in accordance with the Contract Documents. Upon a request from the Resident Engineer, the Engineer will make on-site observations to check the quality and/or quantity of in-progress and completed Work.
- 3.1.3 If the Contract Documents specify Unit Price Work, the Resident Engineer will verify the actual quantities and classes of Unit Price Work completed by the Contractor.
- 3.1.4 If the Owner designates others to support the Resident Engineer with functions at the site, the duties, responsibilities and limits of authority of such assistants will be given in the Contract Documents at the Pre-Construction Conference Meeting.
- 3.1.5 The Resident Engineer and Engineer will have authority to disapprove or reject Work, if they believe it is *defective*, and to require inspection or testing of any Work, whether or not such Work is fabricated, installed, or completed. The Contractor shall take prompt corrective action upon receiving any notice that *defective* Work has been rejected.
- 3.1.6 Observations by the Resident Engineer, Engineer and any assistants shall not (a) create or impose any duty on them to make the observations for the benefit of the Contractor or any other person, (b) relieve the Contractor from its obligation to perform the Work in accordance with the Contract Documents, or (c) represent acceptance of *defective* Work.

### **3.2 Clarifications and Interpretations**

- 3.2.1 The Engineer will issue with reasonable promptness written clarifications or interpretations (which shall be consistent with or reasonably inferable from the Contract Documents) in response to a Contractor's Request for Information (RFI) or as otherwise the Engineer may determine necessary. If the Contractor believes a written clarification or interpretation justifies an increase in Contract Price or Contract Time, the Contractor shall deliver a

Potential Change Order before proceeding with the Work involved. If the Contractor is authorized by the Resident Engineer to proceed with that Work before full agreement is reached on whether any increases are due at all, or on the extent of such increases (if any determined to be due), the Contractor shall, daily, furnish to the Resident Engineer those actual cost records specified in Paragraphs 11.4 and 11.5 of this section.

### **3.3 Minor Variations; Minor Delays**

3.3.1 The Resident Engineer and/or Engineer may cause delay which is reasonable under the circumstances, or authorize minor variations (as opposed to changes) in the Work consistent with the intent of the Contract Documents if, in their judgment, such delay or variation does not justify an adjustment in Contract Price or Contract Time. Minor variations may be accomplished by written document and shall be binding on the Contractor who shall proceed with the Work involved promptly, subject to the requirements in Paragraph 3.2.1 of this section.

### **3.4 Determinations by the Engineer**

3.4.1 The Engineer will "be the initial interpreter of the requirements of the Contract Documents and, in such capacity, will render determinations on the acceptability of Work performed. Notices, proposals or other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents shall be referred initially to the Engineer in writing requesting a formal, written determination, which the Engineer shall render within a reasonable time. Once given, any such determination shall be final and binding on the Contractor unless the Contractor gives notice of a claim in accordance with the procedures and within the deadlines set forth in Article XLVI – Disputes on the Contract Documents on Page CONT-29 and as described in ARTICLE 15 on Page GC-88.

3.4.2 When functioning as interpreter and making determinations, the Engineer will not be liable for an interpretation or determination rendered in good faith. The rendering of an interpretation or other determination by the Engineer on any notice, proposal or any other matter shall be a prerequisite to the exercise by the Contractor of any rights or remedies the Contractor may otherwise have under the Contract Documents or applicable Law concerning any claim or any other matter.

### **3.5 Limitations on the Resident Engineer and Engineer's Responsibilities**

3.5.1 Neither the Engineer's or Resident Engineer's authority to act under this Article 3 or elsewhere in the Contract Documents nor any decision made by either of them in good faith to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Engineer and/or Resident

Engineer to the Contractor, any subcontractor or any supplier, any surety for any of them or any other person.

3.5.2 Neither the Resident Engineer nor Engineer is responsible for the Contractor means and methods, safety precautions and programs related to safety, or the Contractor's failure to execute the Work in accordance with the Contract Documents. Nor are they responsible for acts or omissions of the Contractor, subcontractors, suppliers or anyone for whose acts the Contractor or any subcontractor or supplier may be liable.

3.5.3 Neither the Resident Engineer or Engineer's authority to review any submittals shall create or impose any duty or responsibility on either of them to exercise such authority for the benefit of the Contractor, any subcontractor or supplier, any surety for any of them or any other person.

### **3.6 Resident Engineer's Duties and Responsibilities**

3.6.1 Schedules: The Resident Engineer will review the Contractor's Progress Schedule and Schedule of Shop Drawing Submittals prepared by the Contractor and consult with the Engineer as required.

3.6.2 Conferences and Meetings: The Resident Engineer will arrange with the Contractor, such as Pre-Construction Conference, Progress meetings, job conferences and other project-related meetings. The Resident Engineer will prepare and circulate copies of minutes thereof. These minutes shall serve as the official record of the conference or meeting.

#### 3.6.3 Liaison:

3.6.3.1 The Resident Engineer will serve as the Owner's liaison with the Contractor and Engineer.

3.6.3.2 In consultation with the Engineer, the Resident Engineer will assist the Contractor in understanding the intent of the Contract Documents.

#### **3.6.4 Shop Drawings and Samples. The Resident Engineer will:**

3.6.4.1 Record date of receipt of shop drawings and samples.

3.6.4.2 Transmit shop drawings to the Engineer and coordinate review.

3.6.4.3 Receive samples which are furnished at the site by the Contractor, and notify the Engineer of the availability of the samples for examination.

3.6.4.4 Advise the Contractor and the Engineer of the commencement of any Work requiring a shop drawing or sample if the submittal has not been approved by the Engineer.

**3.6.5 Review of Work, rejection of defective Work, inspections and tests. The Resident Engineer will:**

3.6.5.1 Inspect the Work in progress to determine if the Work is in general proceeding with the Contract Documents and that the completed Work will conform to the Contract Documents.

3.6.5.2 Notify the Contractor and advise the Engineer whenever the Resident Engineer believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and notify the Contractor and advise the Engineer of work that the Resident Engineer believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

3.6.5.3 Verify that tests, equipment and system startups and operating and maintenance training are conducted in the presence of appropriate personnel and that the Contractor maintains adequate records thereof; and observe, record, and report to the Engineer appropriate details relative to the test procedures and startups.

3.6.6 Interpretation of Contract Documents: The Resident Engineer will advise the Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to the Contractor clarifications and interpretations as issued by the Engineer.

3.6.7 Modifications. The Resident Engineer will:

3.6.7.1 Consider and evaluate the Contractor's suggestions for modifications in Drawings or Specifications and report with the Resident Engineer's recommendations to the Engineer. Transmit to the Contractor decisions as required.

3.6.7.2 Investigate any Contractor's claims and make recommendations with regard to payment of such claims.

3.6.7.3 Administer, negotiate and prepare any change orders and supplemental agreements for authorized modifications to the Work as provided for under the Contract Documents.

3.6.8 Records. The Resident Engineer will:

- 3.6.8.1 Maintain at the job site orderly files for correspondence, minutes or reports of job conferences, shop drawings and samples, reproductions of original Contract Documents including all work directive changes, addended change orders, field orders, additional drawings issued subsequent to the execution of the Contract, Engineer clarifications and interpretations of the Contract Documents, progress reports, and other project-related documents.
- 3.6.8.2 Record names, addresses and telephone numbers of contractors, subcontractors, and major suppliers of materials and equipment.

3.6.9 Reports. The Resident Engineer will:

- 3.6.9.1 Prepare periodic reports as required of progress of the Work and the Contractor's compliance with the Progress Schedule and Schedule of shop drawings and sample submittals.
- 3.6.9.2 Consult with the Engineer in advance of scheduled major tests, inspections or start of important phases of the Work.
- 3.6.9.3 Draft Proposed Change Orders and Work Directive Changes, obtaining backup material from the Contractor and recommended to the Engineer Change Orders, Work Directive Changes, and Field Orders.
- 3.6.10 Payment Requests: The Resident Engineer will review applications for payment with the Contractor for compliance with the established procedure for their submission noting particularly the relationship of the payment requested to the cost breakdown, Work completed and materials and equipment delivered at the site but not incorporated in the Work.
- 3.6.11 Certificates, Maintenance and Operation Manuals: During the course of the Work, the Resident Engineer will verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by the Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to the Engineer for review and forwarding to the Owner prior to final payment for the Work.

3.6.12 Completion:

- 3.6.12.1 Before a Certificate of Substantial Completion is issued, the Resident Engineer will submit to the Contractor a Deficiency

- 3.6.12.2 List of observed items requiring completion or correction.  
The Resident Engineer will conduct final inspections in the company of the Engineer and Contractor and prepare a final Deficiency List of items to be completed or corrected.
- 3.6.12.3 The Resident Engineer will observe that all items on the final Deficiency List have been completed or corrected and make recommendations to the Engineer concerning acceptance.
- 3.6.13 Witness Testing: The Resident Engineer will perform witness testing of equipment systems in conjunction with the Engineer.

## **ARTICLE 4 - CONTRACTOR'S GENERAL PROVISIONS**

### **4.1 Review of the Contract Documents**

- 4.1.1 Before undertaking each part of the Work, the Contractor shall (a) study and compare the Contract Documents with each other and against manufacturers' recommendations, (b) verify dimensions and field measurements, (c) coordinate requirements of dependent Work (location, dimensions, access, fit, completeness, class, codes, etc.), and (d) notify the Resident Engineer in writing of any conflict, error or omission or deviation from manufacturers' recommendations discovered.
- 4.1.2 The Contractor shall be responsible for any delay and all costs resulting from performing any Work before obtaining a written clarification or interpretation from the Engineer, if the Contractor had actual knowledge, or should reasonably have known, that any such Work (a) involves a conflict, error or omission, or (b) is subject to a specified method of installation, performance or test procedure and result which is contrary to the recommendations of the corresponding manufacturer.

### **4.2 Supervision, Superintendence, and Personnel**

- 4.2.1 The Contractor shall (a) supervise and direct the Work competently, applying the skills, expertise and attention necessary to perform the Work in accordance with the Contract Documents, (b) be responsible for any means and methods, unless a specific means and method is indicated in or required by the Contract Documents, and (c) verify that the completed Work complies accurately with the Contract Documents, all approved Submittals and all clarifications and interpretations.
- 4.2.2 The Contractor shall at all times keep on the Work at the site a competent, full-time superintendent and competent trade foremen. The superintendent shall not be assigned or replaced without the Owner's written consent. If the Owner, at any time, objects to the superintendent, the Contractor shall

submit a replacement superintendent at no increase in Contract Price or Contract Time. The superintendent shall be the Contractor's representative at the site and have authority to bind the Contractor, unless otherwise agreed in writing between the Owner and Contractor. All communications to the superintendent shall be binding on the Contractor.

- 4.2.3 The Contractor shall provide competent, suitably qualified and reliable personnel to survey, layout, and otherwise furnish and perform the Work. If the Resident Engineer objects to any Contractor personnel for good cause, the Contractor shall promptly correct the problem and, if required, remove such personnel from the Work, in which case the Contractor shall defend, indemnify and hold the Owner harmless from and against all claims, as construed in Paragraph 1.4.
- 4.2.4 The Contractor shall at all times enforce strict discipline and maintain good order at the site. The Contractor shall maintain a drug-free workplace in compliance with the Drug Free Workplace Act of 1988 and, if required by the Owner, shall certify such compliance to the United States Government.

### **4.3 Materials and Equipment**

- 4.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall furnish and be responsible for all materials, equipment, transportation, construction equipment, tools, fuel, glycol, lubricating oils, all utilities, water for flushing and testing, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing and completion of the Work.
- 4.3.2 All materials and equipment shall be (a) of good quality and new, unless otherwise allowed in the Contract Documents, and the Contractor shall furnish satisfactory evidence (including reports of required tests) as to their kind and quality, (b) applied, installed, connected, erected, used, cleaned and conditioned following the manufacturer's and Supplier's instructions, unless otherwise provided in the Contract Documents, and (c) protected against any damage at all times (including, but not limited to while in storage). For each item of material or equipment, the Contractor shall furnish complete information on preventive maintenance, operating requirements, parts lists, ordering of parts and any special conditions as specified or required by the Contract Documents.

### **4.4 Responsibilities for Underground Utilities**

- 4.4.1 The Contractor shall comply with all State, County, and other local laws concerning underground utilities. In addition, the Contractor shall be responsible for (a) not making an excavation unless at least two business days prior written notice is given to the affected public utility (except in an

emergency), (b) locating before excavation and shoring, blocking and protecting all underground utilities, (c) maintaining flagmen and other precautions to avoid interruption of service or damage to any underground utilities, (d) immediately notifying the Resident Engineer and any affected public utility of any underground utilities that are shown or indicated (in the Contract Documents) and are inaccurately shown, that are not shown, or that are dislocated or damaged, (e) repairing any damage or dislocation done to underground utilities that are shown or indicated, (f) keeping a record of the location of all valves, fittings, etc., (g) the safety and protection of, and repairing of any damage done to, any Work and surface and subsurface facilities, and (h) any damages and injury resulting from the failure to excavate in a careful and prudent manner. Except as provided in Paragraph 4.4.2, or under any allowances specific to underground utilities, the Contractor shall be responsible for any delay and all costs relating to the obligations set forth in this paragraph.

- 4.4.2 If the Contractor encounters previously unknown underground utilities that could not reasonably have been foreseen, the Owner shall, pursuant to Paragraph 10.2, order any changes in the Work and changes in Contract Price consistent with the Contractor's obligations under Paragraph 4.4.1. If any such incident results in unreasonable delay under the circumstances which is caused in whole or in part by acts or omissions within the control of the Owner or Engineer, the Owner shall, pursuant to Paragraph 10.4, authorize any corresponding adjustments in Contract Price or Contract Time, or both.

#### **4.5 Patent Fees and Royalties**

- 4.5.1 The Contractor shall be responsible for paying all royalties and license fees and assuming all costs resulting from (a) the use in the performance of the Work, or (b) the incorporation into the Work, of any specified or Contractor-chosen invention, design, process, product or device covered by patent rights or copyrights. The Contractor shall execute a suitable agreement(s) with the patentee or owner of the copyright, and file copies of the agreement(s) with the Owner and Engineer.
- 4.5.2 The Contractor shall defend, indemnify and hold harmless the Owner and Engineer from and against all claims, as construed in Paragraph 1.4, arising from any alleged patent or copyright infringement. The Contractor's obligation under this paragraph to defend, indemnify and hold harmless the Owner and Engineer shall not apply if the infringement results from an invention, design, process, product or device that is specified in the Contract Documents and does not result from a substitution. However, if the Contractor knows or has reason to know that the specified invention, design, process, product or device infringes on a patent or copyright, the Contractor's obligation under this paragraph shall apply, unless the Contractor promptly furnishes that information to the Engineer.

## **4.6 Use of Premises**

- 4.6.1 The Contractor shall confine construction equipment, laydown and storage and its operations to those lands, rights-of-way and easements (referred to as "the premises") made available by the Contract Documents, and shall not unreasonably encumber the premises. The Contractor shall be responsible for any damage to those premises (including damage to any properties and fixtures) and to any adjacent lands, rights-of-way and easements (including damage to any properties and fixtures) resulting from the Contractor's operations. The Contractor shall defend, indemnify and hold harmless the Owner and Engineer from and against all claims, as construed in paragraph 1.4, arising out of or resulting from any damage to such premises or adjacent lands, rights-of-way and easements (inclusive of properties and fixtures), including loss of use.
- 4.6.2 The Contractor shall, on a daily basis, keep the premises free from accumulations of waste materials, rubbish and other debris, and shall not remove, injure, cut or destroy trees, shrubs, plants or grass that are not called for removal, cutting or alteration by the Contract Documents. At the completion of the Work, the Contractor shall remove all obstructions, waste and surplus materials, rubbish, debris, tools and construction equipment and shall leave the site clean and ready for occupancy by the Owner. If the Contractor fails to comply with this requirement, the Owner may do so, in which case the Contractor shall be responsible for any delay and all costs.
- 4.6.3 The Contractor shall restore to original condition all property not designated for alteration by the Contract Documents (including, but not limited to walks, roadways, paved or landscaped areas). If the Contractor fails to comply with this requirement, the Owner may do so, in which case the Contractor shall be responsible for any delay and all costs.
- 4.6.4 The Contractor shall not load or permit any part of any structure to be loaded in any way that will endanger the structure. The Contractor shall not subject any part of the Work or adjacent property to stresses or pressures that will damage or endanger the Work or adjacent property, or both.

## **4.7 Record Documents**

- 4.7.1 For construction projects involving collector sewers, interceptor sewers, and force mains, the Owner shall be responsible for the preparation of all record drawings required for sewer lines. The Contractor shall assist the Owner and Engineer by providing record information, when requested, during the progress of the work.

- 4.7.2 For construction projects other than those listed in Paragraph 4.7.1, the Contractor shall, in accordance with Division 1, General Requirements, maintain at the site one copy of all Record Documents in good order and annotated in a neat and legible manner using a contrasting, reproducible color to show (a) all revisions made, (b) dimensions noted during execution of the Work, and (c) all deviations between the as-built installation and the Contract Documents and all approved Submittals and all clarifications and interpretations issued by the Engineer. Record Documents, along with a properly annotated copy of approved Submittals, shall be available to the Engineer. At completion of the Work, the Record Documents and annotated Submittals shall be delivered to the Owner.
- 4.7.3 The Contractor shall maintain daily field reports recording the labor force and equipment employed by the Contractor and subcontractors, materials/equipment received (at the site or at another location), visits by suppliers, significant in-progress and completed trade Work within major Work areas, and other pertinent information. Daily field reports shall be furnished by the Contractor to the Resident Engineer daily, and shall be accepted by the Owner for information only. The Owner's review of any daily field report shall not be construed as agreement with any information contained in such report. Record documents shall be available for review by the Owner, or other Agency with jurisdiction over the work.

#### **4.8 Emergencies**

- 4.8.1 In emergencies affecting the safety or protection of persons, any Work or property at or adjacent to the site, the Contractor, without special instruction/authorization from the Engineer, Resident Engineer or Owner, is obligated to act to prevent threatened damage, death, injury or loss. The Contractor shall give the Owner prompt written notice of any changes in the Work due to the action taken. If the OWNER concurs, the Owner shall, pursuant to Article 10, order the required changes in the Work and, unless the emergency results in whole or in part from acts or omissions within the control of the Contractor, correspondingly adjust the Contract Price or Contract Time.

#### **4.9 Indemnification**

- 4.9.1 The Contractor shall defend, indemnify and hold harmless the Owner and Engineer from and against all claims, as construed in Paragraph 1.4, for bodily injury, sickness, disease or death, or injury or destruction of property, including loss of use, arising out of, relating to, or being in any way connected with (a) the Work, (b) failure of the Contractor or any subcontractor to provide a safe work place, (c) noncompliance with any Law by the Contractor or any subcontractor or supplier, or (d) the Contractor's failure to maintain the required policies of insurance and coverage. As a

point of emphasis, and as set forth in Paragraph 1.4, this indemnification obligation shall include claims caused in part by the negligence or other liability-creating conduct or omissions of the Owner or Engineer; however, the Contractor shall not be required to indemnify the Owner or Engineer against liability for loss or damage resulting from the sole negligence of the Owner or Engineer.

- 4.9.2 With respect to all such claims against the Owner or Engineer by any employee of the Contractor, the indemnification obligation under Paragraph 4.9.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, any subcontractor or supplier under workers' compensation, disability benefit or other employee benefit acts.

#### **4.10 Control of Work**

- 4.10.1 The Contractor shall prosecute the Work so that it will cause the least practicable interference with, and avoid prolonged interruption of or damage to, existing facilities, underground utilities and overhead utilities. The Contractor shall obtain written approval from the Owner at least ten business days before performing any Work that involves either connection to existing facilities or interruption of service or existing operations. The Contractor shall, at no increase in Contract Price or Contract Time, perform that Work at whatever time it causes the least interference or annoyance.
- 4.10.2 The Contractor shall initiate, maintain and supervise all weather protection programs applicable to the Work. In the event of severe weather, the Contractor shall immediately inspect the Work and the site, and take all necessary actions to ensure that public access and safety are maintained.
- 4.10.3 The Contractor shall be responsible for performing the pumping, draining and controlling of surface water and groundwater in the way that will not endanger the Work or any adjacent facility or property, or interrupt, restrict or interfere with the use of any adjacent facility or property.
- 4.10.4 If a specific means and method is indicated in or required by the Contract Documents, a substitute means and method may be used provided that: (a) the substitute means and method, in the Engineer's judgment, meets the applicable criteria specified in Paragraph 5.3, at no increase in Contract Price or Contract Time, and (b) the alternate means and method is not used without the Engineer's prior acceptance.
- 4.10.5 The Contractor shall post construction signs to advise occupants of operating facilities of the limits of work areas, hardhat areas, excavation, construction parking, etc.

- 4.10.6 The Contractor shall inspect Work already in-place to verify that the in-place Work is in proper condition to receive dependent Work. Whether or not expressly specified in the Contract Documents, the Contractor shall be responsible for all cutting, fitting, drilling and/or patching of concrete, masonry, piping and other materials that may be necessary to make in-place Work and dependent Work fit together properly.
- 4.10.7 Unless otherwise provided in the Contract Documents, the Contractor shall (a) remove and salvage carefully (in sections which may be readily transported) those materials and equipment designated for removal, and (b) pile them in a neat and acceptable manner on the premises, if they belong to a property owner, otherwise at accessible locations along the Work. Removed materials or equipment that are fit for reuse shall remain the property of their owner. Materials and equipment stored on the site or right-of-way shall be placed so as to ensure minimum danger and obstruction to the traveling public.
- 4.10.8 The Contractor shall be responsible for the care and preservation of removed materials and equipment owned by the Owner, State or any other local Governing Body for ten (10) days after completing the storage (on or beyond the right-of-way) of the materials and equipment and receiving written acknowledgement from the Resident Engineer. The Contractor's responsibility for stored materials and equipment of private owners also shall cease at the end of such ten-day period, provided the Contractor notifies them in writing (with copy to the Resident Engineer) that they shall assume responsibility for their materials and equipment after the end of the Contractor's ten-day period.
- 4.10.9 Any work damaged by the Contractor shall be corrected and made equal in all respects (quality, finish, appearance, function, etc.) to similar nondamaged Work. The Contractor shall be directly responsible for the charges of any manufacturer's representative called to the site to repair or adjust any systems damaged by the Contractor.
- 4.10.10 The Contractor shall take whatever steps, procedures or means required to prevent dust nuisance due to the Contractor's operations. Occupied areas in existing facilities shall be separated from construction areas with suitable dust barriers. The dust control measures shall be maintained at all times to the satisfaction of the Owner.
- 4.10.11 The Contractor shall post appropriate signs to advise occupants and visitors of existing facilities of the limits of construction, hardhat areas, excavations, construction parking and staging areas, etc. When the Work reaches a stage that delay in completion may result due to damage by vandalism or other causes, the Contractor shall provide appropriate security during non-working hours to safeguard and protect the Work.

4.10.12 The Contractor shall comply with Laws governing traffic in streets, access to streets and highways, grading and drainage, restoration of lands/property under the control of the State or any Public Entity, nuisance control and water for construction and any other Laws affecting construction operations.

4.10.13 The Contractor shall establish a quality control system to ensure competent supervision, examination, inspection and testing of all items of Work at appropriate intervals, including those of subcontractors and suppliers, and to control conformance to the applicable Specifications and Drawings with respect to product, workmanship, construction, maintenance while idle, finish, functional performance and identification. At a minimum, the Contractor's quality control system shall include the checking, approval and coordination of Submittals and the surveillance of all specified tests, and specifically incorporate the responsibility for verifying and inspecting any item of Work that cannot be located and inspected without uncovering, once that item of Work is complete. Data so obtained shall be accurately annotated on the Record Documents.

4.10.14 The Contractor shall electronically submit a three-week look ahead schedule by the first day of each work week to the Resident Engineer. The schedule for the first week shall list the Work activities to be performed each day by work crew, trade and/or subcontractor. Activities requiring laboratory testing services and/or coordination activities through the Resident Engineer shall be highlighted. The schedules for the second and third week shall list the major work activities to be performed during that period.

#### **4.11 Public Convenience**

4.11.1 The Contractor shall operate vehicles and construction equipment (a) in the way that causes the least practicable interference with pedestrians and traffic, (b) without becoming a hazard to the public, and (c) without interfering with overhead utilities. When transporting materials, vehicles shall not be loaded beyond the capacity set by their manufacturers or applicable Laws. Unless otherwise permitted by law, vehicles shall be registered in the State of New Jersey before they are employed in the execution of the work.

4.11.2 When crossing sidewalks, curbs or landscaped areas, the Contractor shall protect those areas from damage. Safe and adequate pedestrian and vehicular access shall be maintained to fire hydrants, commercial and industrial establishments, churches, schools, parking lots, hospitals, fire and police stations and other like establishments.

- 4.11.3 Whenever activities of the Contractor are carried out beyond the limits of the site or the indications of temporary fences or barricades, the Contractor shall schedule trenching, utility work, site development, landscaping and all other activities in the way that will cause minimum disturbance to or interference with service to the public, or the normal operation of the Owner or others affected by such activities, or both.
- 4.11.4 No road shall be closed to the public without prior written permission by the Resident Engineer. If any road is closed, the Contractor shall maintain traffic over, through or around the Work with the maximum practical convenience, for the full 24 hours of each day of the Contract, whether or not the Work has ceased temporarily. The Contractor shall notify the Resident Engineer before starting the Work or any construction operations that might in any way inconvenience or endanger traffic or the public so that the necessary arrangements may be determined in advance.
- 4.11.5 The convenience of the public and of residents along the Work shall be provided for in a reasonable, adequate and satisfactory manner. Unless otherwise provided, where existing roads are not available for use as detours, all traffic shall be permitted to pass through the Work. In such cases the vehicles of the traveling public shall have precedence over the Contractor's vehicles to prevent the traveling public's vehicles to be unduly delayed for the convenience of the Contractor. In order that all unnecessary delay to the traveling public may be avoided, where ordered by the Resident Engineer, the Contractor shall provide and station competent flagmen whose sole duties shall consist of directing and controlling the movement of public traffic through or around the Work.
- 4.11.6 The Contractor shall provide and maintain, in a manner approved and deemed practicable by the Resident Engineer, such temporary roads as may be necessary to provide convenient access to driveways, houses, buildings, or other property abutting the Work. Where temporary bridges are necessary for traffic and pedestrians, these bridges shall be constructed at the expense of the Contractor and as directed by the Resident Engineer.
- 4.11.7 No material or other obstructions shall be placed within 15 feet of a fire hydrant, valve, manhole, fire alarm, etc. or any closer than it is permitted by local Laws. Fire hydrants shall be accessible at all times to the Fire Department. The Contractor shall not operate valves or otherwise interfere with the operation of any utilities water system without first securing the necessary approvals and permits.
- 4.11.8 During grading operations where traffic is being permitted to pass through the Work, the Contractor shall provide a smooth, even surface that will provide a satisfactory passageway for use of traffic.

4.11.9 The Contractor shall give to the Resident Engineer and affected owners, two business days advance notice of Work on or across private driveways. Interference and inconvenience from such Work shall be minimized by restoring service as soon as possible.

#### **4.12 Barricades, Danger, Warning, and Detour Signs**

4.12.1 Any street and highway signs and markers that are to be affected by the Work shall be carefully removed when the Work begins and stored in a clean and dry condition.

4.12.2 The Contractor shall provide, erect, paint and maintain all necessary barricades. The Contractor also shall provide suitable and sufficient lights, reflectors, or other danger signals and signs, provide a sufficient number of watchmen and flagmen, and take all the necessary precautions for the protection of the Work and safety of the traveling public.

4.12.3 The Contractor shall erect warning signs beyond the limits of the Work sufficiently in advance of any operations that interfere with the use of the road by traffic, including all intermediate points where the Work crosses or coincides with existing roads. Barricades shall be kept well painted and include suitable warning signs.

4.12.4 All barricades and obstructions shall be illuminated at night and all lights or devices for this purpose shall be kept illuminated from sunset to sunrise. Whenever traffic is maintained through or over any part of the project, the Contractor shall clearly mark all traffic hazards.

### **ARTICLE 5 - SUBCONTRACTORS AND SUPPLIERS**

#### **5.1 Employment of Subcontractors**

5.1.1 The Contractor shall neither award Work to a new subcontractor without first obtaining the Owner's written consent, nor remove or replace a subcontractor, against whom the Owner did not make objection, without good cause shown.

5.1.2 The Contractor shall promptly nominate a substitute subcontractor for evaluation by the Owner or proceed to self-perform the part of the Work involved, if qualified, whenever the Owner's consent to a subcontractor nominated is withdrawn based on non-conformance with the Contract Documents or any other reasonable objection, or the Owner has reasonable objection.

5.1.3 The Contractor shall be responsible for any delay and all costs resulting from (a) the withdrawal of the Owner's consent to a subcontractor nominated

before the Notice of Award, if such withdrawal is based on any reasonable objection, or (b) the Owner's reasonable objection to any subcontractor nominated after the Notice of Award.

- 5.1.4 The Owner's or Engineer's consent to a nominated subcontractor shall not constitute a waiver of any right of the Resident Engineer or Engineer to reject *defective* Work; nor shall the authority given to them under this paragraph create or impose any duty on the Owner or Engineer to exercise such authority for the benefit of the Contractor or any other person.

## **5.2 Coordination of Subcontractors**

- 5.2.1 The Contractor shall coordinate self-performed Work and the Work of a subcontractor with all other Work. As part of this responsibility, the Contractor shall, directly or through Subcontractors, supply, install and/or cause items to be built into previously placed work, examine the Drawings and Specifications, verify dimensions of previously placed Work and notify the Resident Engineer of previously placed Work that is unsatisfactory or will prevent a satisfactory installation of other Work. Installation of Work, directly or through a subcontractor, shall constitute acceptance by the Contractor (including the subcontractor) of previously placed Work.

## **5.3 "Or Equivalent" or Substitute Items**

- 5.3.1 Whenever materials or equipment are described in the Contract Documents by using a brand, manufacturer, supplier or specification, such as naming or specification is intended to denote the essential characteristics desired and to establish a standard. The first named brand, manufacturer or supplier is the basis of design. Unless words are used indicating that no "or equivalent" or substitution is allowed, an "or equivalent" or substitute item may be accepted by the Engineer if, in the Engineer's judgment, the item meets the criteria set forth in Paragraph 5.3.2 and its use will increase neither Contract Price nor Contract Time.
- 5.3.2 The Contractor's written application for the "or equivalent" or substitute item shall provide sufficient information to allow the Engineer to determine whether the material or equipment proposed (a) will equally perform the functions and achieve the results called for by the general design concept, (b) is at least of equal materials of construction, quality and necessary essential design features, (c) is suited to the same use as that named or specified, (d) conforms substantially to the desired requirements, e.g., durability, strength, appearance, aesthetics (if aesthetics are significant), safety, useful life, reliability, economy of operation and ease of maintenance, (e) evidences a proven record of performance and the availability of local and responsive service, (f) will not increase Contract Price, and (g) will not extend any Contract Times.

- 5.3.3 Each such application shall certify whether or not acceptance of the proposed "or equivalent" or substitute item will require a change in any of the Work or any of the means and methods indicated in or required by the Contract Documents, or in work performed by the Owner or others, and whether or not incorporation or use of the proposed item is subject to payment of any license fee or royalty. All variations of the proposed item from the item named or specified shall be identified (operation, materials or construction finish, thickness or gauge of material, dimensions, loads, tolerances, deleted and added features, etc.), and information regarding available maintenance, repair and replacement service shall be indicated.
- 5.3.4 The application shall contain an itemized estimate of all direct, indirect and consequential costs that will result from evaluation and acceptance of the proposed "or equivalent" or substitute item, including but not limited to costs and delays of redesign, or claims of other contractors affected by the proposed item, and changes in operating, maintenance, repair, replacement or spare part costs. The Owner may require the Contractor to furnish a manufacturer's performance Bond, an analysis of the effects of the evaluation/acceptance of the substitution on the Progress Schedule, a list of locations of similar installations that have been in service for at least three years before the date of the application, and any other relevant data.
- 5.3.5 The Contractor shall be responsible for verifying that "or equivalent" or substitute items conform to the Contract Documents, and that all dimensions, arrangement, design and construction details and other features are suited to the specified purpose. If an "or equivalent" or substitute item differs materially from the item named or specified, and that difference was not expressly identified in the Contractor's application, or results in changes in the Work or in the general design concept, the Engineer has authority to require removal and replacement of that "or equivalent" or substitute item. The Contractor shall be responsible for any delay and all costs resulting from (a) any such removal and replacement of an "or equivalent" or substitute item, (b) making any "or equivalent" or substitute materials or equipment conform to the requirements of the Contract Documents, and (c) implementing any changes in the Work and/or in other work to accommodate the "or equivalent" or substitute item, or both.
- 5.3.6 No "or equivalent" or substitute item shall be ordered, installed or utilized without the Owner's prior acceptance. The Owner's acceptance shall be evidenced by a written document signed by the Owner or if so specifically designated by the Engineer, by an approved Shop Drawing or sample.
- 5.3.7 The Bidder assumes full responsibility for the cost and time required to make items of material or equipment conform to the requirements of the Bidding Documents. In addition, if an item of material or equipment named or

specified or that is nominated by the Bidder as an "or equivalent" under the provisions of the Bidding Documents, requires any changes in the Work, including, but not limited to changes in the Drawings, or in any testing requirements, or in any means and methods indicated in or required by the Bidding Documents, the Bidder, assumes responsibility for the cost and time required to carry out such changes in the Work. The preceding responsibility applies to any changes required by use of a named or specified item of material or equipment other than the first named item of material or equipment used as the basis of design. Submission of a Bid constitutes a binding representation by the Bidder that the Bidder acknowledges and accepts the determination that any delay and all costs resulting from the events contemplated in this paragraph do not justify any increase(s) in Contract Price and/or Contract Time.

#### **5.4 The Contractor's Continuing Responsibilities**

5.4.1 The Contractor shall be fully responsible to the Owner and Engineer for all acts and omissions of subcontractors and suppliers, at any tier, to the same extent as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between the Owner or Engineer and any subcontractor or supplier. No provision in Article 12 or in the other Contract Documents shall create or impose any express or implied duty or obligation on the Owner or Engineer to any subcontractor or supplier or the Contractor's sureties to pay or to see to the payment of any monies owned to any of them.

#### **5.5 Sub agreements**

5.5.1 Work performed by a subcontractor or supplier shall be through an appropriate written sub agreement that (a) expressly binds the subcontractor or supplier to the requirements of the Contract Documents for the express benefit of the Owner and Engineer, (b) requires each subcontractor or supplier to assume toward the Contractor all the obligations that the Contractor assumes toward the Owner and Engineer, and (c) contains waiver of right provisions as required in Paragraph 7.8 and the dispute resolution provisions of Article 15. The Contractor shall pay each subcontractor and supplier a just share of any funds received on account of losses under property insurance policies issued under Paragraph 7.7.

5.5.2 Subject to prior rights of the Contractor's surety, the Contractor agrees to assign to the Owner each sub agreement the Owner elects to assume (following notice to the subcontractor or supplier in writing) upon a termination action.

## ARTICLE 6 – SUBMITTALS

### 6.1 Shop Drawing, Sample, and Other Technical Submittals

- 6.1.1 After complying with those requirements in this Article and the Specifications, the Contractor shall submit to the Resident Engineer eight copies of all Shop Drawings required by the Contract Documents and all samples and three copies of all other technical submittals (test results, safety procedures, etc.) required by the Contract Documents. Submissions shall be delivered to the Resident Engineer with due diligence and in accordance with the Progress Schedule, and shall be identified as the Engineer may require.
- 6.1.2 Each Submittal shall bear a stamp or specific written indication certifying that the Contractor has satisfied the requirements of this Article, the Technical Specifications and all other responsibilities concerning the submission. In addition, each sample shall have been checked and be accompanied by a certificate guaranteeing that the item complies with the Contract Documents. Partial submittals and submittals without the Contractor's approval will be returned for resubmission by the Resident Engineer.
- 6.1.3 Before each submission, the Contractor shall (a) determine and verify all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements (including location, dimensions, access, fit, completeness, class, codes, etc.), materials, catalog numbers and other similar data as to correctness and completeness, and (b) have reviewed and coordinated that technical submittal with other technical submittals and the requirements of the Contract Documents. Technical submittals of a subcontractor or supplier shall be coordinated with those of other subcontractors or suppliers (location, dimensions, fit, completeness, consistency, integration, etc.), and so represented in the Contractor's stamp or specific written approval before submission to the Engineer.
- 6.1.4 With each submission, the Contractor shall give the Engineer specific written notice of each variation from the requirements of the Contract Documents, and the Contractor shall cause a specific notation of each variation to be made on that Shop Drawing, sample, or other technical submittal.
- 6.1.5 Where a Shop Drawing, sample, or other technical submittal is required by the Technical Specifications, any related Work performed by the Contractor before the Engineer's approval of the pertinent technical submittal will be at the sole expense and responsibility of the Contractor.
- 6.1.6 Technical Submittals consisting of drawings and specifications involving architecture, professional engineering, land surveying or landscape architecture, as

defined in New Jersey laws, shall be prepared by or under the direct supervision of a registrant(s) within the specific category(ies) involved.

## **6.2 Progress Schedule Submittals**

- 6.2.1 Each Progress Schedule Submittal shall bear the Contractor's stamp or written indication of approval as representation to the Owner that the Contractor has determined or verified all data on that Progress Schedule, and that the Contractor and the subcontractors and suppliers have reviewed and coordinated the sequences in that Progress Schedule with the requirements of the Work.

## **6.3 Submittals are not Contract Documents**

- 6.3.1 Submittals are not Contract Documents. Technical submittals are intended to demonstrate how the Contractor intends to conform with the design concept of the Project and the information given in the Contract Documents.
- 6.3.2 Progress Schedule Submittals are intended to show (a) the priority and sequencing by which the Contractor intends to execute the Work or Work remaining to comply with the Contract Times, those sequences of Work indicated in or required by the Contract Documents and any other requirements of the Contract Documents; (b) how the Contractor anticipates foreseeable events, site conditions and all other general, local and prevailing conditions that may in any manner affect cost, progress, schedule, performance and furnishing of the Work; (c) the means and methods chosen by the Contractor; and (d) the actual timing and sequencing of completed Work.

## **6.4 Review and Return of Submittals**

- 6.4.1 The Engineer's review and approval of a technical submittal will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The Engineer's review and approval shall not extend to means and methods (except where a specific means and method is indicated in or required by the Contract Documents) or to safety precautions or programs related to safety; nor shall the Engineer's review impose on the Contractor any responsibility for the accuracy of engineering design(s) furnished by the Contractor, including but not limited to dimensions, quantities, performance of equipment and systems, or any other similar matters, the correctness of which shall remain the sole responsibility of the Contractor. Deviations, discrepancies or conflicts between the shop drawings and the Contract Documents discovered after shop drawing submittals are processed and accepted by the Engineer, do not alter the Contractor's sole responsibility to adhere to the Contract Documents. Approval by the Engineer of a separate item, or a partial technical submittal, shall not mean approval of the item's assembly or related technical submittals

not yet reviewed by the Engineer.

- 6.4.2 The Owner's and/or Engineer's review of Progress Schedule Revision Submittals may result in comments relating to compliance with the Contract Times and those sequences of Work indicated in or required by the Contract Documents; The Owner or Engineer's review of Progress Schedule Update and Proposal Submittals shall be for the purpose of verifying whether the Contractor's planning and scheduling of Work remaining demonstrate continued compliance with the Contract Times and those sequences of Work indicated in or required by the Contract Documents.
- 6.4.3 Progress Schedule review comments or objections noted shall relate to the purposes outlined, and may or may not extend to such issues as to whether items of Work are omitted, activity durations are reasonable, the level of labor, materials and equipment, the Contractor's chosen means and methods or whether the sequences and timing for the Work are practicable. In any event, whether or not any comments or objections are noted from the reviews of Progress Schedule Submittals, no such reviews or objections noted shall be effective or construed to create or impose on the Owner or Engineer any responsibility for the timing, planning, scheduling or execution of the Work or for the accuracy of any such Progress Schedule details, as they shall remain the sole responsibility of the Contractor.
- 6.4.4 A submittal will be returned to the Contractor within 30 calendar days, unless otherwise allowed in Division 1, or later if total float is available in the Progress Schedule. If a Submittal cannot be returned within 30 days or the period allowed, the Engineer shall give appropriate notice to the Contractor of its return date. The Contractor shall revise and correct submittals returned for revision and re submittal, and resubmit them to the Owner's Resident Engineer directing specific attention in writing to revisions other than the corrections called for by the Engineer on previous submissions of the same Submittals.
- 6.4.5 No review or approval of Submittals shall relieve the Contractor of responsibility for (a) any variation from the requirements of the Contract Documents unless the Contractor has called attention to each variation, as provided in Paragraph 6.1.4, and the Engineer has given written approval of that variation by a specific notation within or attached to the returned Submittal, (b) errors or omissions in the Submittal, or (c) compliance with the requirements of this Article.
- 6.4.6 The Engineer shall be entitled to rely upon the accuracy or completeness of any designs, calculations or certifications made by licensed or certified professionals accompanying a specific technical submittal, whether or not that stamp or written certification is required by the Contract Documents.

## **6.5 Responsibilities for Repeat Submittals**

- 6.5.1 All costs incurred by the Owner and made necessary by reviews by the Engineer after the second review of a particular Submittal shall be borne by the Contractor and shall be reimbursed by the Contractor to the Owner. The rate of reimbursement after the second review of a particular submittal shall be reimbursed by the Contractor to the Owner at the hourly rate of \$50 per hour.

## **ARTICLE 7 - LEGAL REQUIREMENTS AND INSURANCE**

### **7.1 Laws, Permits, and Taxes**

- 7.1.1 Laws and Permits - The Contractor shall become familiar with and comply with the current version (unless otherwise specifically designated in the Contract Documents) of all applicable Federal, State and local Laws. Unless expressly required by any permits or Laws, neither the Owner nor Engineer shall be responsible for monitoring the Contractor's compliance with any permits or laws. If the Contractor believes the Contract Documents deviate from the requirements of any permits or laws, the Contractor shall give the Engineer prompt written notice. If the Contractor performs any Work knowing or having reason to know it conflicts with the requirements of any permits or laws, the Contractor shall be responsible for that performance. Except as provided in Paragraph 7.1.2 concerning specific permit and utility allowances and in Paragraph 7.1.3, the Contractor shall be responsible for any delay and all costs relating to the obligations set forth in this paragraph.
- 7.1.2 The Owner is specifically made solely responsible for obtaining all permits with the exception of permits required under the State of New Jersey Uniform Construction Code (UCC). The Contractor shall (a) obtain all UCC permits necessary for the start and prosecution of the Work and the Work involved in any Change Order for Change Authorization and that are required by applicable Laws or affected public utilities, (b) meet all requirements of those permits and those obtained by the Owner, (c) be responsible for all related charges and fees, except to the extent provided by any permit allowances in the Contract Documents specific to those permits, and (d) submit copies of the permits and fee receipts to the Engineer. The Contractor shall pay all charges of public utilities for connections to the Work, unless otherwise provided by allowances in the Specifications specific to those connections.
- 7.1.2.1 The Contractor shall comply with all requirements of any permits covering the Work that are obtained by the Owner, whether the requirements of those permits were made available with the Contract Documents or not.
- 7.1.3 If the requirements of (a) any permit obtained by the Contractor or any

license or applicable law differ from those specified in the Contract Documents, or if not specified, from those enacted before the date of Bid Opening, or (b) any permit obtained by the Owner were not made available or differ from those contained in the Contract Documents and represent requirements that the Contractor could not have reasonably foreseen, the Contractor shall, promptly after becoming aware of the variance or new or differing requirements, notify the Owner in writing. If the Owner, with the advice of the Engineer, concludes the Contract Documents require changes due to that variance or the new or differing requirements, the Owner shall, pursuant to Paragraph 10.1, order any changes in the Work and adjustments in Contract Price required solely by the variance or the new or differing requirements. If any such incident results in unreasonable delay under the circumstances which is caused in whole or in part by acts or omissions within the control of the Owner or Engineer the Owner shall, pursuant to Paragraph 10.4, authorize any corresponding adjustments in Contract Price or Contract Time, or both.

7.1.4 Taxes - The Contractor shall be responsible for and pay all applicable taxes covering the Work. Materials and equipment purchased for permanent installation as part of the Work will be exempt from the New Jersey Sales and Use Tax. If any Application for Payment includes New Jersey Sales and Use Tax on tax-exempt items of materials or equipment, any such tax amount will not be accepted for payment, and will be deducted from the Contract Price by Change Order.

7.1.4.1 The Owner shall make an adjustment in Contract Price for any increase or decrease in taxes covering the Work and that are assessed against and paid by the Contractor, provided those increases or decreases in taxes covering the Work are required by Laws enacted after the date of Bid Opening.

## **7.2 Safety and Protection**

7.2.1 The Contractor shall comply, and shall require all subcontractors to comply, with all Laws governing the safety and protection of persons or property, including, but not limited to the Occupational Safety and Health Act and the Hazard Communication Act as promulgated by the U.S. Government and as adopted by the State of New Jersey. The Contractor shall be responsible for all fines and penalties imposed for any related violation(s) of Federal and State health and safety requirements. The Contractor's safety representative at the site shall be the superintendent, unless otherwise designated in writing by the Contractor to the Owner.

7.2.2 The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs. The Contractor shall take all necessary precautions for the safety of, and shall erect and maintain all

necessary safeguards and provide the necessary protection to prevent damage, injury or loss to: (a) all employees on the Work and other persons who may be affected by the Work, (b) all the Work and materials and equipment to be incorporated into the Work, whether stored on or off the site, and (c) other property at or adjacent to the site, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground utilities not designated for removal, relocation or replacement.

- 7.2.3 All damage, injury or loss to the Work, materials and equipment and such other property caused, directly or indirectly, in whole or in part, by the Contractor shall be remedied by the Contractor (except damage or loss attributable to the fault of the Drawings or Specifications or to any acts or omissions of the Owner, Resident Engineer or Engineer, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor).
- 7.2.4 The Contractor shall notify owners of adjacent property and underground utilities (and the Resident Engineer) when prosecution of the Work may affect them or their property, and shall cooperate with them in the protection, removal, relocation and replacement of their property. The Contractor shall shore up, brace, underpin and protect as may be necessary, all foundations and other parts of all structures adjacent to the site. Except as may be provided in a certificate of Substantial Completion issued by the Engineer, these Contractor duties and responsibilities shall continue until final payment.
- 7.2.5 The Contractor shall comply with all Federal, State and local laws governing the use of explosives, obtain and pay for any required permits before their use and furnish a copy of the permits to the Engineer before using explosives. The Contractor shall, under the supervision of competent and suitably trained and qualified personnel, exercise the utmost care not to endanger life or damage property in the transportation, storage, handling, use and disposal of explosives, and in the use of means and methods. The Contractor shall be responsible for all injury, damage and adverse impacts outside the permit area resulting from the use of explosives (including any delay and all costs resulting from such injury, damage and adverse impacts).

### **7.3 Hazardous Materials**

- 7.3.1 The Contractor shall use, handle, dispose of, store, process, transport and transfer any material considered a Hazardous Material in accordance with all applicable Federal, State and local Laws. If the Contractor encounters asbestos, ACBMs, PCBs, petroleum, such materials used in construction as paint thinners, solvents, gasoline, oil, etc. or any other material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall proceed as follows: (a) immediately stop all

affected Work or, (b) give written notice to the Owner of the conditions encountered, and (c) take appropriate health and safety- precautions.

- 7.3.2 Upon receipt of the written notice, the Owner will investigate the conditions. If the Contractor is not responsible for the material encountered, as provided in Paragraph 7.3.4, and the material is a Hazardous Material that may present a substantial danger and was not described in the Drawings and/or Specifications or otherwise identified as Work under the Contract Documents, the Owner shall order a suspension of Work in writing. The Owner shall proceed to have the Hazardous Material removed or rendered harmless by negotiating a change in the Work with the Contractor, by means of separate contract or as the Owner may deem otherwise expedient, or in the alternative, the Owner shall terminate the affected Work or the Agreement for the Owner's convenience.
- 7.3.3 Once the Hazardous Material has been removed or rendered harmless by any of the means outlined in Paragraph 7.3.2, the affected Work shall be resumed as directed by the Owner. If such incident with Hazardous Materials results in unreasonable delay under the circumstances which is caused in whole or in part by acts or omissions within the control of the Owner or Engineer, the Owner shall, pursuant to Paragraph 10.4, authorize any corresponding adjustments in Contract Price or Contract Time, or both.
- 7.3.4 If the Hazardous Material was brought to the site by the Contractor, or if its existence in whole or in part from any violation by the Contractor of any Laws covering the use, transportation, storage, handling, processing, transfer or disposal of any Hazardous Material, or from any other acts or omissions within the control of the Contractor, the Contractor shall be responsible for any delay and all costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material to the satisfaction of the Owner, State and local Governing Bodies with jurisdiction. If the Contractor fails to proceed with due diligence or act appropriately, the Owner at its sole option, shall have the right to act appropriately, in which case the Contractor shall defend, indemnify and hold the Owner harmless from and against all claims, as provided in Paragraph 1.4, arising out of, relating to, or in any way resulting from the Owner's exercise of such appropriate action.

#### **7.4 Bonds and Insurance - General Requirements**

- 7.4.1 Performance and Payment Bond - the Contractor is required to furnish the bond in the full amount of the Contract Price. The Contractor shall comply with Chapter 384 of the Public Laws of New Jersey, 1995 (N.J.S.A. 2A:44-143). The Contractor shall use the Performance and Payment Bond, as shown on the Contract Documents or any other form approved by the Authority. The Bond shall remain in effect until the end of the Correction Period and at all times after that when the Contractor may be correcting, or removing and replacing, *defective*

Work. The Contractor also shall furnish Maintenance Bonds and Manufacturer Performance Bonds, each in the amount and form specified, that are required in the Technical Specifications. Attorneys-in-Fact who sign the Performance and Payment Bond shall attach a certified copy of their Power of Attorney to sign such a Bond and conduct business in the State of New Jersey.

- 7.4.2 Environmental Maintenance Bond - the Contractor is required to furnish the bond in the amount of 50% of the price bid for the materials needed to fulfill the environmental Specifications, or \$25,000 whichever is greater, as required by N.J.A.C. 7:22-10.11(p). The Contractor shall comply with Chapter 384 of the Public Laws of New Jersey, 1995 (N.J.S.A. 2A:44-143). The Contractor shall use the Environmental Maintenance Bond, as shown on the Contract Documents or any other form approved by the Owner. The Environmental Maintenance Bond shall be dated and take effect at the end of the Correction Period, after issuance of Certificate of Substantial Completion, and remain in effect for a period of one year from the date of the Environmental Maintenance Bond. Attorneys-in-Fact who sign the Environmental Maintenance Bond shall attach a certified copy of their Power of Attorney to sign such a Bond and conduct business in the State of New Jersey.
- 7.4.3 The Maintenance Bond, that the Contractor is required to furnish shall be in the amount of 100% of the Contract Price. The Contractor shall comply with Chapter 384 of the Public Laws of New Jersey, 1995 (N.J.S.A. 2A:44-143). The Contractor shall use the Maintenance Bond on Page MB-1, or any other form approved by the Owner. The Maintenance Bond shall be dated and take effect at the end of the Correction Period, after issuance of Certificate of Substantial Completion, and remain in effect for a period of one year from the date of the Maintenance Bond. The Contractor also shall furnish manufacturer's performance bonds, warranties, and guarantees, each in the amount and form specified, that are required in the Technical Specifications. Attorneys-in-Fact who sign the Maintenance Bond shall attach a certified copy of their Power of Attorney to sign such a Bond and conduct business in the State of New Jersey.
- 7.4.4 The Contractor shall purchase and maintain insurance providing the coverage and limits designated in this Article. Insurance shall be provided by insurers licensed by the State of New Jersey having, unless otherwise authorized by the Owner, an "A" Best's Rating and a Class VII or better financial size category as shown in the most current A.M. Best Company ratings. The Contractor shall not start to perform and furnish the Work, in whole or in part, or continue to perform and furnish any part of the Work, unless the Contractor has in full force and effect all the required policies of insurance.
- 7.4.5 Liability and property insurance policies shall contain a provision or endorsement stating that coverage will not be cancelled, adversely changed or renewal refused until at least 30 days prior written notice has been delivered

or mailed to the Owner and Contractor. Certificates of Insurance submitted by the Contractor as evidence of insurance shall contain a statement or provision confirming the 30 days prior written notice. Any coverage nearing expiration during the period in which it is to remain in full force and effect shall be renewed before its expiration, and a Certificate of Insurance filed with the Owner at least 30 days before expiration.

- 7.4.6 The insurer's costs of providing the insureds a defense and appeal, including attorney's fees, shall be supplementary and shall not be included as part of the policy limits, and shall remain the insurer's separate responsibility.
- 7.4.7 If any of the Contractor's sureties or insurers is declared bankrupt or placed into receivership, ceases to meet the requirements of the Contract Documents or its license to do business in the State is revoked or expires, the Contractor shall immediately substitute other Bonds/sureties or insurers/policies, which shall meet the requirements of the Contract Documents.

## **7.5 The Contractor's Liability Insurance**

7.5.1 The Contractor shall maintain Workers' Compensation and Employer's Liability, Commercial General Liability, Commercial Automobile Liability, Excess Liability and such other insurance as may be designated as appropriate for the Work. The Contractor's liability insurance shall provide protection from claims which may arise out of or result from the Contractor's performance and furnishing of the Work and the Contractor's other obligations under the Contract Documents, whether performed or furnished by the Contractor, any subcontractor, any supplier or anyone for whose acts any of them may be liable.

7.5.1.1 The Contractor's liability insurance shall be endorsed to add the Engineer, Owner and Engineer's agents, consultants, subsidiaries or affiliates and each of their respective directors, officers, shareholders, agents or employees as additional insured's. The insurance afforded to these additional insured's shall be primary insurance, and the coverage and limits provided under the Contractor's policies shall not be reduced or prorated by the existence of any other insurance applicable to any loss the additional insured's may have sustained.

7.5.1.2 The Contractor's liability insurance shall remain in effect until the end of the Correction Period and at all times after that when the Contractor may be correcting, or removing and replacing, *defective* Work. In addition, insurance issued on a claims-made basis and completed operations insurance shall be maintained for two (2) years after final payment, and evidence of coverage shall be furnished to the Owner yearly.

- 7.5.1.3 Commercial General Liability Insurance shall include bodily injury liability, property damage liability, personal and advertising injury liability and medical payments, and shall provide coverage for products and completed operations, premises/operations, independent contractors, broad form contractual liability, underground, explosion and collapse hazard exposures (if risk is present) and pile driving operations (if risk is present). Coverage for underground hazards shall apply to product and completed operations hazards.
- 7.5.1.4 Pursuant to N.J.A.C. 7:22-3.17(a)19 and 7:22-4.17(a)19, the Contractor's liability insurance shall be endorsed to include the State and its agencies, employees, and officers as additional "named insured's" on any certificate of liability insurance (or other similar document evidencing liability insurance coverage).
- 7.5.1.5 Commercial Automobile Liability Insurance shall provide coverage for bodily injury and/or property damage arising out of ownership, maintenance, operation, use or loading and unloading of any owned, hired and/or non-owned vehicle.
- 7.5.1.6 Excess Liability Insurance shall provide the following protections: employer's liability, general liability and automobile liability. Excess Liability Insurance shall be at least as broad as the underlying policies of liability insurance.
- 7.5.2 The coverage limit on each policy of insurance furnished by the Contractor shall be as required by Law. Worker's Compensation shall conform to statutory limits and Employer's Liability limits shall be no less than \$1,000,000. Commercial General Liability insurance limits shall be as follows:

\$1,000,000 each occurrence  
\$2,000,000 general aggregate  
\$1,000,000 products and completed operations aggregate  
\$1,000,000 personal and advertising injury

Commercial Automobile Liability limits shall be \$1,000,000 combined single limit. Deductible amounts shall not exceed \$25,000. Excess Liability limits shall be \$2,000,000 each occurrence and \$2,000,000 aggregate, if the Contract Price is less than \$10,000,000. Occurrence and aggregate limits shall each be raised to \$5,000,000 if the Contract Price is between \$10,000,000 and \$20,000,000, and to \$10,000,000 if the Contract price exceeds \$20,000,000.

- 7.5.3 The Contractor shall promptly notify the Owner in writing (a) of any reduction in coverage limits in excess of \$50,000, whether such impairment in coverage results from Work under the Contract Documents or not, and (b) whenever the Contractor receives a notice of a claim involving the Work. Notification of a claim shall provide full details, including an estimate of the amount of loss or liability. If the Owner subsequently notifies the Contractor in writing that the Owner has determined that the aggregate limits have been impaired to the extent that they are no longer adequate for the balance of the Contract, the Contractor shall promptly reinstate coverage to the limits specified and shall submit Certificates of Insurance confirming that coverage has been reinstated to the specified limits.
- 7.5.4 These requirements shall not be construed to limit the liability of the Contractor or its insurers. The Owner does not represent that the specified coverage or limits of insurance are sufficient to protect the Contractor's interests or liabilities.

## **7.6 The Owner's and Contractor's Protective (OCP) Liability Insurance**

- 7.6.1 The Contractor shall purchase, maintain and deliver to the Owner an Owner's and Contractor's Protective (OCP) Liability Insurance policy, issued on an occurrence basis, naming the Owner as named insured. The Owner's and Contractor's Protective Liability Insurance shall be primary insurance for the Owner, and the policy shall not contain any exclusion relative to any functions performed by the Owner which may arise out of or result from operations under the Contract. The OCP Liability Insurance policy limit shall be \$2,000,000 combined single limits, bodily injury, and property damage. The OCP policy shall not contain any exclusion relative to any functions performed by the Owner which may arise out of or result from operations under the Contract.

## **7.7 Property Insurance/Builder's Risk**

- 7.7.1 The Contractor shall purchase and maintain property insurance, including earth movement and flood, covering the Work at the site in the amount of its full replacement cost. The property insurance shall be All Risks Builder's Risk Completed Value Form Insurance, Installation Floater, or equivalent manuscript policy, and shall include the interests of the Owner, Contractor, subcontractors and suppliers, Engineer and the Owner's and Engineer's consultants as their interests may appear, all of whom shall be listed as additional insured's. The corresponding deductibles, which shall be borne by the Contractor, shall not exceed \$25,000. The property insurance shall be endorsed to comply with the waiver of rights provisions in Paragraph 7.8. At

all times, the expiration date on the property insurance shall remain as the date of commencement of the Correction Period.

- 7.7.2 The property insurance shall contain an endorsement or specific provision to cover damages, losses and expenses incurred in the repair or replacement of any insured property (including, but not limited to charges of engineers, architects, attorneys and others). The property insurance shall also include by endorsement or provision the following additional coverage elections: operational testing (if risk is present), off premises storage not on the site or in transit and property in transit. Deductibles shall not exceed \$25,000 in each instance, unless otherwise authorized by the Owner in writing.
- 7.7.3 Any Partial Use by the Owner shall be subject to the property insurer having acknowledged receipt of notice of Partial Use, in writing effected the necessary changes in coverage and consented by endorsement. The property insurance shall not be cancelled or allowed to lapse because of any Partial Use.
- 7.7.4 If required, the Contractor shall purchase and maintain Boiler and Machinery Insurance and any additional property insurance, which shall include the interests of the Owner, Contractor, subcontractors, Engineer and the Owner's and Engineer's consultants, all of whom shall be listed as additional named insured's.
- 7.7.5 If requested by the Owner, the Contractor shall submit copies of the property insurance policies, showing conditions, coverage, amounts of coverage and deductibles.

## **7.8 Waiver of Rights**

- 7.8.1 To the extent any losses and damages caused by any of the perils covered by the insurance provided in response to Paragraph 7.7 and any other property insurance applicable to the Work are covered by the property insurance and payments are made, the Owner and Contractor waive all rights against each other for any such losses and damages and also waive all such rights against the Engineer and all other persons named as insured's or additional insured's in such policies. Each sub agreement shall contain similar waiver provisions by the subcontractor or supplier in favor of the Owner, Engineer, and all other persons named as insured's or additional insured's. None of these waivers shall extend to the rights that any of the insured's may have the proceeds of insurance held by the Owner as trustee or otherwise payable under a policy so issued.
- 7.8.2 The Owner and Contractor intend that any policies of property insurance shall protect all the parties insured and provide primary coverage for all losses and damages caused by the perils covered. Accordingly, all such

policies shall be endorsed to provide that in the event of payment of any loss or damage the insurer will have no rights of subrogation or other recovery against any of the parties named as insured's or additional insured's, and if the insurers require separate waiver forms to be signed by the Engineer or the Owner's and Engineer's consultants, the Owner will obtain separate waiver forms, and if such waiver forms are required of any subcontractor or supplier, the Contractor will so obtain them.

## **7.9 Receipt and Application of Proceeds**

- 7.9.1 Any insured loss under the policies of property insurance required by Paragraph 7.7 will be adjusted with the Owner and made payable to the Owner as trustee for the insured's, as their interests may appear, subject to the requirements of Paragraph 7.9.2 and any applicable mortgage or bond provision. The Owner shall deposit in a separate account any money so received and shall distribute it based on any agreement that the parties in interest may reach. If no other distribution agreement is reached, the damaged Work shall be repaired or replaced, the monies received applied for that purpose and the Work and associated costs covered by Change Order.
- 7.9.2 The Owner as trustee shall have power to adjust and settle any loss with insurers unless a party in interest objects in writing within 15 days following the occurrence of loss to the Owner's exercise of this power. If an objection is made, the Owner as trustee shall settle with the insurers pursuant to any agreement the parties in interest may reach.

## **7.10 Audit; Access to Records**

- 7.10.1 The Contractor shall maintain and keep, and shall require all subcontractors and suppliers to maintain and keep, in accordance with generally accepted accounting principles, Records pertaining to the bidding, award and performance of the Work, including, but not limited to payroll and employment records and all data used in estimating the Contractor's Bid and pricing and negotiating Work covered by any Change Order, Change Authorization, proposal or claim.
- 7.10.2 The Owner, Engineer, NJDEP, or other State instrumentality with jurisdiction over the Work, the Comptroller General of the United States (if required by law) and any of their duly authorized representatives shall have access to those records for the purpose of inspection, audit and copying. Within a reasonable time after receipt of a written request for access from the Owner or NJDEP, or other instrumentality with jurisdiction over the Work, the Contractor shall provide appropriate and proper facilities for such access.
- 7.10.3 Payroll and other employment records of workers assigned to the site, including apprentices and trainees, maintained to comply with the requirements of this provision, shall contain the name and address of each

worker, correct wage classification, rate of pay (including contributions, or costs assumed to provide, for fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. The Contractor shall maintain records that show (a) the anticipated costs or actual costs incurred in providing such benefits, (b) that the commitment to provide such benefits is enforceable, and (c) that the plan or program is financially responsible and has been communicated in writing to the workers affected.

7.10.4 In accordance with N.J.A.C. 7:22-3.23, all contractors and subcontractors performing the Work may be subject to a financial audit.

### **7.11 Defective Cost and Pricing Data**

7.11.1 If any adjustment in Contract Price exceeding \$10,000 or in Contract Time exceeding five days made under any Change Order, Change Authorization or claim settlement pursuant to Article 15 was increased by any significant amount because (a) the Contractor furnished, or a subcontractor or supplier furnished the Contractor, cost or pricing data that were not complete, accurate, and current as certified in the pertinent Contractor's certificate of current cost or pricing data, or (b) any of these parties furnished data of any kind that were not accurate, then the Contract Price or Contract Time or both, shall be correspondingly reduced by Change Order.

7.11.2 When signing a Change Order, Change Authorization or claim settlement, the Contractor shall certify, and shall require applicable subcontractors and suppliers to certify that, to the best of their knowledge and belief, data submitted in pricing and negotiating the Work involved in that Change Order, Change Authorization or claim settlement were accurate, complete and current as of the date of agreement on the corresponding adjustment in Contract Price or Contract Time.

### **7.12 Laws and Regulations**

7.12.1 Prevailing Wages - The New Jersey Prevailing Wage Act, P.L. 1963, Chapter 150 and Federal Prevailing Wages are hereby made a part of this Contract and whichever is higher shall apply. The Contractor's execution of the Agreement is its guarantee that neither it nor any subcontractors it has employed to perform the Work are listed or are on record in the Office of the Commissioner, Department of Labor and Industry, as one who has failed to pay prevailing wages in accordance with the provisions of this Act.

7.12.2 Nondiscrimination - The Contractor shall comply with Titles VI and VII of the Civil Rights Act of 1964 (Public Law 88-352, 78 STAT.266), U.S. Department of Justice Regulations (28 CFR Part 42), all other New Jersey and local civil rights acts, and all other fair employment practices and equal employment opportunity laws. The Contractor shall furnish and file compliance reports within the times and in the form prescribed by the Owner. Compliance reports may also elicit information as to the practices, policies, programs, and employment statistics of the Contractor and subcontractors. The Contractor will permit access to Contractor's, records and accounts by the Owner and/or its agent for purposes of investigation to ascertain compliance with the Contract Documents.

7.12.3 Equal Employment Opportunity/Affirmative Action - The Contractor shall comply with the State of New Jersey Equal Employment Opportunity (NJSA 10:5-31 et seq. and NJAC 17.27) and Affirmative Action Requirements, issued pursuant to P.L. 1975, Chapter 127.

New Jersey Affirmative Action Requirements (excerpted from N.J.S.A. 10:2-1 and N.J.S.A.IO:5-33 as supplemented by P.L. 1975, Chapter 127):

During the performance of this contract, the Contractor agrees as follows:

The Contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity 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 by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The Contractor or subcontractor, where applicable 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 age, race, creed, color, national origin, ancestry, marital status, affectional . or sexual orientation, gender identity or expression, disability, nationality or sex.

The Contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the Contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Division may, in its discretion, exempt a Contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, Band C, as long as the Division is satisfied that the Contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2.

The Contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

- A. If the Contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the Contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the Contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time-to-time and the Americans with Disabilities Act. If the Contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the Contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the Contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the Contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by

complying with the hiring or scheduling procedures prescribed under B. below; and the Contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

- B. If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of A. above, or if the Contractor does not have a referral agreement or arrangement with a union for a construction trade, the Contractor or subcontractor agrees to take the following actions:
  - I. To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;
  - 2. To notify any minority and women workers who have been listed with it as awaiting available vacancies;
  - 3. Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the Contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
  - 4. To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the Contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;
  - 5. If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;
  - 6. To adhere to the following procedure when minority and women workers apply or are referred to the Contractor or subcontractor:
    - i. The Contractor or subcontractor shall interview the referred minority or women worker.
    - ii. If said individuals have never previously received any document or certification signifying a level of qualification

lower than that required in order to perform the work of the construction trade, the Contractor or subcontractor shall in good faith determine the qualifications of such individuals. The Contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a Contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary, the Contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of C. below.

- iii. The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in i. above, whenever vacancies occur. At the request of the Division, the Contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.
- iv. If, for any reason, said Contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the Contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Division.

- 7. To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Division and submitted promptly to the Division upon request.

- C. The Contractor or subcontractor agrees that nothing contained in B. above shall preclude the Contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for

admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the **Contractor** or subcontractor shall consider for employment persons referred pursuant to B. above without regard to such agreement or arrangement; provided further, however, that the Contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the Contractor or subcontractor agrees that, in implementing the procedures of B. above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the **Contractor** shall submit to the public agency compliance officer and the Division an initial project workforce report (Form AA 201) electronically provided to the public agency by the Division, through its website, for distribution to and completion by the Contractor, in accordance with NJ.A.C. 17:27-7. The Contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.

The **Contractor** agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the job programs for outreach and training of minorities and women.

- D. The **Contractor** and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27)

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Name/Title

Date

7.12.4 "American Goods or Products" - The Contractor shall comply with N.J.S.A. 40A:11-18. " ... That only manufactured and farm products of the United States, wherever available, be used in such work."

In accordance with N.J.S.A. 40A:11-18 and N.J.S.A. 52:33-1, 2, 3, regarding the utilization of domestic materials in public works, the Owner has established the following policies and requirements:

7.12.4.1 "Wherever in this chapter the following words are used, they shall be held to have the meanings hereinafter given:

7.12.4.1.1 'Public Work': Any public building, public highway, bridge, or other public betterment, work or improvement of a permanent nature, constructed, reconstructed, repaired or improved wholly at the expense of the public.

7.12.4.1.2 'Domestic materials': Articles, materials and supplies mined or produced in the United States, and manufactured articles, and supplies manufactured in the United States.

7.12.4.2 "Notwithstanding any inconsistent provision of any law, and unless the head of the department, or other public officer charged with the duty by law, shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only domestic materials shall be acquired or used for any public work. "

7.12.4.3 "This section shall not apply with respect to domestic materials to be used for any public work, if domestic materials of the class or kind to be used are not mined, produced, or manufactured, as the case may be, in the United States in commercial quantities and of a satisfactory quality. "

7.12.4.4 "Every contract for the construction, alteration or repair of any public work in this state shall contain a provision that in the performance of the Work the Contractor and all subcontractors shall use only domestic materials in the performance of the Work; but if the head of the department or other public officer authorized by law to make the contract shall find that in respect to some particular domestic materials it is impracticable to make such requirement or that it would unreasonably increase the cost, an exception shall be noted in the specifications as to that particular material and a public record made of the findings

which justified the exception. "

7.12.4.5 Recognizing the provisions of the aforementioned Buy American statutes, in accordance with N.J.S.A. 40A:11-18 determines that:

7.12.4.5.1 It is unreasonable to prefer American goods over foreign made goods if the cost of the American goods exceed by more than two (2 % ) percent the cost of goods manufactured outside of the United States.

7.12.4.5.2 If at any time in its procurement process, a low bidder seeks to provide goods not manufactured in the United States and there is another bidder who intends to supply goods manufactured in the United States, the Owner shall employ the provisions of N.J.S.A. 40A:11-18 in determining the reasonableness of awarding the contract to the supplier of American made goods versus the supplier of goods not made in America.

7.12.5 Confined Space Entry Program - Pursuant to New Jersey Administrative Code (N.J.A.C. 12:100-0) and OSHA, the Owner has developed a formal Confined Space Entry Program which identifies the locations and establishes the minimum requirements for safe entry to all confined spaces on-site. The Contractor shall comply with all requirements of this program.

7.12.5.1 The Owner defines confined space as a space which by design has limited openings for entry and exit, unfavorable natural ventilation which could contain or produce dangerous air contaminants, could contain a hazardous atmosphere, and which is not intended for continuous occupancy. Confined spaces include, but are not limited to, tanks, manholes, wet wells, metering stations, siphon and valve chambers, pits or any other enclosures that have limited means of entry and exit.

7.12.5.2 The Owner has established a Confined Space Entry Permit (hereafter referred to as the "Permit") which will be made available to the Contractor prior to onsite mobilization. The Permit shall be strictly adhered to at all times. The Contractor shall be required to fill out the Permit and complete all items prior to entry. The Permit shall remain valid for one eight-hour maximum period. At the end of the eight-hour period, the Permit shall be submitted to the Resident Engineer and another permit or permits must be filled out.

- 7.12.5.3 The Contractor shall train his personnel as to the requirements of Federal OSHA standard 29 CFR Part 1910.146. Prior to entering a confined space, the Contractor and all personnel entering that space shall each sign a Confined Space Entry Authorization, as included in these Specifications. This Authorization shall remain in effect for the duration of the Project. Confined space entry permits, however, shall be completed in accordance with these Specifications. Whenever a confined space entry is required, the Contractor shall assign one of these trained personnel as the "Attendant" who will act as the observer and:
- 7.12.5.3.1 Notify the Resident Engineer prior to entry of the confined space and notify the Resident Engineer upon completion of the Work and exit of the confined space. This notification may be given verbally.
  - 7.12.5.3.2 Remain outside the confined space.
  - 7.12.5.3.3 Maintain continuous communication with all entrants by voice, radio, visual observation, personal alert unit or equally effective means.
  - 7.12.5.3.4 Have the authority to order entrants to exit the confined space at the first indication of a hazard.
  - 7.12.5.3.5 Know the means to summon for immediate emergency assistance if required such as the Resident Engineer, local fire department or the local first aid squad.
  - 7.12.5.3.6 Remain at his or her post and not leave for any reason except for self-preservation or to summon emergency assistance, unless replaced by an equally trained person.
  - 7.12.5.3.7 Warn unauthorized persons not to enter, or to exit immediately if they have entered.
- 7.12.5.4 The following procedures must be followed when entering a confined space:
- 7.12.5.4.1 Manholes, Metering Stations, Siphons, Valve Chambers, and Wet Wells.

1. Confined Space Permit - Implement the confined space permit as required by N.J.A.C. 12:100-9.

2. Ventilation - Ventilation fans must be turned on for a period of five (5) minutes prior to entry and remain in operation during entry to insure adequate ventilation of the wet well area. In some cases, additional portable ventilation may be required.

3. Atmospheric Testing - A gas detector shall be used to test the atmosphere prior to and during the performance of the Work.

4. Safety Harness and Rope - Shall be on the Contractor's personnel prior to and during the performance of the Work with trained attendant above. In some applications, a tripod will be required.

7.12.5.5 Additional Confined Space Entry Program requirements:

7.12.5.5.1 Ventilation. When using a portable blower, the internal combustion engine exhaust should not be allowed near or immediately upwind of the blower or manhole in order to prevent possible carbon monoxide contamination of the work area. An additional hose may be required on the intake of the portable blower.

7.12.5.5.2 Traffic Control and Job Site Protection. When preparing to enter any confined space in the roadways, warning devices must be in place to protect the public as well as the Owner's and Contractor's personnel. This protection should not be removed until the work is completed.

7.12.5.5.3 Unsafe Atmosphere. Whenever an unsafe atmosphere exists and ventilation will not clear it, report the condition to the Resident Engineer for resolution. Determination of and correction of the source is mandatory before entry or, if it has already been entered, exit must be undertaken immediately.

7.12.5.5.4 Hot Work. Occasionally, "hot work" must be conducted in a confined space. Prior -to commencing the Work in a confined space or the Primary Sludge Building, Sludge Handling Facilities or Activated Sludge Building, additional forced ventilation and gas detection may be necessary to ensure the atmosphere is clear of any explosive levels of contaminants. - The confined space "hot work" portion of the permit must be adhered to at all times.

7.12.5.6 In certain locations on the Owner's property, a One-Year Duration Permit is utilized. These permits are used for areas where personnel repetitively enter a confined space which has no known potential for presenting an immediately dangerous to life and health (IDLH) atmosphere, and no potential for an engulfment condition to occur. Dry wells in pump stations and covered clarifiers are included in these areas. Positive ventilation and gas detectors may still be required.

7.12.5.7 All damage, injury or loss to the Work, materials and equipment and such other property caused, directly or indirectly, in whole or in part, by the Contractor in violation of Article 7.12.5 shall be remedied by the Contractor.

#### 7.12.6 Special Precautions for Hazardous and Nonhazardous Substances

7.12.6.1 The Contractor is advised that the Owner stores and utilizes liquid sodium hypochlorite at one or more locations on the Project site. At the Pre-Construction Conference Meeting or at a scheduled meeting prior to start of the Work, the Contractor will be given a guided tour by the appropriate Owner's personnel of the areas which contain liquid sodium hypochlorite or associated equipment or piping. A site plan indicating these locations and applicable Material Safety Data Sheets (MSDS) will be provided to the Contractor.

7.12.6.2 In the event of an accidental release of sodium hypochlorite, the Contractor shall immediately report to the Resident Engineer. Warning of a sodium hypochlorite release may consist of detecting a strong "bleach odor" or being informed by the Owner's personnel. If the Contractor detects a leak and the

Owner's personnel are not aware of this situation, the Contractor must notify the Resident Engineer immediately.

7.12.6.3 The Contractor will be instructed to move to an area upwind and a safe distance from the leak site.

7.12.6.4 No excavation shall be performed in the absence of the Resident Engineer in the location of underground sodium hypochlorite pipelines. The Contractor will not work in or on a building containing sodium hypochlorite unless the Resident Engineer is present. The Contractor will inform all workers not to wander from the prescribed work site.

7.12.6.5 The Contractor shall acknowledge that he/she has read these paragraphs relating to the presence of liquid sodium hypochlorite at the project site. The Contractor shall also acknowledge that he/she has received the required site tour, site plan, and appropriate MSDS. Acknowledgement shall be made by the signing and submittal of the "Onsite Hazardous Substances and Safety Precautions Form" which is part of the bid package,

7.12.6.6 The Contractor shall be solely responsible to advise each of his subcontractors of the provisions and requirements of Article above.

7.12.7 Local Public Contracts - The Contractor shall comply with the State of New Jersey Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.), issued pursuant to (N.J.S.A.40A:11-34).

### **7.13 Owner's Smoking Policies**

In accordance with P.L. 1985, Chapter 381, "Controlling Smoking in Government Buildings," it is the policy of the Owner to promote and protect the public health and the health of its employees and establish a nonsmoking policy in all the buildings and structures under its control. The Contractor shall comply with the following policies regarding smoking which have been adopted by the Owner:

#### **7.13.1 No Smoking Areas**

7.13.1.1 All gasoline and diesel fuel service areas.

7.13.1.2 Propane storage tank areas.

7.13.1.3 Smoking is not permitted in any pump, metering or siphon chambers, wet wells, or any underground structure or enclosure or any building.

7.13.1.4 While in any manhole or within 10 feet of any opened manhole.

7.13.2 Safety Hard Caps - In addition to the requirements of Article 7.2, the Owner requires that hard caps be worn by the Contractor's personnel at all times in any building on the Owner's property with the exception of the Operations and Maintenance Building. This requirement includes all pump stations, manholes, metering pits and when working in any empty tank.

## **7.14 Manufacturer Performance Bonds**

7.14.1 For those items of material or equipment specifically designated in these General Conditions, the Contractor shall require the corresponding manufacturer nominated or selected by the Contractor to furnish a Manufacturer Performance Bond with good and sufficient surety in an amount equal to 100 % of the amount of the corresponding sub agreement. Manufacturer Performance Bonds shall be in effect until the end of the Correction Period and at all times after that when the Contractor may be correcting, or removing and replacing, *defective* Work. Manufacturer Performance Bonds shall be in a form acceptable to the Owner.

7.14.2 Manufacturer Performance Bonds shall be secured from a surety acceptable to the Owner, given the requirements of the Contract Documents for sureties. Manufacturer Performance Bonds shall be for the benefit of the Contractor, shall secure performance of the sub agreement and shall indemnify and hold harmless the Contractor and the Surety under the Performance and Payment Bond furnished by the Contractor to the Owner as required under the Contract Documents. The protection offered the Owner under the Manufacturer Performance Bonds shall be in addition to, and not in any way in limitation of, that provided under the Performance and Payment Bond furnished by the Contractor to the Owner.

## **ARTICLE 8 - PROSECUTION AND COMPLETION**

### **8.1 Starting the Work**

8.1.1 After execution of the Agreement by the Owner, a Pre-Construction Conference Meeting will be held to (a) record emergency telephone numbers for key personnel, (b) review the qualifications of Contractor personnel, the Contractor's plans for lay down, staging, construction traffic, access to the site, parking and other similar issues, (c) review procedures for Change Orders, Change Authorizations, Record Documents and Submittals, and (d) establish an understanding among the parties as to the Work. The Contractor shall start to perform and furnish the Work on the Date of Commencement of the Contract Time as specified in the "Notice to Proceed. " No Work shall be done at the site before the date on which the corresponding Contract Time starts to run.

## **8.2 "Revision 0" Schedule Submittals:**

- 8.2.1 Within ten days after receipt of the Notice to Proceed, the Contractor shall submit to the Resident Engineer "Revision 01-A" of the Schedule of Values, as provided in Article 12 and the Technical Specifications. The Contractor also shall submit with the first Application for Payment "Revision 01-A" of the Progress Schedule.
- 8.2.2 The Contractor shall correct and adjust those "Revision 01-A" schedules returned for revision and resubmission, taking into account comments made by the Owner and Engineer, and shall resubmit "Revision 01-A" schedules as directed by the Resident Engineer. The finalized "Revision 01-A" Schedule shall be the Progress Schedule from which Proposal Schedules shall be developed and used by the Contractor when making proposals or claims for adjustments in Contract Time or Contract Price.

## **8.3 Compliance with Contract Time Requirements**

- 8.3.1 The Contractor shall prosecute the Work with the diligence necessary to ensure its completion within the Contract Time. The Contractor shall provide sufficient labor, materials and equipment, and shall promptly undertake appropriate action to recover schedule, as may be necessary to comply with the Contract Time requirements. Except as may be required by the Contractor's safety and protection obligations under the Contract Documents, all Work at the site shall be performed during normal working hours, unless the Contractor has obtained the Resident Engineer's prior written consent. No Work shall be performed in other than daylight conditions unless adequate lighting has been provided after securing all required permits.
- 8.3.2 Unless disallowed by local laws, a daily working schedule from 7 a.m. to 6 p.m., excluding non-business days, not exceeding 50 hours per week, shall be normal working hours. The Contractor shall be responsible for any delay and all costs resulting from working during other than normal working hours. Reimbursements to the Owner under the provision shall combine premium time charges of the Resident Engineer and Engineer (less any savings in such charges from any reduction in Contract Time attributable to such working hours) and any other increases in costs that the Owner incurs and that the Contractor could reasonably have foreseen.
- 8.3.2.1 If Work during other than normal working hours is consented to by the Owner or Resident Engineer and is scheduled by the Contractor, payments by the Contractor to the Owner to reimburse the Owner for the Resident Engineer's time spent over normal working hours shall be at the rate of \$50 per hour.

- 8.3.3 Early dates in the Progress Schedule shall be based on proceeding with all or part of the Work exactly on the date when the corresponding Contract Time commences to run. Late dates shall be based on completing all or part of the Work exactly on the corresponding Contract Time, regardless of whether the Contractor anticipates early completion or not. If sequences of Work are indicated in or required by the Contract Documents, the Progress Schedule shall show in detail the Contractor's approach to conforming with those sequences.
- 8.3.4 The Progress Schedule shall stay current with the Contractor's approach to Work remaining, be employed when reporting on progress or schedule recovery and facilitate the evaluation of progress payments. The Contractor shall carry on the Work with due diligence during disagreements and disputes with the Owner, and no Work shall be delayed pending resolution of any disagreements or disputes. The Contractor shall exercise reasonable precautions and efforts to avoid or mitigate situations that would cause delays.

#### **8.4 Substantial Completion**

- 8.4.1 The Contractor shall notify the Resident Engineer in writing whenever the Contractor considers that the entire Work, or a portion of the Work for which a Contract Time for Substantial Completion has been specified, has progressed to the point where it is sufficiently complete in accordance with the Contract Documents. Within a reasonable time after receipt of any such a notice, the Resident Engineer, Contractor and Engineer jointly shall inspect the entire Work, or portion of the Work, to determine the status of completion. If the Engineer or Resident Engineer does not consider the Work, or portion of the Work inspected, sufficiently complete, the Resident Engineer will, within twenty (20) days after the inspection, deliver to the Contractor a written list of incomplete and unsatisfactory Work sufficient to demonstrate the basis for that determination.
- 8.4.2 If the Resident Engineer and Engineer consider the entire Work substantially complete, or the portion of the Work inspected substantially complete, the Resident Engineer will deliver to the Owner and Contractor a certificate of Substantial Completion, as appropriate, with a Deficiency List. Such certification by the Resident Engineer shall be preceded by the Work, or portion of the Work inspected, having been successfully tested by the Contractor and demonstrated to be ready for its intended use. The certificate shall fix (a) a date of Substantial Completion, (b) a date for completion of the Deficiency List to the satisfaction of the Resident Engineer, and (c) a recommendation about the division of responsibilities between the Owner and Contractor, in the case of Substantial Completion of the Work or Partial Use under Paragraph 8.5.1.1. If the Resident Engineer

determines that the entire Work is not substantially complete, or the portion of the Work inspected is not substantially complete, the Resident Engineer will notify the Contractor in writing. Unless otherwise specified in the Contract Documents, a determination of Substantial Completion shall not become final until the Owner can use or occupy the Work, or specified part of the Work, for the use intended.

## **8.5 Partial Use**

8.5.1 Before Substantial Completion of the entire Work, the Owner may, in its sole discretion, use any portion of the Work designated in the Contract Documents as eligible for Partial Use, or considered by the Owner and Engineer separately functioning Work that can be used by the Owner, even though it was not designated as eligible in the Contract Documents. Partial Use may be accomplished (a) upon a determination of Substantial Completion under Paragraph 8.4.2, or (b) as provided under Paragraphs 8.5.1.1 or 8.5.1.2.

8.5.1.1 If the Owner decides to partially use any portion of the Work that the Owner believes has progressed to Substantial Completion, the Owner shall so inform the Contractor in writing. If the Contractor agrees that any such portion of the Work is substantially complete, the Contractor shall notify the Owner and Engineer in writing. Within a reasonable time after receipt of any such notice by the Contractor, the Owner, the Resident Engineer, Contractor and Engineer jointly shall make a Substantial Completion inspection. Whether the Resident Engineer, or the Engineer does or does not consider that portion of the Work substantially complete, the applicable Substantial Completion provisions of Paragraph 8.4 will apply in all subsequent respects.

8.5.1.2 If the. Owner decides to partially use any portion of the work that is not substantially complete, the Owner shall so inform the Contractor in writing. Within a reasonable time after receipt of the notice, the Owner, the Resident Engineer, Contractor and Engineer jointly shall make an inspection to determine the extent of completion and prepare a list of items remaining to be completed or corrected before that portion of the Work is considered substantially complete. Promptly after the inspection, the Resident Engineer will deliver a Deficiency List to the Owner and Contractor with a written recommendation about the division of responsibilities between the Owner and Contractor for that portion of the Work, pending Substantial Completion of that portion of the Work and the entire Work. During that Partial Use and before Substantial Completion of that portion of the

Work, the Owner shall allow the Contractor reasonable access to complete or correct listed items on the Deficiency List and to complete other Work.

## **8.6 Division of Responsibilities**

- 8.6.1 A certificate of Substantial Completion covering the Work (or a certificate of Substantial Completion covering Work under Partial Use) will include the Resident Engineer's recommendation about division of responsibilities between the Owner and Contractor for security, operation, safety, maintenance, utilities, insurance, warranties and guarantees, pending final completion (or Substantial Completion) of the Work. Any such reasonable recommendation about division of responsibilities under Partial Use shall bind the Owner and Contractor when the Owner starts Partial Use after receipt of evidence of compliance with the property insurance provisions of Paragraph 7.7.3, unless they have otherwise agreed in writing.

## **8.7 Extensions in Contract Time**

8.7.1 An extension in Contract Time will not be justified unless the Contractor, through analysis of the Progress Schedule, demonstrates unreasonable delay under the circumstances in completing all or a specified part of the Work, which arises from unforeseeable causes, and which is not caused in whole or in part by acts or omissions within the control of the Contractor. Examples of such events that may justify an extension in Contract Time, subject to the requirements of the Contract Documents, include: acts of God or the public enemy; acts of the Owner, U.S.

Government, the State or another local governing body, each acting in its sovereign capacity; acts of a public utility in its public capacity; fires, floods, epidemics, quarantine restrictions; strikes, freight embargoes; unusual weather, including storms, tornados, etc. (unusual in the sense of expectation, frequency or severity vis-a-vis the prior five-year average); unusually severe shortages of construction materials, considering all feasible sources of supply; underground utilities not shown; objection, for the Owner's convenience, to a nominated Subcontractor; an emergency; suspension of Work; changes in the Work; differing site conditions; variation in quantities; and delay, as provided in this paragraph, of subcontractors or suppliers, at any tier, not caused in whole or in part by acts of omissions within the control of both the Contractor and subcontractors and suppliers.

- 8.7.2 If upon evaluation of the Contractor's analysis, the Owner justifies an extension in Contract Time from delay under Paragraph 8.7.1 not caused in whole or in part by acts or omissions within the control of the Owner or Engineer, the Owner shall authorize the necessary change in Contract Time only.

## **8.8 Suspension of Work**

- 8.8.1 Without invalidating the Agreement, and without notice to any surety, the Owner may, at any time, order the Contractor in writing to defer, stop, slow down, suspend, interrupt or extend all or any part of the Work for such period as the Owner may deem appropriate for its convenience (in the Specifications also referred to collectively as suspension of Work).
- 8.8.2 If any such written order issued by the Owner, act or omission within the control of another party performing other work for which the Owner is responsible, or act or omission within the control of the Owner or Engineer, results in unreasonable delay under the circumstances, the Owner shall, pursuant to Paragraph 8.7 and Article 11, negotiate with the Contractor and/or authorize a change in Contract Time or Contract Price (excluding any Fee under Paragraph 11.11) for any changes in the time required, or the Contractor's costs, to perform the Work. However, no change in Contract Price shall be made for any such delay (a) to the extent performance is delayed by any other cause, including acts or omission within the control of the Contractor or beyond the control of both the Owner and Contractor, or (b) if an adjustment is provided or excluded by any other provision of the Contract Documents.
- 8.8.3 If the Contractor believes a suspension of Work justifies an increase in Contract Price or Contract Time, the Contractor shall give prompt written notice to the Owner and submit a written proposal promptly after the extent of the delay becomes known. However, no proposal or claim by the Contractor on account of a suspension of Work shall be allowed for any delay or costs incurred more than twenty (20) days before the Contractor gives written notice (except for written orders under Paragraph 8.8.1), or if made after final payment.
- 8.8.4 Except as provided in Paragraphs 8.8.1 through 8.8.3, no order or act or failure to act of the Owner or Engineer shall constitute a suspension of Work justifying an increase in Contract Price or Contract Time. In addition to the conditions in Paragraph 8.9, no suspension of Work shall be unreasonable under the circumstances unless the delay exceeds the time allowed in the Contract Documents for the act or failure to act.

## **8.9 Unreasonable Delay**

- 8.9.1 No delay in completing the Work, or any specified part of the Work, which is caused in whole or in part by acts or omissions within the control of the Owner or Engineer, shall be unreasonable under the circumstances or justify an increase in Contract Time or Contract Price, unless, and to the extent that, the delay extends completion of the Work, or specified part of the Work,

beyond the corresponding Contract Time.

- 8.9.2 Notwithstanding Paragraph 8.9.1, the Owner shall negotiate with the Contractor an adjustment in Contract Price whenever a delay extends performance of the Work beyond an early completion date but not beyond the corresponding Contract Time, subject to the following: (a) the early completion is reasonably achievable, Le., provides adequate allowances for usual weather, Owner and Engineer activities, rework and other foreseeable delaying events within the control of the Contractor and is supported by Activity manpower and quantity data, (b) the delay meets the criteria in Paragraph 11.12.1, (c) the Contractor has exercised good faith and due diligence in complying with the float provisions in Paragraph 8.10, and (d) the adjustment in Contract Price shall not exceed fifty percent (50%) of the Contractor's delay costs (excluding escalation).

## **8.10 Use of Float**

- 8.10.1 Total Float and Contract Float, whether expressly disclosed in the Progress Schedule or implied by the use of float suppression techniques, are not for the exclusive benefit of the Contractor or Owner, and shall be proportionately available to the Owner, Engineer and Contractor.
- 8.10.2 Use by the Contractor of float suppression techniques (including, but not limited to preferential sequencing caused by late starts of follow-up trades, unreasonably small crews, etc., extended durations, imposed dates, or scheduling Work not required for a Contract Time as required Work) in violation of the float provisions of the Contract Documents shall not justify any changes in Contract Price or Contract Time.

## **ARTICLE 9 - WORKMANSHIP/CORRECTION OF WORK**

### **9.1 Warranty and Guarantee.**

- 9.1.1 The Contractor expressly warrants and guarantees to the Owner and Engineer that all Work will conform to the Contract Documents and will not be *defective*. Reasonably prompt notice of defects actually known to the Resident Engineer and/or Engineer shall be given to the Contractor.
- 9.1.2 All warranties for materials and equipment, whether express or implied, including, but not limited to warranties of merchantability and fitness for a particular purpose, that are received by the Contractor shall be assigned to the Owner, and delivered by the Contractor to the Owner.

### **9.2 Tests and Inspections**

- 9.2.1 The Owner, Resident Engineer, Engineer, their representatives, testing agencies and any State and Federal agencies and Governing Bodies with

jurisdiction shall be permitted access to the Work at reasonable times while it is in progress for observation, inspection and testing. The Contractor shall provide proper and safe conditions for such access. The Contractor shall give the Resident Engineer timely notice of readiness of, and access to, the Work for all required inspections, tests or approvals. No tests, inspections or approvals shall relieve the Contractor from its obligation to perform the Work in accordance with the Contract Documents, or to warrant and guarantee the Work as provided in the Contract Documents.

- 9.2.2 Except as provided in Paragraph 9.2.3, the Contractor shall assume full responsibility for any testing, inspection or approval (a) required by Law, (b) indicated in or required by the Contract Documents (including, but not limited to inspection and testing to support the warranty and guarantee requirements), or (c) required for the Engineer's acceptance of a supplier or of materials or equipment submitted for approval by the Contractor. The Contractor shall pay all related costs, schedule related activities, and secure and furnish the Engineer the required certificates of inspection, testing or approval.
- 9.2.3 If the Owner retains a testing agency to perform inspections, tests or approvals, such fact will be specifically noted in the Contract Documents. Except as otherwise provided in Paragraphs 9.2.5 and 9.3.3, the Owner shall pay for the services of any testing agency furnished by the Owner.
- 9.2.4 If any testing, inspection or approval required by law differs from that specified, or if not specified from that enacted on or before bid opening, and the differing inspection, testing or approval requires changes, the Owner shall, pursuant to Paragraph 10.1, order any changes in the Work and corresponding adjustment in Contract Price required solely by changes. If any such incident results in unreasonable delay under the circumstances which is caused in whole or in part by acts or omissions within the control of the Owner or Engineer, the Owner shall, pursuant to Paragraph 10.4, authorize any corresponding changes in Contract Price or Contract Time, or both.
- 9.2.5 The Contractor shall be responsible for any testing, inspection or approval, including any delay and all costs, if that testing, inspection or approval reveals failure of all or any part of the Work. Examples of Owner costs assumed by the Contractor under this obligation include (a) increases in compensation for the Engineer's services, and (b) duplicate testing, approval and inspection costs of testing agencies furnished by the Owner (if any are furnished, as outlined in Paragraph 9.2.3).

### **9.3 Uncovering Work**

- 9.3.1 If any Work that is to be observed by the Resident Engineer or inspected, tested or approved by others is covered without or contrary to a Resident Engineer's written request, it shall, when requested by the Resident Engineer, be uncovered, exposed or otherwise made available for observation, testing, inspection or approval as the Resident Engineer may require, and replaced, if necessary, all at the Contractor's expense.
- 9.3.2 The Contractor, at the Resident Engineer's request, shall uncover, expose or otherwise make available for observation, inspection or testing, as the Resident Engineer may require, any covered Work, if the Resident Engineer determines that such covered Work shall be observed by the Resident Engineer or Engineer or inspected or tested by others.
- 9.3.3 The Contractor shall be responsible for any uncovering, exposure, observation, inspection, testing and satisfactory reconstruction, including any delay and all costs, whenever (a) Work covered without the written concurrence or contrary to the written request of the Resident Engineer is uncovered, or (b) covered Work uncovered at the Resident Engineer's request is found to be *defective* (Paragraph 9.3.2). If Work uncovered at the Resident Engineer's request (Paragraph 9.3.2) is not found to be *defective*, the Owner shall, pursuant to Article 10, order the required changes in the Work and correspondingly adjust Contract Price or Contract Time, or both.

#### **9.4 Correction or Removal or Acceptance of *Defective* Work**

- 9.4.1 If required by the Resident Engineer, the Contractor shall promptly, as directed, (a) correct all *defective* Work, whether fabricated, installed or completed or not, or (b) remove *defective* Work from the site and replace it at the Contractor's expense, if it has been rejected by the Resident Engineer or if any testing, inspection or approval of all or part of the Work reveals failure of that part of the Work to comply with the Contract Documents. If instead of requiring correction or removal and replacement of *defective* Work by the Contractor, the Owner prefers to accept it, the Contractor shall be responsible for any delay and all costs resulting from the Owner's correction or removal of *defective* Work and/or the Owner's evaluation and determination to accept *defective* Work.
- 9.4.2 If the Owner's acceptance of *defective* Work occurs before final payment, a Change Order may be issued incorporating the necessary revisions in the Contract Documents and the Contract Price shall be adjusted accordingly. If the acceptance occurs after that recommendation, an appropriate amount shall be paid by the Contractor to the Owner.

#### **9.5 The Owner May Correct *Defective* Work**

- 9.5.1 If the Contractor fails promptly after receipt of written notice of the

Resident Engineer to proceed to correct *defective* Work, or to remove and replace rejected Work as required by the Resident Engineer, or to correct or complete any items on any Deficiency List, or if the Contractor fails to perform the Work in accordance with the Contract Documents, or to comply with any provision of the Contract Documents, the Owner may, after seven (7) days' written notice to the Contractor, correct any such deficiency. To the extent necessary to complete corrective action, the Owner shall have full power and authority to exclude the Contractor from all or part of the site, and to exercise all the rights and remedies in Paragraph 14.3 (as necessary to reflect the corrective action). The Contractor shall allow the Owner, Engineer and their respective representatives, agents and employees access to the site as is necessary to allow the Owner to complete corrective action.

- 9.5.2 The Contractor shall be responsible for any delay and all costs resulting from the Owner's exercise of appropriate action under Paragraph 9.5.1. Examples of costs assumed by the Contractor under the obligations set forth in Paragraph 9.5.1 are costs of correction and removal and replacement of *defective* Work, costs of repair and replacement of work of others destroyed or damaged by the correction.

## **9.6 Correction Period**

- 9.6.1 The Contract Documents provide for one Correction Period for the entire Work. The Correction Period shall commence on the date of Substantial Completion of the Work, or later if so specified elsewhere in the Contract Documents. The Correction Period shall last one year, or longer if so specified elsewhere in the Contract Documents or required by law.
- 9.6.2 The Contractor shall promptly, without cost to the Owner, and in accordance with the Owner or Resident Engineer's written instructions (a) correct any *defective* Work that is discovered within the Correction Period, or (b) remove from the site any *defective* Work that is discovered within the Correction Period and replace it with *non-defective* Work, if it has been rejected by the Resident Engineer or Engineer. The Owner or other parties under contract with the Owner may correct *defective* Work, or remove and replace rejected Work, in an emergency, or if the Contractor fails to comply promptly with the terms of any instructions, or if other circumstances warrant it.
- 9.6.3 The Contractor shall be responsible for any delay and all costs resulting from any incident of *defective* Work under Paragraph 9.6.2 (including, but not limited to any additional reasonable costs the Owner incurs relating to additional costs of the Resident Engineer and Engineer and increases in the compensation of affected Owner's and Engineer's consultants). If the discovery of the *defective* Work takes place after final payment and the Contractor fails to pay the Owner any of the costs set forth in this

paragraph, the Owner shall demand due performance under the Performance and Payment Bond and Article 14, or shall deliver a claim, in accordance with the procedures set forth in Article 15, or both.

- 9.6.4 The warranties and guarantees and Contractor's obligations for correction of Work specified in this Article are in addition to, and not in limitation of, any other warranties and guarantees specified elsewhere in the Contract Documents or other specific remedies provided in the Contract Documents or by law. Nothing contained in this Article shall be construed as establishing a period of limitations for, or limiting the obligations of, the Contractor under the Contract Documents.

## **9.7 Extended Warranties and Guarantees**

- 9.7.1 If the Owner advances or defers the date of commencement of the Correction Period, the Contractor shall maintain the warranties and guarantees until the revised date of commencement of the Correction Period. If such change in the date of commencement of the Correction Period causes a change in the cost of the warranties and guarantees provided by the Contractor, the Owner shall, pursuant to Article 10, correspondingly adjust Contract Price or Contract Time, or both.
- 9.7.2 Whenever the Owner undertakes Partial Use that was specifically designated as eligible in the Contract Documents, or the Contractor fails to complete the Work or a separable portion of the Work within the corresponding Contract Time and the Owner decides to undertake Partial Use under Paragraph 8.5.1.2, the Contractor shall maintain the warranties and guarantees in full force and effect during the period between the applicable date of commencement of that Partial Use and the date of commencement of that Partial Use and the date of commencement of the Correction Period. The Contractor shall receive no adjustment in Contract Price for any such maintenance of the warranties and guarantees.
- 9.7.3 Any *defective* Work that is either corrected or rejected and replaced will be warranted and guaranteed in accordance with the provisions of this Article for one year from the date of the correction or removal and replacement. If within such extended Correction Period that Work is again found to be *defective*, the Owner may exercise any of the Owner's rights and remedies under this Article.

## **9.8 Special Maintenance Requirements**

- 9.8.1 Whenever the Work, or a designated part of the Work, progresses to Substantial Completion or Partial Completion but is not placed in continuous service until the commencement of the Correction Period, the Contractor shall, between that date of Substantial Completion or Partial Completion and

the date of commencement of the Correction Period, maintain the Work, or designated part of the Work, in good order and proper working condition, and take all other actions necessary for its protection. The Contractor shall receive no adjustment in Contract Price for any such maintenance.

- 9.8.2 If the Work or any such part of the Work suffers loss or damage, the Contractor shall rebuild, repair, restore and make good all those losses or damages without an increase in Contract Price. The occurrence of suspension of Work or the granting of an extension in Contract Time for any cause shall not relieve the Contractor of the Contractor's responsibility for the Work, or designated part, as specified in this paragraph.

## **ARTICLE 10 - CHANGES**

### **10.1 Changes in the Work**

- 10.1.1 Unilateral Changes - Without invalidating the Agreement and without notice to any surety, the Owner may, at any time, by Change Order or Change Authorization signed by the Owner (a) order changes in the Work consisting of additions, deletions or other revisions (within the scope of the Work) in the requirements of the Specifications and Drawings, any means and methods, the Owner-furnished lands, equipment, materials or services, or directing acceleration of the Work, and (b) unilaterally make or provide the basis for making an adjustment in Contract Price or Contract Time. Upon receipt of any such unilateral order, the Contractor shall promptly proceed or continue with the Work involved as directed. Any adjustment made by Change Order or authorized by Change Authorization shall be final and binding on the Contractor, unless the Contractor delivers notice of a claim and a claim Submittal, both within the deadlines provided in Article 15.
- 10.1.2 Negotiated Changes - The Owner may negotiate changes with the Contractor by issuing a request for proposal describing the changes in the Work being considered, and requesting that the Contractor submit a proposal for the corresponding adjustment in Contract Price or Contract Time, if any.
- 10.1.3 Construction Changes - Any other written or oral order from the Owner or Engineer, including instruction, interpretation, determination or approval, that causes a change shall be treated as a change in the Work, but only if the Contractor or Owner promptly delivers a Potential Change Order (PCO) to the other (in the case of the Contractor, notice is subject to the requirements of Paragraph 3.2.1). Upon evaluation of any such Potential Change Order, if the Owner concludes, with the advice of the Engineer, that a change in the Work has been ordered, the Owner shall by Change Order or Change Authorization correspondingly amend the Contract Documents. If the Owner concludes that a change has not been ordered, that conclusion shall be final and binding on the Contractor unless the Contractor delivers a claim, in

accordance with Article 15, within 30 days after receipt of that Owner's decision.

10.1.3.1 No proposal or claim by the Contractor arising from changes under Paragraph 3.2.1 or 10.1.2 shall be allowed for any costs or delay incurred more than 20 days before the Contractor gives written notice as required.

10.1.4 Value Engineering Construction Changes - In accordance with New Jersey Local Public Contract Laws, all construction contracts issued by the Owner, when the total price of the originally awarded contract equals or exceeds \$5,000,000, shall allow for value engineering construction change orders to be approved after the award of the contract.

10.1.4.1 Value engineering construction change orders shall be subject to the following provisions:

- a. Value engineering construction change orders shall not be used to impair any of the essential functions, or characteristics of the project, or any portion of the Work involved.
- b. The Contractor shall submit a value engineering construction proposal that completely describes the changes to the original specifications or proposal, impact on other project components, advantages and disadvantages of the proposed change, cost estimates and calculations on which they are based, any impact on the contract time schedule, and any other relevant information that the Owner may require in order to review the value engineering construction proposal. The Contractor's cost for developing the value engineering construction proposal shall not be eligible for reimbursement by the Owner.
- c. The Contractor shall be liable for all reasonable costs incurred by the Owner for the technical evaluation and engineering review of a value engineering construction proposal presented by the Contractor.
- d. The Engineer shall prepare a written report that shall evaluate the value engineering construction proposal, make a recommendation on whether or not it should be accepted, rejected, or modified, and state to the Owner and Contractor the amount of any projected cost savings.
- e. The proposal shall not be approved unless the Engineer

reports that the proposal appears consistent with the required performance, quality, reliability, and safety of the project and does not impair any of the essential functions, or characteristics of the project, or any portion of the work involved.

- f. The Owner shall have the sole discretion to approve or disapprove a value engineering construction proposal.
- g. The Contractor and the Owner shall equally share in the cost savings generated on the contract as a result of an approved value engineering construction change order. Once the project is completed, the Engineer shall verify the cost savings to reflect the actual cost of the work, and such verified cost saving shall be the basis for the savings shared equally with the Contractor.
- h. The Contractor shall have no claim against the Owner as a result of the Owner's disapproval of a value engineering construction proposal.
- i. The procedures to regulate the value engineering construction change order process shall be in accordance with the provisions of Paragraph 10.6 and Article 11.

## **10.2 Changes Due to Differing Site Conditions**

10.2.1 The Contractor or Owner shall notify the other in writing if the Contractor or Owner, respectively, discovers that (a) actual subsurface conditions or latent physical conditions encountered at the site differ materially from those shown or indicated in the Contract Documents, (b) unknown physical conditions encountered at the site, of an unusual nature, differ materially from those ordinarily encountered and recognized as inherent in work similar in character to the Work, or (c) any reference points need correction to enable the Contractor to proceed with the Work. A notice from the Contractor shall be delivered promptly, before proceeding with any affected Work and before the conditions or reference points are disturbed. A notice from the Owner shall be delivered as soon as possible after discovery of the conditions or reference points.

10.2.2 Upon receipt or delivery of any such notice, the Owner shall investigate the matter. If the Owner concludes the alleged conditions on which the Contractor is entitled to rely differ materially, the Owner shall correspondingly amend the Contract Documents. If the Owner decides the Contract Documents do not need amending, or decides to make or not to make a change in Contract Price or Contract Time, that determination shall

be final and binding on the Contractor unless the Contractor delivers notice of a claim and a claim Submittal, both within the deadlines provided in Article 15.

10.2.3 No proposal or claim by the Contractor due to differing site conditions shall be allowed (a) if the Contractor knew of the existence of those conditions before submission of its Bid, or (b) if those conditions could have been discovered by the types of reasonable explorations and examinations for which the Contractor, as Bidder, was made responsible under the Bidding Requirements, or (c) unless the Contractor has given the written notice required under Paragraph 10.2.1.

### **10.3 Variation in Quantities of Unit Price Work**

10.3.1 If the Contract Documents specify Unit Price Work, the Contract Price includes, for all such Unit Price Work, the sum of the unit prices bid for each item of Unit Price Work times its estimated quantity. The Contractor shall be responsible for completing the estimated quantities of all specified and contingent Unit Price Work within the Contract Time.

10.3.2 Specified Unit Price Work - The Contractor shall promptly, before proceeding with any affected Work, deliver a Potential Change Order to the Owner whenever actual quantities for an item of Unit Price Work differ materially from those estimated and (a) request (if called for) an increase in the estimated quantity, and (b) propose an adjustment in the unit price or Contract Time or inform the Owner that adjustments are not needed. Promptly after receiving the Potential Change Order, the Resident Engineer will evaluate the affected Work and options available to avoid or reduce the variation in quantities and their effect on the unit price and Contract Time.

10.3.2.1 If the Owner consents in writing to quantities varying from those estimated and determines that (a) the additional or reduced quantities for that item of Unit Price Work justify an adjustment in the unit price (applicable to the actual quantities above 120% or below 80% of the estimated quantity) or Contract Time, or both, or (b) the unit prices are valid for the actual quantities, or that no adjustment in Contract Time is warranted, or both, the Contractor shall proceed with the affected Unit Price Work as directed. Any such determination by the Owner shall be final and binding on the Contractor unless the Contractor delivers notice of a claim and a claim Submittal, both within the deadlines provided in Article 15.

10.3.3 Contingent Unit Price Work - If actual quantities for a contingent Unit Price Work item exceed materially those estimated, the Owner and Contractor shall negotiate an adjustment in unit price (applicable to those actual

quantities above 120% of the estimated quantity) or in Contract Time, or both, as provided in Paragraph 10.3.2. No adjustment shall be allowed for an under-run in the quantities of an item of contingent Unit Price Work, unless the product of the unit price times the estimated quantity exceeds the lesser of \$50,000 or 1 % of the Contract Price.

10.3.4 No such adjustment due to variation in quantities shall be allowed (a) unless the Owner has received the Potential Change Order before the Contractor proceeds with the affected Work, or (b) if the unit price increases result at all from acts or omissions within the control of the Contractor (including errors in the Contractor's Bid or unbalanced prices).

#### **10.4 Contract Price and Contract Time Adjustments**

10.4.1 Adjustments in Contract Price made necessary by changes in the Work, differing site conditions or variation in quantities shall be based on changes, pursuant to Article 11, in the Contractor's cost required to perform any part of the Work; except that no proposal or claim by the Contractor on account of changes in the Work, differing site conditions or quantity variations shall be allowed if made after final payment.

10.4.2 If a case of differing subsurface conditions under Paragraph 10.2 results in a suspension of Work, no such related suspension of Work shall be unreasonable under the circumstances, unless the suspension of Work exceeds 10 days.

10.4.3 If any case of changes in the Work, differing site conditions or quantity variations results in unreasonable delay under the circumstances, which is caused in Whole or in part by acts or omissions within the control of the Owner or Engineer, the Owner shall authorize an adjustment in Contract Price or Contract Time for any changes in the Contractor's cost or time required to perform the Work, as follows: (a) changes in Contract Time shall be pursuant to Paragraph 8.7; (b) changes in Contract Price for related suspensions of Work shall be pursuant to Paragraph 8.8; (c) changes in Contract Price for the performance of the Work involved shall be pursuant to Article 11 ; (d) no change in Contract Price shall be made for any delay to the extent performance is delayed by acts or omissions within the control of the Contractor, or beyond the control of both the Owner and Contractor, or if an adjustment is excluded by any other provision of the Contract Documents. The Contractor shall be responsible for any such resulting delay and delay costs, if the delay is reasonable under the circumstances.

#### **10.5 Change Orders; Change Authorizations**

10.5.1 A Change Order or Change Authorization duly signed by the Owner and Contractor, without the Contractor having reserved the right to claim

additional adjustments, constitutes an all inclusive settlement for all changes and any delay and all costs, and the Contractor's signature represents a waiver of any and all rights to file a claim on account of that Change Order, Change Authorization or the Work.

- 10.5.2 A Change Order or Change Authorization signed by both the Owner and Contractor, which incorporates a written notice from the Contractor (directly or by reference) reserving the Contractor's right to claim additional adjustments, shall become final and binding on the Contractor, without consideration of its reservation of rights, unless the Contractor delivers notice of a claim and a claim Submittal, both within the deadlines provided in Article 15.
- 10.5.3 The Owner and Contractor shall sign Change Orders with reasonable promptness for changes in the Work and any corresponding adjustments in Contract Price or Contract Time agreed to in total or in part by the Owner and Contractor, or for previously executed Change Authorizations. Amounts for Work involved in a Change Authorization, in accordance with Paragraph 10.6.4, or a Change Order, signed by the Owner may be included in progress payments.
- 10.5.4 The Owner may use Change Authorizations to order changes in the Work, provide the basis for a subsequent adjustment in Contract Price or Contract Time, order changes not warranting an increase in Contract Price or Contract Time, or consent to quantity variations. Amounts for Work involved in a Change Authorization justifying a subsequent change in Contract Price are allowable for payment of up to a maximum of 80% of the total value of the Change Authorization until the Change Authorization is included in a Change Order.
- 10.5.5 The Owner reserves the right to decrease the adjustments made in any Change Order, Change Authorization, proposal or claim settlement if an audit of the Contractor's Records reveals that the Contractor provided false or inaccurate cost and pricing data in negotiating the Change Order, Change Authorization, proposal or claim. In enforcing this provision, the Owner and Contractor shall use those procedures provided in FAR clause 52.214-27 (found in 48 CFR Part 52).

## **ARTICLE 11 - CHANGES IN CONTRACT PRICE/CHANGES IN CONTRACT TIME**

### **11.1 Changes in Contract Price or Contract Time**

- 11.1.1 Contract Price. or Contract Time shall be changed only by Change Order approved by the Owner. The basis for a subsequent change in Contract Price or Contract Time may be authorized by Change Authorization signed by the Owner.

11.1.2 A Contract Time (whether stated in the Agreement or changed by Change Order) shall not be changed due to a delay in Contractor's early completion date until all Contract Float available in the Record Schedule at the time of the start of the delay is used and performance of the specified Work extends necessarily beyond that Contract Time.

11.1.3 Except as provided in Paragraph 8.9.2, Contract Price (whether stated in the Agreement or changed by Change Order) shall not be changed due to a delay in a Contractor's early completion date until all Contract Float available in the Record Schedule at the time of the start of the delay is used and performance of the specified Work is necessarily so extended.

## **11.2 Proposals or Claims Substantiating Adjustments**

11.2.1 Contractor proposals shall be due within 20 days after the Contractor receives a written request for proposal from the Owner or delivers to the Owner a written notice documenting the event which the Contractor, subject to the requirements of the Contract Documents, believes justifies a change in Contract Price or Contract Time. Any delay in the submittal of a proposal will not constitute basis for an increase in Contract Price or Contract Time. A proposal shall be irrevocable for at least 60 days after its receipt by the Owner.

11.2.2 Contractor proposals or claims shall cover all aspects of the Work involved, and shall be fully documented and itemized as to all labor, material/equipment, construction equipment and supplemental costs, as specified in this Article, quantities and fee (which shall segregate percentages for profit and administrative costs). Amounts for subcontractors or suppliers at any tier shall be similarly supported.

11.2.3 Where the change in Contract Price arises from changes in the time required to perform any Work, or where a change in Contract Time is sought, the Contractor's itemized estimates shall in addition detail all productivity and production data, and include a detailed analysis of the Record Schedule.

## **11.3 Methods for Determining Adjustments in Contract Price**

11.3.1 The methods to be used to determine any adjustment in Contract Price for "the Work involved" in (a) changes ordered or under negotiation, (b) delay ordered, caused or under negotiation, or (c) Work covered by a proposal or claim shall be selected by the Resident Engineer from one of the methods in Paragraphs 11.3.1.1 and 11.3.1.2, or shall be limited to one of the methods in Paragraphs 11.3.1.3 and 11.3.1.4.

- 11.3.1.1 If the Work involved is covered by lump-sum prices or unit prices in the Contract Documents, by application of those lump sum prices or application of those unit prices to the quantities of the Work involved, respectively.
- 11.3.1.2 If the Work involved is not covered by lump-sum or unit prices in the Contract Documents, by mutual acceptance of a lump-sum price negotiated using the Contractor's itemized estimate of the anticipated Cost of the Work involved, as specified in this Article, and a Fee for the Work involved not to exceed one and one-third (Le., 133 %) of the Fee resulting from the application of paragraph 11.11.
- 11.3.1.3 If the Work involved is not covered by either of the first two methods, and agreement cannot be reached on a lump-sum price, and the Owner directs the Contractor to proceed with the Work involved with payments to be made pursuant to actual costs (with or without a guaranteed maximum), based on an itemized breakdown of the actual Cost of the Work involved, as specified in this Article, and a fee for the Work involved, as specified in Paragraph 11.11.
- 11.3.1.4 If payment for the Work involved is to be determined by a court of law, it is agreed by the Contractor that the actual cost and Fee methods in Paragraph 11.3.1.3 shall represent appropriate methods for determining the Cost of the Work involved and Fee for the Work involved.

11.3.2 In computing Cost of the Work involved, costs shall be allowable only to the extent costs (a) are consistent with those prevailing in the locality of the Project and with applicable criteria set forth in 48 CFR Part 31, and (b) include only those items for labor, material or equipment, construction equipment and supplemental costs specified in this Article.

#### **11.4 Labor, Subcontract, and Material/Equipment Costs**

11.4.1 The Cost of the Work involved includes payroll costs for the Contractor's labor, including foremen, assigned to the site and engaged in furnishing and incorporating materials/equipment in the Work involved. Labor man hours shall not exceed those derived from a standard industry estimating guide applicable to the Work and acceptable to the Owner. Payroll costs shall include wages and may include those labor burdens expressly certified in advance by a duly authorized financial representative of the Contractor and so approved by the Owner. Examples of labor burdens include social security, unemployment taxes, workers' compensation, health and retirement benefits, vacation and holiday pay. When determining actual payroll costs (a)

under Paragraph 11.3.1.3, daily time sheets certified by the Contractor and verified by the Resident Engineer along with certified payroll records shall be the valid records; (b) under Paragraph 11.3.1.4, daily time sheets shall be valid only if they expressly correlate to the Work involved, and if recorded at that time and used for payroll.

11.4.2 The Cost of the Work involved includes payments made by the Contractor to subcontractors for the Work involved performed by Subcontractors. The methods for calculating subcontractors' costs shall be the same as those for Contractor costs, except that the term "subcontractor" shall replace the term "the Contractor," context permitting. If the Owner requires, the Contractor shall obtain detailed competitive sub-bids and nominate at least two subcontractors for the performance of any Work involved for selection by the Owner.

11.4.3 The Cost of the Work involved includes payments by the Contractor to suppliers for material and equipment used in the Work involved, including transportation, storage and necessary suppliers' field services. All trade discounts, rebates and refunds and all returns from sale of surplus items shall accrue to the Owner, and the Contractor shall make provisions so that they may be obtained. If required by the Owner, the Contractor shall obtain bids for designated materials or equipment and nominate at least two suppliers for selection by the Owner. When determining actual supplier costs, invoices segregating items associated with the Work involved shall be the record upon which to base actual costs.

## **11.5 Construction Equipment Costs**

11.5.1 The Cost of the Work involved includes costs for individual construction equipment with replacement value in excess of \$1,000. Transportation, loading and unloading, installation, dismantling and removal costs shall be allowed only if prior consent is obtained from the Resident Engineer, and if the equipment is, or was, transported to the site solely for the Work involved. Shipping costs will be allowed if the equipment requires use of a carrier, and provided the travel distance does not exceed that for similar equipment available in the project locality. When multiple attachments are used, only the highest cost attachment shall be recoverable. Equipment costs shall cease when the equipment is no longer needed for the Work involved. Payroll costs for labor operating the equipment are as specified in Paragraph 11.4.1. Equipment costs shall be computed using the same accounting and estimating rules and prices, whether related to added or deleted Work.

11.5.2 When determining actual construction equipment costs (a) under Paragraph 11.3.1.3, daily logs of the equipment, operators and actual usage, verified by the Resident Engineer, shall be the valid records; (b) under Paragraph 11.3.1.4, such daily records shall be valid only if developed when the Work

involved was performed and used for accounting purposes.

11. 5.3 Rented or owned equipment at the site, idled solely by actions of the Owner or Engineer, shall be paid at the rates for rented equipment, or based on 50 % of the rates for owned equipment, respectively, provided that the idle period exceeds that normally experienced for such equipment and occurs during normal working hours.

## **11.6 Rented or Leased Construction Equipment**

11.6.1 For equipment rented or leased from lessors not associated with or owned by the Contractor, the Contractor shall be entitled to amounts based on negotiated rates, but in no event shall the rates exceed those listed in the Rental Rate "Blue Book" published by Dataquest, Inc. for the region covering Middlesex County applicable to the equipment (model number and year). The equipment rate for second or third shift Work shall not exceed fifty percent (50%) of the base rate. Operating costs shall not exceed the hourly operation rate in the Blue Book. Hourly rates for equipment previously in use on the Work for at least a month shall be based on the monthly rate divided by 176 hours. Equipment previously in use for only one week or not previously in use at the site shall not be invoiced to the Owner at rates higher than the following schedule of equipment use and payment category:

Less than 8 hours	Hourly Rate
1 day but less than 7 days	Daily Rate
1 week but less than 30 days	Weekly Rate
30 days or more (when in use)	Monthly Rate

## **11.7 Owned Construction Equipment**

11.7.1 For equipment owned by the Contractor, or rented or leased from lessors associated with or owned by the Contractor, the Contractor shall, in the Owner's sole discretion, be entitled to costs based on either (a) charges established by the Contractor's normal accounting practices, or (b) the hourly rates listed in the "Contractor's Equipment Cost Guide," published by Dataquest, for the region covering the Ocean County, New Jersey area. Operating costs shall not exceed the hourly operation rate in the Blue Book. For multiple shifts, the equipment rate shall not exceed the shift Work adjustments recommended in the referenced Cost Guide.

## **11.8 Supplemental Costs**

11.8.1 The Cost of the Work involved includes a proportion of necessary supplemental costs, to the extent those supplemental costs increase or decrease on account of (a) the Cost of the Work involved for labor,

subcontractors or supplier-furnished materials or equipment, or (b) an extension in Contract Time or delay under Paragraph 8.9.2, as follows:

- 11.8.1.1 Payroll costs and subsistence expenses for the Contractor's fulltime superintendent and payroll costs for other personnel in the employ of the Contractor, resident (and engaged in activities) at the site and listed in the schedule of indirect personnel classifications agreed to by the Owner, if those costs arise solely from an extension in Contract Time or delay under Paragraph 8.9.2.
- 11.8.1.2 Costs of field supplies and purchase costs (less market value if not consumed) of tools individually valued at less than \$1,000 that are not owned by the workers, if the Contractor provides an itemized list of the field supplies and tools required for the performance of the Work involved; however, no such costs shall be allowed over 4% of the labor costs under Paragraph 11.4.1, excluding burdens, unless the Contractor furnishes detailed data sufficient to allow verification that a higher percentage is appropriate for the Work involved.
- 11.8.1.3 Costs of office and temporary facilities at the site, including materials, supplies, equipment, minor expenses (telegrams, expressage and petty cash), utilities, fuel, sanitary facilities, long distance telephone calls and telephone service at the site, if those costs arise solely from an extension in Contract Time or delay under Paragraph 8.9.2.
- 11.8.1.4 Costs of consultants not in the direct employ of the Contractor, or subcontractors not covered under Paragraph 11.4.2; if those costs are or were authorized by the Owner before proceeding with the Work involved, and if not covered by Paragraph 11.4 or not excluded by Paragraph 11.10.
- 11.8.1.5 Taxes on the Work involved, and for which the Contractor is liable; and royalty payments and fees for permits and licenses, if they relate solely to the Work involved.
- 11.8.1.6 Physical losses, damages and expenses to the Work, not compensated by property insurance or otherwise, or otherwise to be sustained by the Contractor in the prosecution of the Work (except losses and damages within the deductible amounts of property insurance, if any), but only if the losses, damages and expenses result from causes beyond the control or other than fault or negligence of the Contractor.

- 11.8.1.7 Cost of Bond premiums and insurance premiums, not included as part of the labor burdens charged under Paragraph 11.4.1, if they relate solely to the Work involved.

## **11.9 Limitation on Equipment and Supplemental Costs**

- 11.9.1 The Contractor shall not be allowed to include as part of the Cost of the Work involved any construction equipment or supplemental costs that cannot be shown to increase on account of, or are not directly attributable to, the performance of the Work involved. Payroll costs for the full-time resident superintendent included within the requirements of Paragraph 4.2.2 are but one example of such costs.

## **11.10 Administrative Costs Covered by the Fee for the Work Involved (and not Allowable as Cost of the Work Involved)**

- 11.10.1 The Cost of the Work involved shall not include any of the following costs (considered administrative costs or contingencies covered by the fee for the Work involved):
  - 11.10.1.1 Payroll costs and other compensation of (a) executives, general and administrative managers, estimators, claim consultants, attorneys, accountants, labor relation' coordinators, contract and subcontract administrators, purchasers, expeditors and other administrative staff, whether employed at the site or in the Contractor's principal or branch offices; and (b) project managers, construction managers, engineers, architects, schedulers, detailers, safety personnel, clerks and other administrative staff employed in the principal or branch offices.
  - 11.10.1.2 Costs in the preparation of Change Orders or Change Authorizations (whether or not ultimately authorized by the Owner), or the preparation or filing of claims.
  - 11.10.1.3 Costs of engineers, architects, accountants, consultants, attorneys and others, in the direct employ of the Contractor or otherwise, utilized for services related to a controversy or claim about the acceptability of the Work,
  - 11.10.1.4 Any part of the Contractor's capital expenses, including, but not limited to interest on the Work involved, charges for delinquent payments, lost interest on unpaid retainage, and lost profits and lost opportunities.

11.10.1.5 Any other expenses of the Contractor's principal and branch offices, including storage and yard facilities; and any costs not specifically and expressly allowed in this Article.

## **11.11 Limits on Fee for the Work Involved**

11.11.1 Any adjustment in Contract Price for Work involved shall include a negotiated Fee to cover (a) administrative costs described under Paragraph 11.10, and (b) profit. Any such Fee shall not exceed the following percentages:

11.11.1.1 Contractor - For Work involved performed or to be performed by (a) the Contractor, the Contractor's Fee shall not exceed 15% of the Contractor's Cost of the Work involved, excluding supplemental costs, (b) a Subcontractor(s), the Contractor's Fee shall be 5 % of the performing subcontractor( s)' Cost of the Work involved, excluding all supplemental costs and subcontractor(s)' fees.

11.11.1.2 Subcontractors - For Work involved performed or to be performed by (a) a first-tier subcontractor, that first tier subcontractor's fee shall not exceed 15 % of that subcontractor's Cost of the Work involved, excluding supplemental costs, (b) a lower tier subcontractor, that subcontractor's fee shall be 10 % of that subcontractor's Cost of the Work involved, excluding supplemental costs, and any corresponding higher tier subcontractors shall share equally a fee of 5 % of the performing subcontractor's Cost of the Work involved, less supplemental costs and fees.

11.11.1.3 The credit to be allowed to the Owner for an individual change in the Work involving deletions, or additions and deletions, that yields a negative Cost of the Work involved, shall be the amount of the net decrease and, if the negative Cost of the Work involved exceeds \$10,000, a fee credit of one-third of the Fee resulting from the application of Paragraphs 11.11.1.1 and 11.11.1.2 shall be added to that amount.

11.11.1.4 When unrelated, distinct changes in the Work are covered in a Change Order, Change Authorization, proposal or claim for the sake of convenience, each of such changes yielding a net increase or decrease in the Cost of the Work involved, the combined fee for the various changes so grouped shall be computed as the sum of the individual fees.

## 11.12 Additional Payment-for-Delay Provision

11.12.1 Subject to the applicable requirements of the Contract Documents (including, but not limited to those provisions in paragraphs 8.8, 8.9 and 10.4.3 voiding compensation under certain conditions), an extension in Contract Time or a delay under Paragraph 8.9.2 may be combined with an increase in Contract Price in the following cases: Underground utilities that are not shown, i.e., previously unknown; an emergency; objection, for the Owner's convenience, to a nominated subcontractor; uncovering of Work not found to be *defective* under Paragraph 9.3.2, delay under Paragraph 13.2.3 or any other suspension of Work; changes in the Work; differing site conditions; and variation in quantities.

11.12.2 Changes in the Contract Price for extensions in Contract Time shall exclude costs that are unaffected or do not relate to the extension in Contract Time, such as: (a) operating cost of construction equipment assigned to the Work on a continuing basis but primarily used in the furnishing and incorporating of materials/equipment into the Work, (b) operating costs plus owned/rental costs of construction equipment used solely in the furnishing and incorporating of materials/equipment into the Work (crane used for specific lifts, concrete pump used for specific pours, etc.), and (c) fully paid site facilities, tools, etc.

11.12.3 If unreasonable delay under the circumstances, caused in whole or in part by acts or omissions within the control of the Owner or Engineer, extends completion of the Work beyond the Contract Time in Paragraph 3.1.1 of the Agreement, the Owner shall negotiate with the Contractor the reimbursement of an amount to cover administrative costs (under Paragraph 11.10) that will be or were unabsorbed prior to the expiration of that Contract Time. Reimbursement shall be based on the lesser of (a) 5% times the portion of the Contract Price in 4.1 of the Agreement remaining unbilled prior to the expiration of that Contract Time. Reimbursement shall be based on the lesser of (a) 5 % times the portion of the Contract Price in 4.1 of the Agreement remaining unbilled prior to the expiration of that Contract Time, or (b) the product of that unbilled portion of the Contract Price times the (company-wide) ratio of the Contractor's administrative costs to billings, or (c) that amount derived by an application of the Eichleay formula.

11.12.4 The Contractor shall not recover from the Owner (a) acceleration costs incurred to overcome delays which warrant extensions in Contract Time but exclude changes in Contract Price, (b) escalation costs for any part of the Work not delayed beyond the Late Dates in the Progress Schedule, or (c) delay costs not expressly allowed in this Article.

### **11.13 Proposal and Waiver Provisions**

11.13.1 In addition to the requirements in Articles 8 and 10, the Contractor shall submit a written proposal promptly after the delivery of a written notice (a) reserving the Contractor's right to claim additional adjustments at a later date, or (b) documenting the occurrence of any other event which, subject to the requirements of the Contract Documents, the Contractor believes justifies a change in a Contract Price or Contract Time.

11.13.2 If upon (a) the Contractor's neglect, refusal or failure to submit a proposal promptly after delivering a written notice reserving the Contractor's right to claim additional adjustments, or (b) the review of any such proposal or claim submitted by the Contractor, the Owner determines that an adjustment or that no adjustment in Contract Price or Contract Time is justified under the Contract Documents, that Owner's determination shall be final and binding on the Contractor unless the Contractor delivers notice of a claim and a claim submittal, both within the deadlines provided in Article 15. Any such determination by the Owner shall be subject to the advice of the Engineer.

## **ARTICLE 12 - PROGRESS PAYMENTS, FINAL PAYMENT, AND ACCEPTANCE**

### **12.1 Schedule of Values/ Application for Payment**

12.1.1 The Schedule of Values shall subdivide the Work into items in sufficient detail to facilitate and serve as the basis for payments, as specified in the Contract Documents, and if not specified, as approved by the Resident Engineer. The Schedule of Values format shall be acceptable to the Resident Engineer and include separate subtotals for Work of the Contractor and each subcontractor. For each item covering the furnishing and/or installing of materials in the Work, data shall include quantities, material/equipment costs and labor costs. Labor costs shall include amounts for construction equipment, supplemental costs, administrative costs and profit, unless separate scheduled value items are designated for all those costs.

12.1.2 Once a month, the Contractor shall submit to the Resident Engineer Applications for Payment signed by the Contractor certifying Work completed, and enclosing all supporting documentation. If payment is requested based on materials and equipment stored at the site or at another location agreed to in writing, the Application for Payment also shall be accompanied by consent of surety, a bill of sale, invoice or other documentation warranting that the Owner has received the materials and equipment free and clear of all liens, and evidence that the materials and equipment are covered by appropriate insurance and other arrangements to protect such material or equipment and the Owner's interests. If the documentation is not satisfactory to the Owner, the Contractor shall

reimburse the Owner for all costs incurred by the Owner and Engineer to inspect and verify that the materials are properly stored.

12.1.3 The Contractor guarantees that title to all Work covered by any Application for Payment, whether incorporated in the Work or not, will pass to the Owner no later than at time of payment free and clear of all liens. The Contractor shall submit a properly executed consent of its surety to the release of retainage before release of retainage by the Owner.

12.1.4 If required by the Owner, the Contractor shall attach to Applications for Payment canceled checks, receipts and vouchers from/with subcontractors and suppliers along with statements of accounts from subcontractors and suppliers with notarized sworn statements attesting to the billings from and payments made by the Contractor to each of them.

## **12.2 Review of Application for Payment**

12.2.1 Subject to the procedures in the Agreement, within 10 days after receipt of an Application for Payment, the Resident Engineer shall either (a) recommend to the Owner payment of that amount the Resident Engineer determines to be due, or (b) return the Application for Payment to the Contractor indicating the reasons for refusing to recommend payment. In the latter case, the Contractor shall make the necessary corrections and resubmit that Application for Payment. Except as qualified in Paragraph 12.4.1, the Owner shall make payment to the Contractor as provided in the Agreement.

### **12.2.2 Partial payments; deposit bonds**

Any contract, the total price in which exceeds \$100,000.00, entered into by a contracting unit involving the construction, reconstruction, alteration, repair or maintenance of any building, structure, facility or other improvement to real property, shall provide for partial payments to be made at least once each month as the work progresses, unless the contractor shall agree to deposit bonds with the contracting unit pursuant to P.L.1979, C.152 (C.40A:11-16.1).

l.1979, c. 464, s.1; amended 1999, c. 440, s. 25.

### **12.2.3 Withholding of payments**

a. With respect to any contract entered into by a contracting unit pursuant to section 1 of P.L.1979, c.464 (C.40A:11-16.2) for which the contractor shall agree to the withholding of payments pursuant to P.L.1979, c.152 (C.40A:11-16.1), 2% of the amount due on each partial payment shall be withheld by the contracting unit pending completion of the contract.

b. Upon acceptance of the work performed pursuant to the contract for which the contractor has agreed to the withholding of payments pursuant to subsection a. of this section, all amounts being withheld by the contracting unit shall be released

and paid in full to the contractor within 45 days of the final acceptance date agreed upon by the contractor and the contracting unit, without further withholding of any amounts for any purpose whatsoever, provided that the contract has been completed as indicated. If the contracting unit requires maintenance security after acceptance of the work performed pursuant to the contract, such security shall be obtained in the form of a maintenance bond. The maintenance bond shall be no longer than two years and shall be no more than 100% of the project costs.

L.1979, c. 464, s. 2; amended 1991, c. 434, s. 2; 1999, c. 440, s. 26.

#### 12.2.4 Partial payments for materials

Any contract entered into by a contracting unit pursuant to section 1 of P.L.1979, c.464 (C.40A:11-16.2) may also provide for partial payments at least once in each month with respect to all materials placed along or upon the site, or stored at secured locations, which are suitable for use in the execution of the contract, if the person providing the materials furnishes releases of liens for the materials at the time each estimate of work is submitted for payment. The total of all the partial payments shall not exceed the cost of the materials.

### **12.3 Intent of Review of Application for Payment**

12.3.1 The Resident Engineer's recommendation of any Application for Payment is a representation to the Owner, based on (a) observations at the site, (b) any Project representation provided by the Resident Engineer, and (c) the Resident Engineer's review of the accompanying schedules and data, that the Work has progressed to the point indicated, that to the best of the Resident Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment of the amount recommended. Such representation, however, are subject to an evaluation of the Work as a functioning whole before and upon Substantial Completion, to the results of any tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work, and to any other qualifications stated in the recommendation.

12.3.2 In the case of final payment, the Resident Engineer and Engineer's recommendation that the Work is acceptable shall be an additional representation by the Resident Engineer and Engineer to the Owner that conditions governing final payment to the Contractor have been fulfilled.

### **12.4 Refusal to Make or to Recommend Payment**

12.4.1 The Owner may withhold from any payment an amount based on the

Resident Engineer's refusal to recommend payment or the Owner's estimate of the fair value of any other items entitling the Owner to a withholding against the amount recommended. Such items may include, but not limited to asserted liquidated damages for anticipated or actual late completion, claims made against the Owner arising out of or related to the Contractor's performance of furnishing of the Work, payment claims made concerning the Work, failure by the Contractor to reimburse the Owner any costs the Owner is entitled to recover under the Contract Documents. The Owner will give the Contractor reasonably prompt written notice (with copy to the Engineer) stating the reasons for such action.

12.4.2 The Resident Engineer may refuse to recommend all or any part of any payment, or because of subsequently discovered evidence or inspections or tests, nullify all or any portion of any payment previously recommended, as the Resident Engineer may consider necessary to protect the Owner from loss because (a) the Work is *defective* or completed Work has been damaged requiring correction or replacement, (b) the Contract Price has been reduced by Change Order, (c) it has been necessary that the Owner correct *defective* Work or complete Work, as provided in Article 9, (d) reasonable evidence exists that all or a part of the Work will not be completed within the specified Contract Time, (e) of the Contractor's failure to submit Progress Schedule submittals or Record Documents when due, (f) reasonable evidence exists that Work previously considered to be completed, is not complete, or (g) the Engineer or Resident Engineer reasonably believes or knows of the occurrence of an event justifying termination for cause.

## **12.5 Final Application for Payment**

12.5.1 Upon written notice from the Contractor that the entire Work, or a part of the Work for which final acceptance is specified in the Contract Documents, is complete and ready for final payment, the Resident Engineer and Engineer will make a corresponding final inspection with the Owner and Contractor. The Resident Engineer will notify the Contractor in writing of all instances of incomplete or *defective* Work revealed by the final inspection. The Contractor shall immediately undertake all necessary measures to correct the deficiencies.

12.5.2 The Contractor may apply for final payment and acceptance (a) after completing correction of the deficiencies to the satisfaction of the Resident Engineer and delivery of all maintenance and operating instructions, warranties and guarantees, certificates of inspection, revised Record Documents (reflecting revisions made after Substantial Completion), any other required Bonds and all other required documents, and (b) once the Resident Engineer has consented to review the Work for final acceptance and payment.

12.5.3 The application for final payment and acceptance shall enclose (a) a certificate of insurance confirming the policies and coverage obtained and certifying that coverage will not be cancelled, adversely changed or renewal refused except as provided under Paragraph 7.4.3, (b) a document acceptable to the Owner certifying that the surety agrees that final payment shall not relieve the surety of any of its obligations under the Performance and Payment Bond, (c) complete and legally effective releases or waivers acceptable to the Owner in the full amount of the Contract Price, or if any subcontractor or supplier refuses or fails to furnish such release or waiver, a Bond or other security acceptable to the Owner to indemnify the Owner against any payment claim, (d) certification of payment of prevailing Rate of Wages on Public Contracts, and (e) a list of all pending property damage and injury insurance claims.

## **12.6 Final Payment and Acceptance**

12.6.1 If based on the Resident Engineer's (a) observation of the Work, (b) final inspection, and (c) review of the application for final payment and acceptance, the Resident Engineer is satisfied that the Work, or a part of the Work for which separate final acceptance is specified in the Contract Documents, has been completed and the Contractor's other obligations under the Contract Documents have been fulfilled, the Resident Engineer will, within 30 days after receipt of the final application, furnish to the Owner and Contractor the Resident Engineer's recommendation of final payment and acceptance. If the Resident Engineer is not satisfied, the Resident Engineer will return that application for final payment to the Contractor, indicating in writing the reasons for not recommending final acceptance, in which case the Contractor shall make the necessary corrections and resubmit the application.

12.6.2 If the Owner concurs with the Resident Engineer's recommendation of acceptance, the Owner will within fifteen (15) days give written notice to the Contractor and Engineer of the Owner's acceptance of the Work or separable part of the Work for which final acceptance is so specified. Within thirty (30) days after that, the Owner shall pay the balance of the Contract Price, subject to those provisions governing final payment specified in the Agreement. If the Owner does not concur with the Resident Engineer's determination, the Owner will return the request to the Contractor indicating in writing the reasons for refusing final payment, in which case the Contractor shall make the necessary corrections and request that the Resident Engineer resubmit the final payment. The Owner's written decision will be binding upon the Contractor, unless the Contractor delivers notice of a claim and a claim submittal, both within the deadlines provided in Article 15.

12.6.3 If recommended by the Resident Engineer, the Owner may, upon receipt of

the Contractor's final request for payment, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted, if final completion of the Work is significantly delayed through no fault of the Contractor. Payment of the balance due shall be made under the provisions for final payment, but shall not constitute a waiver of claims.

12.6.4 The Owner shall pay with reasonable promptness any amounts deducted from the final payment, upon resolution of the claims justifying withholding of such monies.

## **12.7 Contractor's Continuing Obligation**

12.7.1 The Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following constitutes acceptance of Work not in accordance with the Contract Documents or a release of the Contractor's obligation to perform the Work in accordance with the Contract Documents: (a) a recommendation of any progress or final payment by the Resident Engineer; (b) the issuance of a certificate of Substantial Completion or Partial Completion; (c) any payment by the Owner to the Contractor; (d) any Partial Use by the Owner; (e) any act of acceptance by the Owner or any failure to do so; (1) any review and approval of a Shop Drawing, sample, test procedure, or other Submittal; (g) any review of a Progress Schedule; (h) any inspections, tests or approvals; (i) the issuance of a notice of acceptability by the Engineer or Resident Engineer; or G) any correction of *defective* Work by the Owner.

## **12.8 Waiver of Claims**

12.8.1 The making and acceptance of final payment do not constitute a waiver by the Owner of any rights as to the Contractor's continuing obligations under the Contract Documents, nor will it constitute a waiver of any claims by the Owner against the Contractor and still unsettled, or arising from unsettled payment claims, *defective* Work appearing after final inspection or failure by the Contractor to comply with the Contract Documents or the terms of any special warranties or guarantees provided by the Contract Documents or by Law.

12.8.2 The making and acceptance of final payment will constitute a waiver of all claims by the Contractor against the Owner, other than those claims previously made in writing, on a timely basis, in accordance with Article 15, and still unsettled.

## **ARTICLE 13 - OTHER WORK**

### **13.1 Related Work at Site**

- 13.1.1 During the period allowed for performance and completion of the Work, the Owner may perform other work at the site with the Owner's own forces, or have other work performed by other parties (including, but not limited to other contractors or public utilities). If the Contract Documents do not note that any such other work is to be performed, written notice will be given to the Contractor before starting that other work.
- 13.1.2 The Contractor shall afford each other party (or the Owner when performing other work) proper/safe access to the site and a reasonable opportunity for the handling, unloading and storage of materials and equipment and for the execution of their work, and shall properly connect and coordinate the Work with other parties. The Contractor shall do all cutting, fitting, patching and interfacing of the Work that may be required to make any part of the Work come together properly and integrate with other work. The Contractor shall not cut, excavate or otherwise alter any other work without the written consent of the other party and the Resident Engineer. The Contractor shall promptly notify the Resident Engineer in writing whenever Work interfacing with any other work has been performed.
- 13.1.3 If any part of the Work depends for proper execution or results on the work of the Owner or another party, the Contractor shall inspect and promptly report in writing to the Resident Engineer conditions in, that work that make it unavailable or unsuitable for proper execution. The Contractor's failure to do so will constitute an acceptance of other work as fit and proper for integration with the Work, except for latent or non-apparent defects and deficiencies in the other work.
- 13.1.4 Whenever Work to be performed by the Contractor is dependent upon the work of other parties, the Contractor shall coordinate that Work with the dependent work to the same extent that the Contractor is required to coordinate dependent subcontractor Work. Installation of Work by the Contractor, directly or through a subcontractor, in any given area, shall constitute acceptance by the Contractor (including the subcontractor) of all previously placed dependent work.
- 13.1.5 If the Owner contracts with other parties for other work, the Contractor shall be responsible for cooperating with the Engineer fully in the coordination of the Contractor's submittals with dependent submittals of those other parties whose work in any way relates or depends upon the Work or vice versa. When submitted to the Engineer any such coordinated submittal of the Contractor shall identify, by specific notation, within or attached to that submittal, each and every item of interface with the other work.

## **13.2 Mutual Duties and Responsibilities**

- 13.2.1 If the Contractor causes damage to the work or property of others, or if a claim arising out of the Contractor's execution of Work is made by another party against the Contractor, Owner or Engineer, the Contractor shall promptly attempt to settle with that party by agreement or otherwise resolve the claim. The Contractor shall defend, indemnify and hold harmless the Owner and Engineer from and against all claims, as construed in Paragraph 1.4, arising out of or resulting from damage by the Contractor to the work or property of others or from the Contractor's execution of the Work.
- 13.2.2 If another party causes damage to the Work or property of the Contractor, or if the performance of other work results in any claim by the Contractor, the Contractor shall promptly attempt to settle with that party by agreement or otherwise resolve the claim. The Contractor shall not begin any action against the Owner or Engineer, their consultants, agents or any of their directors, officers, shareholders, agents or employees, or permit any action against them to be maintained in the Contractor's name or for the Contractor's benefit before any court or tribunal, which action seeks to impose liability or recover damages from the Owner or Engineer for such claim.
- 13.2.3 Except as excluded in Paragraph 13.2.4, if any party performing other work causes suspension of Work resulting in unreasonable delay under the circumstances, and if, upon a request from the Contractor, the Owner concludes that any such delay requires a change in Contract Price or Contract Time, the Owner shall, pursuant to Paragraph 8.8, authorize an adjustment in Contract Price or Contract Time, or both.
- 13.2.4 If a party performing other work is granted an extension in a contract time only (on account of unreasonable delay under the circumstances not caused in whole or in part by acts or omissions of the other party, the Owner, Engineer or the Owner's representative on that other work), and if, upon a request from the Contractor, the Owner concludes that the extension granted to the other work requires a change in a coterminous Contract Time in the Contract Documents, the Owner shall authorize the necessary change in Contract Time only.

### **13.3 The Contractor's Responsibility for Owner Costs**

- 13.3.1 If the Contractor becomes involved in settling or otherwise resolving claims with other persons performing other work arising out of events covered under Paragraphs 13.2.1 or 13.2.2, or because of any other similar controversy, including damage to the Work or other work or a dispute about responsibility for clean-up or any other issue, neither the Owner, the Engineer, nor any of their constituents, agents nor any of their directors, officers, stockholders nor employees will be involved in any way in such actions (except if subpoenaed). If the Owner incurs costs contrary to the provisions of this

Article, the Contractor shall reimburse those costs to the Owner.

## **ARTICLE 14 - TERMINATION**

### **14.1 Notice of Intention to Terminate for Cause**

14.1.1 If at any time reasonable doubt of the Contractor's performance arises, the Owner may demand adequate, written assurance of due performance. In addition, the Owner, acting on knowledge or belief, may include with the demand for assurance notice to the Contractor and surety of the Owner's intent to terminate the Contractor's right to complete the Work within twenty (20) days, or sooner if safety to persons or property is in question, because of the occurrence of any of the following events, which constitute lack of due performance and reasonable grounds for terminating the Contractor:

- 14.1.1.1 The Contractor fails to complete the Work, or a specified part of the Work, within the corresponding Contract Time; fails or refuses to supply sufficient skilled workers, materials or equipment or otherwise prosecute the Work, or specified part of the Work, with the diligence required for completion within the corresponding Contract Time; or fails, refuses or neglects to obtain or renew the insurance required by Article 7.
- 14.1.1.2 The Contractor admits in writing, or the Owner otherwise establishes, the Contractor's inability to pay the Contractor's debts generally as they become due; or in response to the Owner's demand, the Contractor fails to provide adequate, written assurance promptly (the adequacy of which the Owner shall be the sole judge) of the Contractor's due performance in accordance with the Contract Documents.
- 14.1.1.3 A trustee, receiver, custodian or agent of the Contractor is appointed under applicable law or under contract, whose appointment or authority to take charge of property of the Contractor is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of the Contractor's creditors.
- 14.1.1.4 The Contractor disregards the authority of the Resident Engineer and/or the Engineer, otherwise violates in any substantial way any provision of the Contract Documents, fails to perform the Work in accordance with the Contract Documents, or otherwise disregards any applicable laws.

14.1.2 Within 10 days after the Contractor receives a demand for assurance or a

notice of intent to terminate, the Contractor and surety shall meet with the Owner and present their plan to give adequate assurance of due performance to the Owner and to avoid or cure any default. If at or after the meeting, the Owner decides to allow the Contractor to continue to prosecute the Work, that decision shall not waive the Owner's right to subsequently declare the Contractor in default or affect any rights or remedies of the Owner against the Contractor or surety, or both, then existing or that may accrue in the future.

## **14.2 Contractor Default and Termination for Cause**

14.2.1 The Owner shall have full power and authority to default the Contractor and to give notice of termination if at or after the meeting referred in Paragraph 14.1.2, the Owner decides to terminate the Contractor's right to complete the Work or the parties are otherwise unable to reach an agreement for prosecution of the Work to completion. The Contractor shall not be terminated for cause, however, until seven days after the Owner mails or delivers the termination notice to the Contractor and surety, or the expiration of the 20-day notice of intent to terminate, whichever occurs first. Upon receipt of notice of termination, the Contractor shall immediately proceed in accordance with any specific instructions, protect and maintain the Work, and make every reasonable effort to mitigate all costs that may result from the termination.

14.2.2 Upon receipt of the Owner's notice of termination of the Contractor for cause, the surety shall promptly:

- 14.2.2.1 Make renewed attempts to arrange for the Contractor, with consent of the Owner, to continue with performance and prosecution of the Work to completion.
- 14.2.2.2 Undertake to perform and complete the Work, in accordance with the Contract Documents, in place of the Contractor, either through the surety's agents or by executing sub agreements with qualified contractors (excluding the Contractor's affiliates), or both.
- 14.2.2.3 If agreed to by the Owner, waive the surety's rights set forth elsewhere in this Article, and with reasonable promptness under the circumstances, after investigating in good faith and with due care and diligence, determine the amount for which it may be liable to the Owner, and present that determination to the Owner. If the Owner rejects that amount, the surety shall negotiate a sum acceptable to the Owner and promptly pay that amount to the Owner in full and with interest from the date the termination of the Contractor's services became effective. If the

Owner rejects the sum determined by the surety, or if the surety fails to negotiate an agreement with the Owner on the amount of the surety's liability, the Owner shall have full power and authority to default the surety.

14.2.3 If the Owner has determined the Contractor, and the surety elects to act under Paragraph 14.2.2.2, the Owner will determine in good faith the amount necessary to cover the total direct, indirect and consequential costs (including, but not limited to liquidated damages, the cost of correcting Work, fees and charges of engineers, architects, attorneys and others and any other costs and damages for which the surety is liable under the Performance Bond) that the Owner believes it will sustain from the default of the Contractor. The Owner will communicate its determination to the surety, and the Owner will deduct that amount in its entirety from progress payments to the surety under the Contract Documents. Upon completion of the Work, if the unpaid balance of the Contract Price is not sufficient to reimburse the Owner for any delay and all actual costs resulting from the default of the Contractor, the surety and Contractor, jointly and severally, are liable to the Owner for the difference, which they shall pay to the Owner promptly.

14.2.4 If the Owner has terminated the Contractor, and the surety elects to act under Paragraph 14.2.2.2, the surety's contract with another contractor makes that contractor a subcontractor under the Contract, in which case (a) the provisions of Article 11 shall remain in full force and effect, and the methods and criteria to be used to compute the surety's (in lieu of the Contractor's) and that Contractor's Cost of and Fee for the Work involved shall be limited to those provided in Article 11, and (b) all Work performed by any such contractor pursuant to a sub agreement with the surety shall be governed by the flow-through requirement in Paragraph 5.5.1 and any other requirements of the Contract Documents governing sub agreements.

### **14.3 Surety Default**

14.3.1 If upon receipt of a notice of termination for cause, the surety fails to proceed as provided in Paragraph 14.2.2 with reasonable promptness, the Owner shall declare the surety in default under the Performance and Payment Bond in accordance with the provisions of this paragraph.

14.3.1.1 No default of the surety under the Performance Bond shall be declared however until the expiration of 15 days after receipt by the surety of an additional written notice from the Owner demanding that the surety perform its obligations under the Performance and Payment Bond.

14.3.1.2 If the Owner declares the surety in default, the Owner shall have full power and authority to exclude the surety and Contractor

from the site, assume any sub agreements that the Owner so selects and take possession of the Work and of all the surety and Contractor's tools, plant and office, and construction equipment at the site (without liability to the surety or the Contractor for trespass, rent or conversion).

14.3.1.3 The Owner further shall have full power and authority to (a) proceed to the full extent that the surety and Contractor could have proceeded, (b) incorporate into the Work all materials and equipment stored at the site or elsewhere, and (c) prosecute the Work to completion as the Owner, with the advice of the Engineer, may deem expedient. When the Owner exercises any of the rights or remedies provided in Paragraphs 14.3.1 through 14.3.1.3, the Owner shall not be required to obtain the lowest price for Work performed.

14.3.2 If the Owner has terminated the Contractor or defaulted the surety, any such termination or default will not affect any rights or remedies of the Owner against the Contractor or surety, or both, then existing or that may accrue after termination. Any retention or payment of monies due the Contractor or surety by the Owner will not release the Contractor or surety from liability. All provisions of the Contract Documents that, by their nature, survive final acceptance of the Work shall remain in full force and effect after a termination for cause of the Contractor or default of the surety, or both.

14.3.3 The Owner may, in its sole discretion, permit the Contractor or surety to continue to perform Work when the Contractor or surety has been terminated or declared in default for any reason. Any such decision by the Owner shall in no way operate as a waiver of any of the Owner's rights under the Contract Documents or under the Performance and Payment Bond, or both, nor in the event of a subsequent default, entitle the Contractor or surety to continue to furnish and perform or prosecute the Work to completion.

#### **14.4 Termination for Convenience of the Owner**

14.4.1 Upon 15 days written notice to the Contractor and the surety, or sooner if reasonable under the circumstances, the Owner may, without cause and without prejudice to any other right or remedy it may have, elect to terminate any part of the Work, or the Agreement in whole or in part, as the Owner may deem appropriate for its convenience. Upon receipt of any such termination notice, the Contractor shall immediately proceed in accordance with any specific instructions, protect and maintain the Work, and make reasonable and diligent efforts to mitigate costs associated with the termination.

- 14.4.2 In any termination for convenience, the Contractor shall be paid for (a) Work completed, in accordance with the Contract Documents, before receipt of the notice of termination, and (b) reasonable termination settlement costs for commitments that had become firm before the termination. The Contractor shall not be paid any anticipated and unrealized supplemental costs, administrative expenses and profit for uncompleted Work. If no agreement can be reached as to reasonable termination costs, the Owner and Contractor shall follow the provisions in FAR 52.249-2, found in 48 CFR Part 52.
- 14.4.3 Upon termination for convenience, the Owner shall have full power and authority to take possession of the Work, assume any sub agreements with subcontractors and suppliers that the Owner selects, and prosecute the Work to completion by contract or as the Owner may deem expedient.
- 14.4.4 If after notice of termination of the services of the Contractor for any of the causes listed in Paragraph 14.1.1, it is determined that the Contractor was not in default, the termination shall be deemed to have been for the convenience of the Owner. In such event the Contractor may recover from the Owner payment in accordance with Paragraph 14.4.2.

## **14.5 The Contractor May Stop Work**

- 14.5.1 To the extent permitted by Law, through no act or fault of the Contractor, the Resident Engineer fails to act on any Application for Payment within 30 days after it is submitted, or the Owner fails for 45 days to pay the Contractor any Application for Payment sum finally determined by the Resident Engineer to be due, then the Contractor may, upon 15 additional days written notice to the Owner of a suspension of Work, suspend the Work under the provisions of Paragraph 8.8.
- 14.5.2 Except as specifically provided in Paragraph 14.5.1, these provisions shall not relieve the Contractor of the obligations under Article 8 to carry on the Work in accordance with the Progress Schedule and without delay during disputes and disagreements with the Owner.

## **ARTICLE 15 – DISPUTES**

### **15.1 Claims Under This Article**

- 15.1.1 Claims, counterclaims and other issues between the Owner and Contractor arising under or relating to the Contract Documents or the breach thereof

giving rise to disputes shall be processed and resolved as provided in this Article.

15.1.2 A claim which means a written demand or assertion by the Owner or Contractor, which is a properly certified, seeking an adjustment in Contract Price and payment of monies due, an extension or shortening in Contract Time, the adjustment or interpretation of Contract terms, or other relief arising under or relating to the Contract, which becomes a dispute subsequent to a determination by the Engineer or Owner under the appropriate provision of the Contract Documents.

15.1.3 A claim arising under the Contract, unlike a claim relating to the Contract, is a claim that can be resolved under a provision with the Contract Documents that provides for or excludes the relief sought by the claimant. Those claims shall be resolved in accordance with the applicable provisions.

15.1.4 No claim under this Article shall be valid unless it is based upon written notice (stating the nature of the claim) delivered by the party making the claim to the other party promptly, but in no event later than 30 days after the Resident Engineer, Engineer or Owner's determination giving rise to the claim. The claim submittal with all supporting data shall be delivered within 60 days after that determination (unless the Owner allows an extension). The responsibility to substantiate claims shall rest with the claimant. Notwithstanding anything in this Article to the contrary, the Owner shall not be required to deliver notice of any claim for liquidated damages or retention until 60 days after final acceptance.

15.1.5 A claim by the Contractor shall be submitted to the Resident Engineer for a written decision from the Owner. A claim by the Owner shall be submitted to the Contractor and Engineer for a written determination from the Engineer.

## **15.2 Requirements for Contractor Claims**

15.2.1 For all Contractor claims seeking an increase in Contract Price or Contract Time, the Contractor shall submit an affidavit executed by an officer or partner in charge of the Contract or by its general or managing partner. The affidavit shall certify that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in Contract Price or Contract Time that the Contractor determines the Owner is liable and covers any delay and all costs to which the Contractor is entitled from the occurrence of the claimed event, and (c) supporting cost and pricing data are current, accurate, complete and represent the Contractor's best knowledge and belief.

## **15.3 Determination on a Claim**

15.3.1 For Contractor claims under \$50,000, the Owner will, if requested in writing by the Contractor, render a determination within 60 days of the request. For Contractor claims over \$50,000, the Owner will, within 60 days decide the claim or notify the Contractor of the date when the decision will be made. Once given, the Owner's determination shall be final and binding on the Contractor unless the Contractor submits the claim for alternate dispute resolution pursuant to Section 15.3.3.

15.3.2 For Owner claims under \$50,000, the Engineer will, if requested in writing by the Owner, render a decision within 60 days of the request. For Owner claims over \$50,000, the Engineer will, within 60 days, decide the claim or notify the Owner of the date when the decision will be made. Once given, the Engineer's final determination shall be final and binding on the Owner and Contractor unless the dispute resolution procedures set forth in Paragraph 15.3.3 are initiated within 30 days after receipt of the Engineer's final determination.

15.3.3 Should the Owner and Contractor not resolve their dispute, the dispute shall be submitted to a process of resolution pursuant to alternative dispute resolution practices, such as mediation, binding arbitration or non-binding arbitration pursuant to industry standards, prior to being submitted to a court for adjudication, as required by the provisions of P.L. 1997, C. 371.

15.3.4 Pending final resolution of any claim under this Article, including alternative dispute resolution practices and litigation, the Contractor shall proceed diligently with the Work and comply with any decision of the Owner, Resident Engineer and/or Engineer.

15.3.5 After settlement or final adjudication of any claim under this Article if, upon demand, payment by the Contractor is not made to the Owner, the Owner may offset the appropriate amounts against (a) payments due to the Contractor under the Contract and/or any other contract between the Owner and Contractor, or (b) any amounts for which the Owner may be obligated to the Contractor in any capacity.

#### **15.4 Venue; Flow-Through Provision**

15.4.1 The Contractor agrees to waive jurisdiction and venue, to consent and submit to the jurisdiction of, and not commence any action in other than, a competent State court in Ocean County, New Jersey, unless original jurisdiction is vested in the New Jersey Supreme Court, regardless of residence or domicile, for any action or suite at law or in equity arising out of or under the Contract Documents. The Contractor further agrees that it will have each of its Suppliers and Subcontractors provide similar waivers in those sub agreements as those required in this paragraph.

15.4.2 The Contractor agrees and submits, and the Contractor shall require each of its suppliers and subcontractors to consent and submit, to the service of process at the address and in the manner specified in the Agreement.

15.4.3 The Contractor shall insert the provisions of this Article in all Sub agreements, altering those paragraphs only to identify properly the contracting parties.

## **ARTICLE 16 - DEBARMENT**

- 16.1 No Contractor shall be permitted to work on Owner's work if they are debarred, suspended, or disqualified from NJDEP contracting pursuant to N.J.A.C. 7:1D-2.
- 16.2 Contractors may be debarred, suspended, or disqualified from contracting on any project financially assisted by the State or the NJDEP if the Contractor commits any of the acts listed in N.J.A.C. 7:1D-2.
- 16.3 No payment of final loan monies shall be made to any Contractor or subcontractor that is included on the State Treasurer's list of debarred, suspended, and disqualified bidders as a result of action by a State agency in addition to that of the NJDEP. If Fund loan monies are used for disbursement to a debarred firm, the NJDEP reserves the right to immediately terminate (N.J.A.C. 7:22-3.44) the Fund loan and/or take such other action pursuant to N.J.A.C. 7:1D-2 as is appropriate.
- 16.4 Whenever a bidder is debarred, suspended, or disqualified from NJDEP contracting pursuant to N.J.A.C. 7:1D-2, the Owner may take into account the loss of Fund loan monies under these regulations which result from awarding a contract to such bidder, in determining whether such bidder is the lowest responsive and responsible bidder pursuant to laws and the Owner may advise prospective bidders that these procedures shall be followed.
- 16.5 Any person included on the State Treasurer's list as a result of action by a State agency, who is or may become a bidder on any contract which is or will be funded by a Fund loan under this subchapter, may present information to the NJDEP why this section shall not apply to such person. If the NJDEP determines that it is essential to the public interest and files a finding thereof with the New Jersey Attorney General, the NJDEP may grant an exception from the applicable of this section with respect to a particular contract, in keeping with N.J.A.C. 7:1D-2.9. In the alternative, the NJDEP may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C.7:1D-2.

## **ARTICLE 17 - SED PROJECT REQUIREMENTS**

- 17.1 Contractor's Responsibility - The Contractor shall submit a plan to meet the 10% SED

Utilization Requirements within 30 days of contract award. The Contractor's plan will include statements of how the SED participation requirement shall be achieved over the duration of the project. Additional guidance on implementation of SED requirements are contained in the SED Business Utilization Plan which is part of this contract specification.

17.2 Owner's Responsibility - The Owner is committed to achieving the 10% goal for award of work to SED businesses through the Utilization Plan that is made part of these Contract Documents. The Owner shall perform the following tasks:

17.1.1 Provide in the Project Manual locations to find the listings for certified SEDs to assist the construction contractors in meeting the 10 % utilization goal.

17.1.2 Thirty days prior to the public advertisement for bids, the PACO shall provide notice to the Office of Equal Opportunity and Public Contract Assistance of the availability of opportunities for SEDs to bid on this unrestricted contract or to provide services or products to contractors whom may bid on this unrestricted contract.

17.1.3 Require that all business concerns included in the low bid construction contractor's implementation plan be certified as SEDs by the New Jersey Department of Commerce and Economic Development prior to the award of the construction contract.

## GLOSSARY

1.1 Defined Terms:

1.1.1 The following terms or relative pronouns used in Division 0 or Section 01310 - Progress Schedule has the following intent and meanings, unless the context requires otherwise:

*Activity* - An element in a Progress Schedule establishing a requisite step, or the time and resources required, for performing or furnishing the part of the Work designated by the Activity.

*Addenda* - Written instruments issued before Bid opening modifying the Bidding Documents by additions, deletions, interpretations or clarifications, corrections or other revisions.

*Advertisement* - The public notice to contractors of intention to receive Bids and contract for the Work.

*Agreement* - The written agreement between the Owner and the Contractor covering the Work to be performed.

*Apparent Low Bidder* - The Bidder whose Bid yields the lowest sum of Base Bid and those alternates selected by the Owner.

*As-Planned Schedule* - Revision 0 Progress Schedule returned to the Contractor as "Re-submittal Not Required," with or without comments or objections noted.

*Bar Chart Schedule* - Graphical schedule based on bar chart techniques that accounts for the entire Work at a level of detail commensurate with the requirements of the Progress Schedule.

*Benchmark* - A point of progress for a key aspect of the Work, having a *Benchmark Time* equal to the Late Date in the *As-Planned Schedule* for the Activity designating that Benchmark.

*Bid* - Written offer by a Bidder for the Work as specified, on the forms furnished with the Bidding Documents.

*Bidder* - The person acting directly or through an authorized representative, who submits a Bid directly to the Owner.

*Bidding Documents* - The proposed Contract Documents as advertised, and all Addenda issued before Bid opening.

*Bid Price* - The Bidder's price for a lump sum item of Work, or the product of the Bidder's unit price for an item of Unit Price Work times the quantity given on the Bid Form for that item.

*Bid Security* - Security serving as a guarantee that the Bidder will conform with all conditions requisite for its return. or as liquidated damages in the event of failure or refusal to conform.

*Bidding Requirements* - The Advertisement, Instructions to Bidders, Supplementary instructions, Information for Bidders, Bid Form, Bid Form Attachments and Qualification Submittals.

*Bonds* - *Bid Bond*, *Performance and Payment Bond*, *Environmental Maintenance Bond*, and the *Maintenance Bond* are security furnished by the Contractor as required by the Contract Documents. Other Bonds that may be required include *Maintenance Bond* and *Manufacturer Performance Bonds*.

*Business Day* - Any day except Saturdays, Sundays and holidays observed by the Owner.

*Cash Allowance* - An Owner-specified sum, included within the Contract Price to reimburse the Contractor for the actual purchase/furnished cost of required materials, equipment or other designated items that are not specified in detail but are to be furnished and installed, as provided in the Contract Documents.

*CFR* - The Code of Federal Regulations.

*Change Authorization* - A written order signed by the Owner directing changes in the Work, or giving the basis for a change in Contract Price and/or Contract Time for incorporation into the Contract Documents by Change Order, or both.

*Change Order* - A written order approved by the Owner that amends the Contract Documents to provide for changes in the Work, or changes in Contract Price or Contract Time, or both.

*Construction* - The construction, re-construction, demolition, erection, alteration, or repair of a structure or other improvement to real property, other than the construction, re-construction, demolition, or renovation of a public building.

*Contract Documents* - Those documents itemized or designated in Section 00500 - Form of Agreement, Paragraphs 7.2 and 7.3.

*Contract Float* - If the Contractor anticipates early completion, *Contract Float* is the number of days or Business Days between the Contractor's anticipated date for early completion of all or any part of the Work and the corresponding Contract Time.

*Contract Price* - The Contract Price for the Work, or a designated part of the Work, is the total compensation, including authorized changes, payable by the Owner to the Contractor as stated in the Agreement or elsewhere in the Contract Documents (subject to provisions for Unit Price Work).

*Contract Times* - The Contract Times for the entire Work are the periods allowed, including authorized changes, for Substantial Completion and final completion of all the Work. The Contract Time for a designated part of the Work is the period allowed for its Substantial Completion, Partial Completion or final acceptance, as specified in the Contract Documents.

*Correction Period* - The period within which the Contractor shall, in accordance with the Contract Documents, either correct, or if rejected, remove and replace, *defective* Work.

*Cost of the Work Involved* - The sum of all costs that would be, or actually were, necessarily incurred by the Contractor in the proper performance of the Work involved.

*CPM Schedule* - Computerized Progress Schedule based on CPM techniques that

accounts for the entire Work. The *Critical Path* is a sequence of Activities in a CPM Schedule controlling achievement of a specified Contract Time.

*Day* - Every day shown on the calendar, Saturdays, Sundays and holidays included.

*Date of Commencement of the Contract Time* - The date when the Contract Time starts to run.

*Defective Work* - (a) Work that is unsatisfactory, deficient or damaged, does not conform to the Contract Documents, or does not meet the requirements of any inspection, test or approval, or (b) Work associated with Deficiency List items that the Contractor fails to complete within a reasonable time after issuance of the Deficiency List by the Resident Engineer.

*Deficiency List* - A list of minor incomplete or unsatisfactory items that do not materially impair the usefulness of the Work, or designated part of the Work, for its intended purpose (or its specified use, under Partial Utilization), and that is developed by the Resident Engineer in determining the status of completion of the Work, or designated part of the Work, and is attached to a certificate of Substantial Completion or to the Resident Engineer's recommendation for final payment.

*Delay* - Acts or events that postpone, extend or in any other manner alter the schedule or completion of all or any part of the Work. Delay includes deferral, stop, slow down, interruption and extended performance, and all related hindrance, rescheduling, disruption, interference, inefficiency and productivity and production losses. Delay may result from added Work, or without the addition of any Work - due to suspension of Work, Contractor-caused delay or delay from any other causes.

*Director of Operations* – Is used interchangeable with *Engineer*. Both shall be considered the same person under this Contract.

*Division* - Each of the \_\_\_\_\_ (\_\_\_\_\_), parts (starting with Division 0) into which the Specifications are divided.

*Drawings* - Part of the Contract Documents showing the Work. Drawings shall neither serve nor be used as Submittals. The terms "Plans" and "Contract Drawings" mean *Drawings*.

*Early (Late) Dates* - Early (late) times of performance for the Work, given, but not limited to, the requirements of the Contract Documents.

*Engineer* - The person named "the Engineer" in the Agreement who has the rights and authority assigned to the Engineer in the Contract Documents.

*FAR* - The Federal Acquisition Regulations System, Title 48 of the Code of Federal

Regulations, Chapter 1. The term *CFR* means the Code of Federal Regulations.

*Fee for the Work Involved (or Fee)* - A negotiated fee allowed to the Contractor for reasonable costs and negotiated, reasonable profit.

*General Requirements* - Division 1 of the Specifications.

*Governing Body* - Any county, city, village or other local unit of the State, including any agency, department or instrumentality of any such county, city, village or other local unit.

*Hazardous Material* - Asbestos, ACBMs, PCBs, petroleum products, such construction materials as paint thinners, solvents, gasoline, oil, etc., and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by Federal, State or local laws governing the protection of public health, natural resources or the environment.

*Law(s)* - Laws, including statutes, by-laws, resolutions and ordinances, or orders; and rules and regulation, whether federal, State or local. In the Contract Documents, the term law means laws and/or regulations.

*Means and Methods* - Includes means, methods, techniques, sequences and/or procedures applicable to the Work.

*NJDEP* - The New Jersey Department of Environmental Protection administers environmental protection and conservation efforts, manages natural resources, and solves pollution problems.

*NJEIT* - The New Jersey Environmental Infrastructure Trust funds Authority improvement projects through the NJEIT Financial Loan Program.

*N.J.S.A.* - The New Jersey Statutes Annotated; the Laws of the State of New Jersey.

*Notice of Award* - The written notice stating that the Owner will sign the Agreement upon compliance by the Bidder, within the time specified, with those conditions itemized in the notice.

*Notice to Proceed* - Written notice authorizing the Contractor to proceed with the Work, or a designated part of the Work.

*Owner or Authority* - The City of Perth Amboy named as "the Owner" in the Agreement with whom the Contractor has entered into the Agreement and for whom the Work under the Contract Documents is to be provided. The term Owner includes the Owner's authorized representatives.

*Partial Use* - Use by the Owner of a portion of the Work before reaching Substantial Completion for the entire Work. In the Contract Documents, the terms "partially used"

or "partially occupied" have in context the same meaning as Partial Use.

*Person* - Individuals, partnerships, corporations, receivers, trustees, joint ventures and any combinations of any of them.

*Progress Schedule* - Work Schedule that shows the Contractor's approach to planning, scheduling and execution of the Work and accurately portrays completed Work as to sequencing and timing. The Progress Schedule includes all the information and data.

*Project* - The total construction, which includes the Work and possibly other work, as indicated in the Contract Documents.

*Public Utility* - A utility company, utility department or agency of a local governing body, natural gas pipeline company, cable or cable communications company, or any other owner/operator of utilities that are operated or maintained in, on, under, over or across public right-of-way or public or private easements.

*Qualification Submittals* - Data concerning a Bidder's qualifications and eligibility, as specified in the Bidding Requirements.

*Record Documents* - Drawings, Specifications, Addenda, Change Orders, Change Authorizations, test records, photographs, clarifications and interpretations and all other documents recording, or annotated to show, all revisions and deviations between the as built installation and the Contract Documents, approved submittals and clarifications/interpretations (RFIs).

*Records* - Books, reports, documents and other evidence pertaining to the bidding, award and performance of the Work.

*Record Schedule* - A Progress Schedule Revision Submittal returned by the Engineer to the Contractor as "Re submittal Not Required", as set forth in the Specifications .

*Registered Mail* - Includes registered United States mail and certified United States mail with return receipt requested. The term "hand delivered" includes delivery by private carriers.

*Resident Engineer* - The authorized representative of the Owner who is assigned to the project site or any part thereof.

*Schedule of Values* - A schedule which subdivides the Work into component parts and details, for each itemized part, quantity and cost information required for making payments for Work performed. The sum of all costs in the Schedule of Values shall equal the Contract Price for the Work.

*Shop Drawings* - Includes drawings, diagrams, illustrations, standard schedules,

performance charts, instructions and other data prepared by or for the Contractor to illustrate some part of the Work, or by a supplier and submitted to the Contractor to illustrate items of material or equipment.

*Specifications* - Parts of the Contract Documents organized into Divisions. "Technical Specifications" means Divisions of the *Specifications* consisting of technical descriptions of materials, equipment, construction systems, standards and workmanship.

*Sub-agreement* - A subcontract or purchase order awarding a part of the Work to a subcontractor or supplier.

*Subcontractor* - A person having a sub-agreement for (a) performing craft labor at the site, which craft labor is engaged in incorporating materials and/or equipment into the Work, or (b) both performing such craft labor at the site and furnishing materials and/or equipment for incorporation into the Work.

*Submittals* - Includes Shop Drawings, samples, Progress Schedules and those other documents required for submission by the Contract Documents. The term "Technical Submittal" includes Shop Drawings, brochures, samples, test procedures, and those other Submittals required by the Contract Documents for submission by the Contractor to demonstrate how the Contractor intends to conform with the design concept of the project and the related information given in the Contract Documents.

*Substantial Completion* - The Work, or designated part of the Work, has been completed in accordance with the Contract to the extent that the Owner can use or occupy all or the specified part of the Work for the use for which it is intended without any concurrent Work at the site, except as required to complete Deficiency List items with cumulative value under 1 % of the Contract Price. Prerequisites for Substantial Completion include all systems having been successfully tested and demonstrated by the Contractor for their intended use, and the Owner receiving all occupancy certifications and approvals from those State and Governing Bodies with jurisdiction.

*Successful Bidder* - The Bidder awarded the Contract.

*Supplier* - A manufacturer, fabricator, distributor, material man or vendor having a sub agreement for furnishing materials and/or equipment and not for performing craft labor at the site.

*Total Float* - Number of days, or business days, by which the Work or any part of the Work may be delayed from its early dates without necessarily extending a pertinent Contract Time. Total Float is by definition at least equal to Contract Float.

*Underground Utilities* - Pipelines, piping, conduit, duct, cables, tanks, tunnels and appurtenances, and other similar facilities, installed underground to convey or support conveyance of potable water, sprinkler or irrigation water, fire protection systems,

electricity, gases, steam, petroleum products, sewerage and drainage removal, telephone, and cable communications, traffic or control systems, whether owned by the Owner or others.

*Unit Price Work, specified* - Work of specified and defined quantities (Le., shown in the Contract Documents) that when performed is measured, as determined by the Resident Engineer, and paid based on unit prices contained in the Contract.

*Unit Price Work, Contingent* - Work of specified but undefined quantities (Le., not shown in the Contract Documents), the performance of which is contingent upon conditions encountered at the site, as determined by the Resident Engineer.

*Value, Activity* - Portion of the Contract Price representing a fair payment for the part of the Work represented by that Activity.

*Value Engineering Construction Change Order* (for projects where the originally awarded contract equals or exceeds \$5,000,000) - A change order that results in cost reductions to a project or any portion of the Work from the original bid specifications after a construction contract is awarded.

*Value Engineering Construction Proposal* (for projects where the originally awarded contract equals or exceeds \$5,000,000) - A cost reduction proposal based on analysis by a Contractor of the functions, systems, equipment, facilities, services, supplies, means and methods of construction, and any other item needed for the completion of the contract consistent with the required performance, quality, reliability, and safety.

*Work* (also "*the entire Work*", "*all the Work*") - The entire completed construction, or its various parts, as specified in the Contract Documents, that is the result of performing and furnishing all services, obligations, responsibilities, labor, materials, equipment, temporary facilities, and incidentals required by the Contract Documents.

*The Work* is further interpreted in Paragraph 1.3.2 and the meaning of the term "as specified in the Contract Documents" is interpreted in Paragraph 1.3.3 both of this section.

## **1.2 Other Defined Terms:**

1.2.1 Other defined terms used in Division 0 but not assigned intent and meanings under this Glossary have the intent and meanings as used or defined in N.J.S.A. unless the context requires otherwise.

1. 2. 2 Defined terms listed in this Glossary used in the other parts of the Specifications and in the Drawings in lower cases, or as capitalized terms, have the intent and meanings assigned to them in this Glossary, if the context will permit.

### 1.3 Interpretations:

- 1.3.1 Defined terms in Division 0 and Section \_\_\_ include (a) lower case and capitalized terms defined in Paragraph 1.1, (b) those other terms designated in Paragraph 1.2, and (c) those other terms interpreted in Paragraphs 1.3.2 through 1.3.13. Capitalized terms include certain defined terms and titles of Divisions and Sections of the Specifications.
- 1.3.2 "Execution of the Work" includes performance or furnishing of the Work, or both. "Work" as in "Unit Price Work," or "acceptable Work," etc. refers to specific parts of *the Work*. "Work Involved" denotes existing or potential additional parts of the Work (a) reflected in changes ordered or under negotiation or in any proposal or claim, or (b) affected by delay ordered, caused or under negotiation. *The Work* includes, without limitation, additions, deletions, modifications and other revisions reflected by the *Work involved* in Change Orders and Change Authorizations signed by the Owner.
- 1.3.3 It is intended that the proper interpretation of the terms "the Contract Documents", "in accordance with the Contract Documents", "as specified in the Contract Documents", "complies with the Contract Documents", or such other similar terms, shall include (a) all Contract Documents existing on the date the Owner executes the Agreement, and (b) all Change Orders, Change Authorizations and other Contract Documents issued up to the date when such interpretation is being made.
- 1.3.4 The terms "substantially complete (completed)" have in context the same meaning as Substantial Completion.
- 1.3.5 The term substitute, referring to items of material or equipment, or to means and methods, shall be construed to mean a substitute item, or means and method, meeting the requirements for "or equals" of these Specifications, regardless whether the terms is used by itself preceded by the term "or equal" or following the term "or equal. "
- 1.3.6 The expression (a) "acts or omissions within the control of" shall be construed to include (but not as limitation) the fault or negligence of the party involved and any other acts, causes and events for which that party is responsible; (b) "causes beyond the control of" includes acts or omissions not within the control of the party involved and any other acts, causes and events for which that party is not responsible.
- 1.3.7 Whenever the term "first tier" is used concerning a subcontractor or supplier, it means a subcontractor or supplier having a direct sub agreement with the Contractor. Relatedly, the term "lower tier" refers to a subcontractor or supplier having a direct sub agreement with another subcontractor.

- 1.3.8 Contract Time computations shall be made in days, even if the Contract Time in question is specified as a date. Float computations made in business days shall be converted to days in making decisions about changes in Contract Time.
- 1.3.9 Calculations of a Contract Time made by adding days to a date shall include the first and last day. Any computation of a notice period shall exclude the first day and include the last day. In either case, if the computed day falls on a non-business day, that day shall be omitted from the computation.
- 1.3.10 An "early completion" Progress Schedule is one that anticipates completion of all or specified part of the Work ahead of the corresponding Contract Time.
- 1.3.11 Each Article in a Section in Division 0 contains sub-articles, numbered as this sub-article 1.3 is numbered; parts, numbered as this part 1.3.11 is numbered, and sub-parts, all of which are considered "paragraphs." A reference to a paragraph means a reference to the sub-article, part or sub-part, or any combination of any of them, if the context will permit.
- 1.3.12 Any reference to an Article or a Paragraph in a Section within Division 0 means a reference to an Article or Paragraph in the very Section in which the reference is made, unless that reference specifically names another Section.
- 1.3.13 Whenever the context of any provision requires, the Singular number includes the plural number and vice-versa, and the use of any gender includes all genders.

#### **CERTIFICATE OF SUBSTANTIAL COMPLETION**

Contractor: \_\_\_\_\_  
 Owner: City of Perth Amboy

Contract: \_\_\_\_\_  
 Engineer: \_\_\_\_\_  
 Owner's Contract No. \_\_\_\_\_

- A **SCOPE:** This certificate of Substantial Completion is for the entire Work
- B **DATE OF SUBSTANTIAL COMPLETION:** The Work to which this certificate applies has been inspected by authorized representatives of the Owner, the Contractor and the Engineer, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on the following date of Substantial Completion: , 20\_.
- C **LIST OF ITEMS TO BE COMPLETED OR CORRECTED:** A Deficiency List (of minor incomplete or unsatisfactory items not impairing the usefulness of the Work) to be completed or corrected is attached to this certificate. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of Contractor to complete all the Work in accordance with the Contract Documents. The items in the attached Deficiency List shall be completed or corrected by the Contractor within 30 days after the date of Substantial Completion fixed by this certificate, that is on or before , 20\_. The Owner reserves the right to correct any items not corrected or completed by the specified date, as provided in paragraph 9.5.1 of the General Conditions.

D DIVISION OF RESPONSIBILITIES: The responsibilities between the Owner and Contractor for security, operation, safety, maintenance, heat and utilities, insurance, warranties and guarantees pending final payment (or Substantial Completion of the entire Work), shall be as follows:

E DOCUMENTS ATTACHED: The following documents are attached to and made a part of this Certificate:

\_\_\_\_\_

F LIMITATION: This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, it is not a release of Contractor's obligation to complete the Work in accordance with the Contract Documents, nor is it a release of the Surety.

City Of Perth Amboy –Owner

By: \_\_\_\_\_  
Signature Date

Name and Title: \_\_\_\_\_  
\_\_\_\_\_ Engineer

By: \_\_\_\_\_  
Signature Date

Name and Title: \_\_\_\_\_

The Contractor acknowledges receipt of this Certificate of Substantial Completion:  
\_\_\_\_\_ Contractor

By: \_\_\_\_\_  
Signature Date

Name and Title: \_\_\_\_\_

THE CITY OF PERTH AMBOY  
260 High Street  
Perth Amboy, NJ 08861  
Phone: 732-826-5335 Fax: 732-442-8714

REQUEST FOR INFORMATION

CONTRACT No. \_\_\_\_\_

RFI NO. \_\_\_\_\_

TO: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_

Spec. Section:

\_\_\_\_\_

Pg/Para: \_\_\_\_\_

Dwg. No. \_\_\_\_\_

Sheet \_\_\_\_\_

QUESTION:

PLEASE RESPOND BY: \_\_\_\_\_

Date

\_\_\_\_\_

Signature

RESPONSE:

DATE: \_\_\_\_\_

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

Consulting Engineer: \_\_\_\_\_

COPA Eng. Mgr.: \_\_\_\_\_

COPA RE: \_\_\_\_\_

**THE CITY OF PERTH AMBOY**

**SUBMITTAL FORM**

To: \_\_\_\_\_ SUBMITTAL NO.: \_\_\_\_\_  
\_\_\_\_\_ Date of Submittal: \_\_\_\_\_  
\_\_\_\_\_ Contractor: \_\_\_\_\_  
Contract No.: \_\_\_\_\_  
Subject of Submittal: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Specification No.: \_\_\_\_\_ Par. No: \_\_\_\_\_ Drawing No.: \_\_\_\_\_

**WE ARE SENDING YOU ATTACHED THE FOLLOWING: (Indicate All Applicable Items)**

- Shop Drawings  Progress Schedules  Testing Procedure  First Submission  Third Submission  
 Sample  O&M Manual  \_\_\_\_\_  Second Submission  \_\_\_\_\_ Submission

DESCRIPTION (Itemize All Components)	NO.OF COPIES

Complete either (a) or (b) and (c), in the case of technical Submittals or Progress Schedule Submittals:

**a ( ) The Contractor has verified that the material, equipment, or other item contained in this Submittal meets all the requirements specified, shown, Or indicated in the Contract Documents with no exceptions.**

**b ( ) The Contractor has verified that the material, equipment, or other item contained in this Submittal meets all the requirements specified, shown, Or indicated in the Contract Documents, except for the variances identified in the following attached documents:**

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**c ( ) The Contractor has stamped or written its approval on each Shop Drawing sheet, or cover sheet in the case of other Submittals, certifying that the Contractor has satisfied its responsibilities with respect to the review of the submission including, but not limited to, the requirements of Article 6 of the General Conditions.**

Signed (By the Contractor): \_\_\_\_\_

DAILY FIELD REPORT No.: \_\_\_\_\_ Date: \_\_\_\_\_, 20\_\_ Contract \_\_\_\_\_ Day  
No.: \_\_\_\_\_

Contract: \_\_\_\_\_  
Contractor: \_\_\_\_\_

Owner: City of Perth Amboy Owner's Contract  
No.: \_\_\_\_\_

**A. WEATHER**

Time: \_\_\_\_\_ a.m. Sunny  Cloudy  Partly Cloudy  Time: \_\_\_\_\_ pm Sunny  Cloudy  Partly Cloudy

Precipitation: Snow  Rain  Accumulation: \_\_\_\_\_ Precipitation: Snow  Rain  Accumulation: \_\_\_\_\_

Temperature: High: \_\_\_\_\_ ° Low: \_\_\_\_\_ ° Temperature: High: \_\_\_\_\_ ° Low: \_\_\_\_\_ °

Part day of Work only due to severe weather  No work due to severe weather

B. WORK FORCE:

Classification	Company Name	Number	Hours	Classification	Company Name	Number	Hours
Project Managers				Lathers			
Superintendents				Masons			
				Millwrights			
Foremen				Operators/Oilers			
Field Engineers				Painters/Caulkers			
				Pavers			
				Pipe/Steamfitters			
Boilermakers				Plasterers			
Bricklayers				Plumbers			
Carpenters				Rodmen			
				Roofers			
				Sheet Metal			
Cement Finishers				Tile Setters			
Electricians				Truck Drivers			
Glaziers							
Insulators							
Iron Workers							

C. PROGRESS SCHEDULE ACTIVITIES CORRESPONDING TO WORK PERFORMED:

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D. DELIVERIES TO SITE/WAREHOUSE: (Note - and describe, quantify material/equipment received. Also identify missing or damaged deliveries)[May limit to equipment/material items that are expressly called out on Progress Schedule.]

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E. WORK DESCRIPTION:

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F. VISITORS TO SITE:

NAME	COMPANY/ORG.	NAME	COMPANY/ORG.

G. MAJOR CONSTRUCTION EQUIPMENT USED:

Equipment	Company	No.	Equipment	Company	No.	Equipment	Company	No.
Compressors			Cranes - Large			Conveyors		
Compactors			Tractors			Generators		
Backhoes			Bulldozers					
Rollers			Scrapers					
Cranes- Small			Trenches					
Cranes- Medium			Concrete Pump					

H. INSPECTION/TESTING: (Note – Describe specific inspection/tests, performed, results, and any deficiencies)

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CERTIFICATION

TO: THE CITY OF PERTH AMBOY  
260 High Street  
Perth Amboy, New Jersey 08861

DATE: \_\_\_\_\_

The Undersigned, Contractor, designated in Contract No.: \_\_\_\_\_  
as an inducement to the Owner (THE CITY OF PERTH AMBOY) to make final payment in  
accordance with the terms and conditions of said Contract, does hereby certify to the Owner, under  
and pursuant to Section 9 of Chapter 150, Prevailing Rate of Wages on Public Contracts, that the  
amounts due and owing from such Contractor to any and all workmen from the wages due on  
account of the public work are:

\_\_\_\_\_None (No wages are unpaid)                      \_\_\_\_\_List as required (If wages are unpaid)

The Contractor further certifies that it has paid in full all wages due on account of said work in  
accordance with the applicable prevailing wage rate determination issued by the New Jersey  
Department of Labor.

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Title

State of                      )  
                                      : SS:  
County of                    )

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Title

\_\_\_\_\_(Contractor) in the within Certificate does upon his oath  
depose and state that he has read the statement subscribed by him above; knows the contents  
thereof; and that the same is true to his personal knowledge.

\_\_\_\_\_  
Signature

Sworn and subscribed to  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
A Notary Public of New Jersey

**CONTRACT NO. \_\_\_\_\_**  
**CONTRACTOR'S AFFIDAVIT**

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

Before me, the Undersigned, a \_\_\_\_\_  
(Notary Public)

in and for said County and State personally appeared \_\_\_\_\_  
(Individual, Partner, or duly authorized  
representative of Corporate Contractor)

who being duly sworn according to law deposes and says that all labor, material, and outstanding claims and indebtedness of whatever nature arising out of the performance of the CONTRACT of THE CITY OF PERTH AMBOY with

\_\_\_\_\_  
(CONTRACTOR)

have been paid in full.

\_\_\_\_\_  
(Individual, Partner, or duly authorized  
representative of Corporate Contractor)

*Acknowledgment of CONTRACTOR, if a Corporation)*

STATE OF: \_\_\_\_\_

SS:

COUNTY OF: \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came and appeared \_\_\_\_\_

to me known, who, being by me duly sworn did depose and say that he resides at

\_\_\_\_\_ that he is the \_\_\_\_\_ of

\_\_\_\_\_ the corporation described

in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors or said corporation, and that he signed his name thereto by like order.

\_\_\_\_\_ (SEAL)

*(Acknowledgment of CONTRACTOR; if an Individual)*

STATE OF: \_\_\_\_\_

SS:

COUNTY OF: \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came and appeared \_\_\_\_\_

to me known and known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same.

\_\_\_\_\_ (SEAL)

*(Acknowledgment Of CONTRACTOR, if a Partnership)*

STATE OF: \_\_\_\_\_

SS:

COUNTY OF: \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came and  
appeared \_\_\_\_\_

to me known and known to me to be one of the members of the firm of \_\_\_\_\_  
\_\_\_\_\_ described in and who executed the foregoing instrument,  
and he acknowledged to me that he executed the same as and for the act and deed of said firm.

\_\_\_\_\_

(SEAL)

**CONTRACT NO. \_\_\_\_\_**  
**CONTRACTOR'S RELEASE**

KNOW ALL MEN BY THESE PRESENTS THAT: \_\_\_\_\_

\_\_\_\_\_  
(CONTRACTOR) of \_\_\_\_\_ County and State of \_\_\_\_\_

does hereby acknowledge that he has received this day of and from THE CITY OF PERTH AMBOY the sum of One Dollar (\$1.00) and other valuable consideration in full satisfaction and payment of all sums of money owing payable and belonging to \_\_\_\_\_  
\_\_\_\_\_(CONTRACTOR) by any means whatsoever, for on account of a certain agreement hereinafter called the CONTRACT, between the CITY OF PERTH AMBOY and \_\_\_\_\_(CONTRACTOR) dated \_\_\_\_\_

NOW THEREFORE, the said \_\_\_\_\_(CONTRACTOR)

(for myself, my heirs, executors and administrators) (for itself, its successors and assigns) do by these presents remise, release, quit-claim and forever discharge the said THE CITY OF PERTH AMBOY, its successors and assigns, of and from all claims and demands arising from or in connection with the said CONTRACT dated \_\_\_\_\_ and of and from all, and all manner of action and actions, cause and causes of action and actions, suits, debts, dues, duties, sum and sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, agreements, promises, variances, damages, judgments, extends, execution, claims and demand, whatsoever in law or equity, or otherwise which against said CITY OF PERTH AMBOY its successors and assigns ever had, now have or which (I, my heirs, executors, or administrators) (it, its successors and assigns) hereinafter can, shall or may have, for upon or by reason of any matter cause or thing whatsoever, from the beginning of the world to the date of these presents.

IN WITNESS WHEREOF \_\_\_\_\_(CONTRACTOR)

has caused these presents to be duly executed the \_\_\_\_\_ day of \_\_\_\_\_ .20\_\_

Signed, Sealed, and Delivered in the presence of:

\_\_\_\_\_

\_\_\_\_\_(SEAL)  
INDIVIDUAL

\_\_\_\_\_(SEAL)  
PARTNERSHIP CONTRACTOR

\_\_\_\_\_

BY \_\_\_\_\_  
PARTNER

Attest

\_\_\_\_\_  
CORPORATE CONTRACTOR

\_\_\_\_\_  
SECRETARY

BY \_\_\_\_\_  
PRESIDENT OR VICE PRESIDENT

CORPORATE SEAL

**CONTRACT NO.** \_\_\_\_\_

**STATEMENT OF SURETY COMPANY**

IN ACCORDANCE with the provisions of the AGREEMENT dated \_\_\_\_\_ between

The City of Perth Amboy (OWNER) and \_\_\_\_\_

\_\_\_\_\_ (CONTRACTOR), the \_\_\_\_\_

\_\_\_\_\_ (SURETY), SURETY on the Material and Labor Payment BOND of \_\_\_\_\_

\_\_\_\_\_ (CONTRACTOR)

after careful examination of the books and records of said CONTRACTOR or after receipt of an affidavit from CONTRACTOR, which examination of affidavit satisfies SURETY that all claims for labor and materials have been or will be settled by the CONTRACTOR

satisfactorily, hereby approve of the final payment of the said \_\_\_\_\_,

CONTRACTOR and by these presents witnesseth that payment to the CONTRACTOR of the final estimate shall not relieve SURETY of any of its obligations to The City of Perth Amboy as set forth in the said SURETY Company's bond.

IN WITNESS WHEREOF, said SURETY has hereunto set its hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

ATTEST

\_\_\_\_\_

BY \_\_\_\_\_

(SEAL)

NOTE: This statement, if executed by any person other than the President or Vice President of the Company, must be accompanied by a certificate issued on the same day showing authority conferred upon the person so signing to execute such instruments on behalf of the Company represented.

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## Use of the Change Order Form entitled “Contract Modification Proposal and Acceptance”

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- When the Loanee wishes to issue a change to the contract, the attached “Contract Modification Proposal and Acceptance” form should be used as a request for proposal. Upon final settlement of the change, this same form is then completed and serves as the contract modification.
- The Loanee in requesting a proposal for a change would execute items 1 thru 8 (exclusive of the revised contract price and duration data) and 9 thru 12. Pages 1 and 2 of this form are then forwarded to the contractor, specifying scope of work and requesting the contractor’s proposal.
- The contractor should execute page 2 of the form. He then submits pages 1 and 2 of the form as his proposal, attaching additional sheets as necessary to provide his detailed breakdown of costs.
- Upon negotiation of a final settlement, the Loanee completes page 1 of the form, and all concerned parties (Contractor, Engineer, Owner) sign this document as the contract modification.
- Page 3 of the form is executed by the Loanee for documentation of the change, and to provide the necessary details for review by the Regulatory Agencies.
- Submit a minimum of one original with raised engineer’s seal and one copy. It is suggested that one original be kept for your records.

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## Detailed Instructions for Executing “Contract Modification Proposal and Acceptance” Form

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Item 1. Enter the name of the Loanee.

Item 2. Enter State Project number.

Item 3. Enter the contract number or designation.

Item 4. Enter the number identifying this modification.

Item 5. Enter the name of the Contractor.

Item 6. Enter the project title and location.

Item 7. Requests a proposal for the specified change order work, but does not direct contractor to proceed. The owner or his authorized representative must execute this statement by signature with date and title blocks entered.

Item 8. Provide a clear description of the scope of work for this change. Upon final settlement of the modification costs, enter cost data by line item for unit priced items or by sum; and state total cost of this modification – net increase, decrease or no change in contract price. Enter appropriate information for any change in contract time, including number of calendar days involved. The modification is executed when all appropriate signatures are included.

Items 9 – 12. Same as items 1 – 4.

Item 13. Executed by the contractor, stating net effect of change in appropriate box for money and time. A detailed breakdown must be provided in this item; and appropriate signature of authorized representative of contractor included.

Item 14. Enter the Loanee’s name and State Project number.

Item 15. Enter the contract number or designation.

Item 16. Enter number identifying this modification.

Item 17. Enter appropriate financial data.

Item 18. Explain and justify the reasons for this change order

Item 19. Explain all other impacts resulting from this change with estimate of costs involved. This should include impact on other contractors and the Consulting Engineers.

Item 20. Document that negotiations were held as required by the regulations and explain the events leading to the final settlement in price and time. This statement should include, at a minimum, date and location of negotiations, persons attending, summary of negotiations leading to final price and time settlements, and a statement that the agreed-to price is “fair and reasonable”.



## CONTRACT MODIFICATION PROPOSAL AND ACCEPTANCE

9. ISSUING OFFICE	10. PROJECT NO.	11. CONTRACT NO.	12. MODIFICATION NO.
13. CONTRACTOR'S PROPOSAL – CHANGE IN CONTRACT PRICE (Detailed breakdown, attach additional sheets as necessary)			
(Proposed)			
NET INCREASE \$ _____	NET DECREASE \$ _____	CALENDER DAYS INCREASE _____ DAYS	
DATE:	TYPE NAME AND TITLE:	SIGNATURE:	

## CONTRACT MODIFICATION PROPOSAL AND ACCEPTANCE

14. ISSUING OFFICE & PROJECT NO.	15. CONTRACT NO.	16. MODIFICATION NO.
17. ORIGINAL CONTRACT BID PRICE ..... \$ _____ TOTAL OF PREVIOUS CHANGE ORDERS ..... \$ _____ TOTAL CONTRACT COST INCLUDING CHANGE ORDERS ... \$ _____		
18. NECESSITY FOR CHANGE AND REASON FOR OMISSION FROM PLANS AND SPECIFICATIONS:		
19. OTHER IMPACTS RESULTANT OF THIS CHANGE:		
20. RESUME OF NEGOTIATIONS OR RECOMMENDATIONS (Loanee's Representative) :		
DATE:	TYPE NAME AND TITLE OF LOANEE'S REPRESENTATIVE:	SIGNATURE: