

JAMES J. DEAN
Superintendent of Highways
Roadmaster IV

Orangetown Representative:

R.C. Soil and Water Conservation Dist.-Chairman
Stormwater Consortium of Rockland County
Rockland County Water Quality Committee



**HIGHWAY DEPARTMENT
TOWN OF ORANGETOWN**

119 Route 303 • Orangeburg, NY 10962
(845) 359-6500 • Fax (845) 359-6062
E-Mail – highwaydept@orangetown.com

Affiliations:

American Public Works Association NY Metro Chapter
NYS Association of Town Superintendents of Highways
Hwy. Superintendents' Association of Rockland County

August 10, 2023

**Request for Proposal
For Installation of New 4” Ductile Iron Sprinkler Main**

The Town of Orangetown Highway Department is hereby requesting proposals to furnish and install approximately 70’ of New 4” Ductile Iron Sprinkler Main from the watermain shed to existing “Dry Fire Suppression System” located in the South Storage Building at 119 Route 303, Orangeburg, NY 10962. **Please see attached site location map.**

SCOPE OF WORK:

NEW 4” CLASS 54 DUCTILE IRON SPRINKLER MAIN INSTALLATION WORK TO BE CONDUCTED FROM THE WATERMAIN TO SOUTH STORAGE BUILDING:

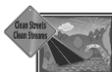
1. Install new 8” x 4” cast iron mechanical joint tapping sleeve to outside watermain east of the Watermain Shed.
2. Install approximately 70’ of 4”, Class 54, ductile iron pipe. The new 4”, Class 54, ductile iron pipe shall connect to 8” x 4” tapping sleeve from the watermain and head south to the South Storage Building.
3. Core drill and penetrate through the South Storage Building foundation wall.

NEW 4” DUCTILE IRON SPRINKLER MAIN INSTALLATION WORK TO BE CONDUCTED IN THE SOUTH STORAGE BUILDING:

1. Saw cut and jack hammer concrete slab in the South Storage Building and excavate approximately 4’- 6” deep.
2. Install new 4”, 90-degree mechanical joint coupler from 4”, Class 54 ductile iron pipe penetrated through foundation wall, straight up with a flange spool piece and a 4” Outside Stem/Screw and Yoke (OS&Y) valve with a tamper switch.
3. Backfill and tamp inside building and concrete patch hole.
4. Install heat trace tape on exposed 4”, Class 54, ductile iron water supply pipe.

GENERAL NOTES

- CONTRACTOR SHALL RETAIN THE SERVICES OF A UTILITY LOCATING AND MARKOUT COMPANY



- ALL SAW CUTTING OF ASPHALT, ASPHALT EXCAVATION AND SOIL EXCAVATION BETWEEN THE WATERMAIN SHED AND SOUTH STORAGE BUILDING TO BE CONDUCTED BY OTHERS.
- CONTRACTOR TO PROVIDE PIPE SAND AND ITEM 4.
- CONTRACTOR INSTALL THRUST BLOCKS ON ALL MJ90 AND MJ45.
- PAVING TO BE DONE BY OTHERS.
- ALL SAW CUT AND JACK HAMMERED CONCRETE MATERIALS ARE TO BE LEFT ON SITE.

The qualified firm shall submit to the Town their qualifications and approach to the project. Qualified firm shall submit a project schedule with their proposal.

Sealed proposals shall be submitted with an itemized cost breakdown and also include a total project cost.

Sealed Proposals should be in writing described below and submitted to the Town of Orangetown Highway Department Administrative Office, 119 Route 303, Orangeburg, NY, **no later than 10:00 am on Friday, August 25, 2023**. Submissions received after this time will be returned to the sender.

The outside of envelope not being properly marked may result in the RFP not being received by the Highway Department before the deadline, and could result in the RFP being disqualified. Please complete all forms included in the RFP specifications. Forms not being filled out correctly and/or completely may result in the RFP being disqualified.

The Town reserves the right to issue one or more addendums to this RFP after initial issuance of the RFP. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the Contract Documents, which if issued, will be supplied to all prospective bidders at the respective fax, email, and/or addresses furnished for such purposes not later than three (3) days prior to the date fixed for the opening of proposals. Failure of any bidder to receive any such addendum or interpretation shall not relieve any bidder from any obligation under his proposal submitted. All addenda so issued shall become part of the Contract Documents.

The Town of Orangetown reserves the right to select the most advantageous offer to the Town through “best value” procurement. Orangetown reserves the right to select the most advantageous offer to the Town of Orangetown by evaluating and comparing factors in addition to cost or price. Favorable pricing will be one element of the selection process, but the schedule, the experience of the firm, qualifications, experience and ability of the assigned staff, completeness of the level of service proposed by the qualified firm will be significant factors in the award of this contract. Final decision on selection of the qualified firm will be determined by the Orangetown Superintendent of Highways.

At its sole discretion, the Town of Orangetown reserves the right to the following:

1. Waive any bid process irregularities which the Town determines to be in its favor.

2. Reject any or all proposals, for any reason, determined to be appropriate by the Town.
3. Award the Ductile Iron Sprinkler Main Contract to the lowest qualified proposer meeting the Town's needs as determined by the Town.

I. GENERAL

Payment:

Payment will be made within 30 days of submission of an invoice for the actual quantities of service provided accompanied by a municipal payment voucher upon completion of the work, based on the unit price bid in the proposal, which price shall include the cost of labor, all tools, equipment and materials, signage, and all else necessary therefore and incidental thereto.

Term of contract:

The contract(s) awarded pursuant to this RFP will be for time it takes to complete the work.

II. TIMELINE

The Town desires to have the Contractor commence work as soon as possible after a contract is approved by the Superintendent of Highways. Qualified firm shall submit a project schedule with their proposal.

III. PREVAILING WAGE

Vendor warrants and represents that all employees and independent contractors affiliated with or employed by such vendor or any subcontractors shall be compensated at the prevailing wage, including where applicable, wage rates mandated by the New York State Department of Labor for the work performed in any connection with any project. The Prevailing Wage Schedule for Article 8 Public Works projects will be transmitted via electronic mail.

Certified payroll must be submitted with each invoice. Payment will not be made until required information has been submitted.

Payment by the Town for the services will only be made after the services have been performed, an itemized billing statement is submitted in the form specified by the Town and approved by the appropriate Town representative, which shall specifically set forth the services performed and the name of the contractor performing such services.

IV. INSURANCE

Worker's Compensation Insurance

Contractor is required and must provide proof of Workers Compensation Insurance in accordance with the provisions of the NYS Workmen's Compensation Law. Employer liability limits of a \$1,000,000.

General Liability (including operations, products, and completed operations)

\$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

The Contractor shall obtain and keep in effect for the duration of this contract, Worker's Compensation Insurance, Disability Insurance, and General Liability Insurance for all employees involved with this contract.

Verification of Coverage

Contractor shall furnish the Town of Orangetown with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the Town of Orangetown or on other than the Town of Orangetown's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the Town of Orangetown before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Town of Orangetown reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

Sub-Contractors

Contractor shall require and verify all sub-contractors maintain insurance subject to all the requirements stated herein.

V. INFORMATION TRANSMITTAL

Interested vendors shall submit their proposal to the address below no later than 10:00am, on Friday, August 25, 2023.

Scheduling requests may be made to Stephen Munno, Senior Administrative Assistant to visit the project site at the Orangetown Highway Department. Stephen Munno may be contacted by phone at 845-359-6500 or via email at highwaydept@orangetown.com. Site visit appointments must be scheduled by Friday, August 18, 2023.

Sealed proposals shall be submitted with an itemized cost breakdown and also include a total project cost.

For more information contact:

Stephen F. Munno, Senior Administrative Assistant
Orangetown Highway Department
119 Route 303

Orangeburg, NY 10962
(845) 359-6500 (Office)

Submit Proposals to:

James J. Dean
Superintendent of Highways
119 Route 303
Orangeburg, NY 10962
(845) 359-6500 (Office)

VI. TECHNICAL SPECIFICATIONS

1. Location: Work limited to 119 Route 303, Orangeburg NY 10962.
2. Regulations: The successful proposer shall be subject to comply with all applicable federal, state, and local ordinances, regulations, licenses, and permits necessary to perform work under this Contract.
3. Work Period: Work shall be **completed within 30 working days** from notice to proceed exclusive of inclement weather. Working hours shall be between 7:00 a.m. and 4:00 p.m. Monday through Friday, excluding state and federal holidays. Weekend and holiday work may be permitted in writing only, under exceptional circumstances, at the discretion of the Town Administrator.
4. Supervision: Contractor consults with the Town of Orangetown its designee concerning scheduling and details of all work. Contractor has a competent person in charge of his work at all times to whom the Town may issue directives, and who shall accept and act upon such directives, and who speaks, reads, and writes English competently.
5. Utility Agencies: Are contacted by Contractor any time assistance is needed to work safely around overhead or underground installations. The Town provides list of principal contacts and telephone numbers for public and private utility organizations. Pre-planting mark-outs are the responsibility of the Contractor.

The Contractor shall protect all utilities from damage, shall immediately contact the appropriate utility if damage should occur, and shall be responsible for all claims for damage due to his operations.

6. Subcontractors: Subcontracting of any work under this Contract will not be allowed without prior written consent of the Town. All subcontractors permitted to perform any work under this contract shall be bound by all conditions and specifications contained herein. It is the total responsibility of the Contractor to ensure that all such conditions and specifications are met by the subcontractor.

All directions given to the subcontractor in the field shall bind the Contractor as if the directions had been given directly to the Contractor.

7. Clean-Up: The work site shall be left equal to or cleaner than its pre-work condition.

8. Damages: Damages done by the Contractor to any person or property, public or private, is the total responsibility of the Contractor, and are repaired or compensated for by the Contractor at no cost to the Town and to the satisfaction of the injured party and the Town. All damages or injuries shall be reported to the Town Administrator in writing within 24 hours of occurrence.

9. Final Inspection and Acceptance: When all of the Contract is completed, the Contractor shall request a final inspection by the Town. The request shall be made at least five working days prior to completion of the contract. Upon correction of any deficiencies detected by the Town, final acceptance of the project will be certified in writing to the Contractor.

10. Preconstruction and Supervisor's Meeting: Before work begins, a mandatory meeting shall be held between the Town and all employees of the Contractor who are expected to serve as field supervisors under this Contract. This meeting shall be held at a time and place set by the Town, and will cover the work to be performed under this Contract, and any questions the Contractor may have.

17. Substitutions will only be allowed after a request for such, in writing, is submitted at the time of bidding and approved by the Town. The entire project must be bid upon. No partial bids will be accepted.

VII. CONTENTS OF PROPOSAL

Signed proposal form (attached) including:

- Name and address of company, and contact information for company representative.
- Proposed unit price. and total price.

No fewer than three (3) references, with organization name, contact name, address and telephone number, for whom similar work has been performed in the past two (2) years.

List of equipment available to the entity making the proposal for performing the proposed services.

Itemization of any terms, conditions, limitations or exceptions to the above-stated requirements under which the work will be undertaken.

VIII. BASIS OF AWARD

The Town expects to award this contract to the entity proposing the lowest price, provided that all of the listed requirements are met. The Town reserves the right to waive requirements at its discretion, or to make no award.

PROPOSAL PRICE SUMMARY

We, the undersigned company, agree to furnish to the Town of Orangetown, County of Rockland, New York, the following items in accordance with the attached Request for Proposal.

In addition, the undersigned has read the technical specifications which are attached and made a part hereof, and agrees to furnish such service at the price(s), as shown below, in the manner as indicated in the technical specifications. It is understood that the award of the bid will be based upon the lowest price bid, after analysis for compliance of the bids submitted. The entire project must be bid upon. No partial bids will be accepted.

NEW 4” DUCTILE IRON SPRINKLER MAIN INSTALLATION WORK TO BE CONDUCTED IN THE WATERMAIN SHED

Labor: _____

Material: _____

Grand Total: _____

Authorized Signature of Bidder: _____

Name of Signatory: _____

Title: _____

Name of Bidder: _____

Address: _____

Telephone#: _____

Fax#: _____

Email address: _____

Federal EIN: _____

Date: _____

Include with proposal: a) equipment list; b) no less than three (3) references; c) a list of available equipment; and d) itemization of any terms, conditions, limitations or exceptions to the above-stated requirements under which the work will be undertaken.

CONTRACT

**THE TOWN OF ORANGETOWN
AND**

**Installation of New 4” Ductile Iron Sprinkler Main
Orangetown Highway Department
Town of Orangetown**

THIS CONTRACT made and entered into this ____ day of _____ 20____, by and between the TOWN OF ORANGETOWN with offices at 26 Orangeburg Road, Orangeburg, New York 10962 (hereinafter referred to as the “Owner”), and _____, with offices at _____.

Federal Identification Number _____, (hereinafter referred to as the “Contractor”).

WITNESSETH:

A contract having been awarded by the Owner for the Installation of New 4” Ductile Iron Sprinkler Main in accordance with a certain Request for Proposals, dated **August 10, 2023** expressly incorporated herein, and made part hereof, and in consideration of the promise, agreements and payments herein specified, the Contractor hereby agrees, at its own cost and expense, to perform all the work and furnish all the materials, equipment, supplies, tools and other accessories necessary to complete the Project, complete, in place, tested and ready for use, all in strict conformance with the Contract Documents.

Contract Documents

Contract Documents, as used herein, include the Request for Proposals, Contractor’s Proposal, Non-collusion Certificate, Project Specifications, and General Conditions, Contract Drawings, if any, and prevailing wage information and other attachments and addenda, if any which are hereby, by reference, make a part hereof as if fully set forth herein:

ALL WORK IS INSPECTED BY THE TOWN SUPERINTENDENT OF HIGHWAYS, OR HIS DESIGNATED REPRESENTATIVE, BEFORE SUCH WORK IS VOUCHERED FOR PAYMENT.

Insurance and Indemnification Requirements

See General Conditions annexed hereto and make a part hereof.

The insurance requirements of this Contract are a material term, in default of which the Contractor shall be deemed in breach hereof.

Prevailing Wages

The wages and supplements to be paid to laborer, workman or mechanic performing work under this Contract shall be not less than the prevailing rate of wages and supplements as defined and determined by the New York State Labor Law or the Davis-Bacon Act (40 USC27a to a-7) as supplemented by Department of Labor regulations (29 CFT Part 5), as applicable, a copy of which, as applicable, is attached hereto or to the Bid Documents.

Certified payroll must be submitted with each invoice. Payment will not be made until required information has been submitted.

IN WITNESS WHEREOF, the parties have make and executed this Agreement, the day and year first above written.

CONTRACTOR:

Company Name: _____

Principal: _____

Signature: _____

Business Address: _____

Telephone Number: _____

Fax Number: _____

E-Mail: _____

TOWN OF ORANGETOWN HIGHWAY DEPARTMENT

JAMES J. DEAN
SUPERINTENDENT OF HIGHWAY

DATE

TERESA KENNY
TOWN SUPERVISOR

DATE

NON COLLUSIVE BIDDING CERTIFICATE

STATEMENT ATTACHED TO AND FORMING A PART OF ALL BIDS RECEIVED BY THE TOWN OF ORANGETOWN.

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor:

Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any bidder or to any competitor; and,

No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A bid shall not be considered for award nor shall any award be made where (a), (1), (2), and (3) above have not been complied with; provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a), (1), (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition. The fact that a bidder (a) has published price lists, rates or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same price being bid, does not constitute, without more, a disclosure within the meaning of subparagraph one (a).

Any bid made to any political subdivision of the State or any public department, agency or official thereof by a corporate bidder for work or service performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation or local law, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

This statement so subscribed by bidder to person signing on behalf of bidder and affirmed as true under penalties of perjury.

DATED: _____

BY: _____

FOR: _____

POLICY AGAINST DISCRIMINATION AND HARASSMENT

The Town has adopted and disseminated a revised Policy Against Discrimination and Harassment.

All Proposers are required to acknowledge that they have reviewed the revised Policy, and have been afforded an opportunity to ask a Municipality Compliance Officer any questions they may have regarding the Policy.

If you have any questions regarding this Policy, feel free to contact the Compliance Officer.

This Agreement may be signed by facsimile or electronic signature and in counterparts, which signatures shall have the same force and effect as an original signature and which pages shall be incorporated herein as one document.

The undersigned declares that they have carefully examined and fully understand the Town of Orangetown's Policy Against Discrimination and Harassment, effective October 23, 2018. Said policy is available on the Town's website at www.orangetown.com. Upon award of the proposal, all members of the firm who will be working on this project shall be required to review said policy and execute an acknowledgement form.

IN WITNESS WHEREOF, the respective parties have hereto executed this Agreement and caused same to be signed by the proper officers of the respective parties and their respective seals affixed the day and year first above written.

**CERTIFICATION
OF
TOWN ATTORNEY**

I, ROBERT V. MAGRINO, Town Attorney of the Town of Orangetown, hereby certify that all conditions precedent to the execution of this contract have been complied with and it is, in all respects, a valid and binding obligation upon the parties thereto.

DATE

ROBERT V. MAGRINO, Town Attorney

PURCHASES BY OTHER LOCAL GOVERNMENTS OR SCHOOL DISTRICTS

As per the New York State General Municipal Law, all political subdivisions of New York State are allowed to make purchases through the resulting contract(s).

1. The Town of Orangetown shall make contract award information available to other political subdivisions. Other political subdivisions may contact the Orangetown Highway Department at (845) 359-6500.
2. Any other political subdivision will issue purchase orders directly to vendors within the specified contract period referencing the Town's contract and shall be liable for any payments due on such purchase orders; and shall accept sole responsibility for any payment due.
3. All purchases shall be subject to audit and inspection by the other political subdivisions for which the purchase was made.
4. No officer, board or agency of a county, town, village, or school district shall make any purchase through the Town when bids have been received for such purchase by such officer, board or agency, unless such purchase may be made upon the same terms, conditions and specifications at a lower price through the Town.
5. All Bidders shall be on notice that as a condition of the award of a Town contract, the successful bidder shall accept the award of a similar contract with any other political subdivision in New York State, if called upon to do so. The Town, however, will not be responsible for any debts incurred by the participants pursuant to this or any other agreement.
6. Necessary deviations from the Town's specifications in the award of a participant contract, whether such deviations relate to quantities, or delivery points shall be resolved between the successful bidder and the other political subdivisions.

GENERAL CONTRACT CONDITIONS

1. INTRODUCTION

The purpose of these General Contract Conditions is to set forth the general manner under which the Owner, Contractor and Engineer will execute the Contract. The provisions of the Special Conditions of the Contract will modify the requirements of the General Contract Conditions as hereinafter stated.

2. CONTRACT DOCUMENTS

Wherever the term "Contract Documents" is used, it shall mean and include the Notice To Bidders, Instructions to Bidders, Bid Proposal, Contract, General and Special Conditions, Contract Bonds, Proposal, Plans or Drawings, Specifications, Addenda, all change orders issued after the execution of the contract and any and all other writings necessary to complete the project, as discussed in Article 15, page GCC-7.

3. INTENT OF DOCUMENTS AND INSTRUCTIONS

The Specifications, Drawings and any Instructions as set forth herein are complimentary, are intended to provide for, and include everything necessary for, the proper and complete orderly execution and finishing of the work. Words which have a well-known technical or trade meaning used to describe work, materials or equipment shall be interpreted in accordance with such customary and recognized meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws and Regulations in effect at the time of opening of bids, except as may be otherwise specifically stated. However, no provisions of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of Owner, Contractor or Engineer or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the Engineer, or any of the Engineer's consultants, agents or employees any duty or authority to supervise or direct the furnishing or performance of the work.

It is understood that except as otherwise specifically stated in the Contract Documents, all Contractors shall provide and pay for all permits, materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature and all other services and facilities of every nature under his contract whatsoever necessary to execute, complete and deliver the work within the specified time. All costs for all work required under the General Contract Conditions shall be deemed to be included in the lump sum bid for the work in the proposal.

"The unit prices bid are intended to provide a complete contract, as proposed by the plans and specifications, tested and ready for use. All costs for all work required under the General

Contract Conditions shall be deemed to be included in the lump sum bid for the work in the proposal."

4. DEFINITIONS

The term "subcontractor" includes any individual, firm or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the work of this project.

The term "changes" as used herein refers to and includes work required by the Owner, which, in the judgment of the Engineer involves changes in, or additions to, that required by the Plans, Specifications and Addenda in their present form.

In the performance of the work, the Owner shall be represented by any person designated by the Owner to perform the duties of the Engineer. The Engineer will provide general services during construction in checking and directing the work.

Whenever they refer to the work or its performance, "directed", "required", "permitted", "ordered", "designated", "prescribed" and words of like import shall imply the direction, requirements, permission, order, designation or prescription of the Owner and "approved", "acceptable", "satisfactory", "in the judgment of" and words of like import shall mean approved by, or acceptable or satisfactory to, or in the judgment of the Owner or its duly authorized representative.

All time limits stated in the contract documents are of the essence of the Contract.

5. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clauses required by law to be inserted in this contract shall be deemed to be inserted herein, and the contract shall be read and enforced as though it were included herein, and if through mistake, or otherwise, any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the contract shall forthwith be physically amended to make such insertion.

6. PROGRESS PAYMENTS

The Owner shall make payments on account of the Contract as follows:

- a) Prior to the submission of the first invoice for partial payment, the Contractor shall submit to the Engineer an approved form of invoice, detailing the items of work, dollar amounts and portion of the total contract price represented thereby for approval. In the event that the invoice form is not approvable, the Contractor shall supply such further information as required and shall resubmit the form of invoice for approval until such form of invoice is approved. The form of invoice shall list the items of work, dollar amounts and percentage of the total contract price represented thereby in sufficient detail to enable the Engineer to determine the amount of work completed and the value of such work completed and submitted for payment.

b) On not later than the twenty-first day of every month, the Contractor shall submit to the Engineer for approval, the Engineer's Standard Monthly Estimate Form or an approved invoice covering the percentage of the total amount of the Contract which has been completed from the start of the job up to and including the last day of the preceding month, together with such supporting evidence as may be required by the Owner or the Engineer.

c) Not later than the twenty-first day of the month following the submittal, the Owner will make partial payment to the Contractor on the basis of a duly certified approved estimate of the work performed during the preceding period by the Contractor. Retained amounts shall be limited, except where greater retention is necessary under specific circumstances specifically provided for in the construction contract, to the following schedule:

- (1) retention of 5% of payments claimed, provided that the Contractor is making satisfactory progress and there is no specific cause for greater withholding;
- (2) when the project is substantially complete (operational or beneficial occupancy), the retained amount shall be further reduced below 5% but not less than two (2) times the value of any remaining items to be completed and an amount necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged.
- (3) The Town of Orangetown will accept only bonds or notes of the United States of America, New York State or political subdivisions thereof in lieu of all or part of the cash retainage.

d) No partial payment will be made for any materials or equipment until they are incorporated in the work except that 95 percent partial payment of invoices may be allowed for special or uniquely manufactured items made specifically for this project, delivered at the site and properly stored and protected, provided, however, that the Contractor shall furnish written evidence that he is the unconditional owner of such manufactured materials.

e) All work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of the work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Owner to require the fulfillment of all the terms of the Contract.

f) Before any payments will be made under this contract, the Owner reserves the right to require that the Contractor and all subcontractors shall submit written verified statements, in satisfactory form, certifying in detail to the amounts then due and unpaid by such contractor and subcontractor to all laborers for daily or weekly wages on account of labor performed upon the work under the contract, or to other persons for materials, equipment and supplies delivered at the site of the work. The term "laborers" as used herein shall include workmen and mechanics.

g) 2.5% of the value of the Contract will be held by the Town for a period of one year from date of completion of the work to insure that all work completed was done in a proper, workmanlike manner.

7. OTHER PROHIBITED INTERESTS

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

8. NOTICE AND SERVICE THEREOF

A. The service of any notice, letter or other communication shall be deemed to have been made by one of the contracting parties on the other party to the contract, when such letter, notice or other communication has been delivered to the legal office address of the addressee by a duly authorized representative of the addresser in person, or when such notice, letter or other communication has been deposited in any regularly maintained mail box of the United States Postal Service in a properly addressed postpaid wrapper. The date of such service shall be considered to be the date of such personal delivery or mailing.

B. The address of the contractor noted in his bid and/or the address of his field office adjacent to the site of the work hereunder shall be considered as his legal address for the purposes as above set forth.

C. The address of the Owner noted in this Contract Document shall be considered as its legal address for the purpose as above set forth.

9. DISPUTES

Except for specific provisions otherwise set forth in the Contract Documents, any disputes concerning questions of fact or circumstances arising out of this Contract shall be mutually resolved through good faith mediation between the Contractor and the Owner. The Contractor shall carry on the work and maintain his progress schedule during all disputes or disagreements with the Owner. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Contractor and the Owner may otherwise agree in writing.

10. ARBITRATION

If agreed upon in writing by the Contractor and Owner in an unsettled dispute, any controversy arising out of or relating to this Contract, or the breach thereof, may be settled by arbitration in accordance with Construction Industry Arbitration Rules of the American Arbitration

Association and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof.

The Contractor shall not delay the work because arbitration proceedings are pending, unless he shall have written permission from the Owner to do so. Such delay shall not extend beyond the time when the arbitrators shall have the opportunity to determine whether the work shall continue to be suspended pending decision by the arbitrators of such a dispute. Any request for arbitration shall be in writing and shall be delivered to the Owner and any adverse party either by personal delivery or by registered mail addressed to the last known address of the parties in dispute.

11. USE OF COMPLETED PORTIONS

The Owner shall have the right to take possession of and use any completed or partially completed portion of the work, notwithstanding the time for completing the entire work or such portions which may not have expired, but taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents.

Upon occupancy by the Owner, the following procedures will apply:

1. The Engineer, with the approval of the Owner, will notify the Contractor as to what portion or portions of the work have been accepted into Occupancy.
2. The guarantee period applicable to that portion of the work accepted into Occupancy will start as of the date of Occupancy.
3. The retainage applicable to that portion of the work accepted into occupancy will be at a value equal to 2 times the punch list items of the accepted work, such value to be determined by the Engineer, provided that the Contractor submits acceptable affidavits, certificates or waivers showing no right of lien exists in connection with this portion of the work, and acceptable evidence as to the satisfaction of all claims applicable to this portion of the work.

12. CONTRACT DRAWINGS AND SPECIFICATIONS

Additional copies of the Plans and Specifications, if available, will be furnished to the Contractor at the cost of reproduction.

The Contractor shall furnish each of his subcontractors, manufacturers and material men such copies of the Contract Documents as may be required for his work.

13. CHECKING PLANS AND SPECIFICATIONS

All figures and dimensions on the drawings and specifications shall be carefully checked by the Contractor, who shall note all conflicts, errors or discrepancies. Contractor will be held responsible for any conflict, error or discrepancy not discovered before the work is executed, unless the Contractor could not have reasonably known about the conflict, error or discrepancy. In case errors are found, these shall be immediately reported in writing to the Engineer, who will instruct the Contractor as to the method of correcting them. The Contractor shall not alter

specifications, drawings or figures, or make any alterations in or additions to the quantity, character or arrangement of the materials or work, whether same shall involve additional expense or not, unless same shall be agreed upon first, in writing, as provided for herein. This provision, however, shall not abridge in any way the Engineer's rights as to the interpretation of the specifications, plans and figures thereon. The Divisions and Sections of the Specifications and the identification of any drawings shall not control the work among Contractors nor the Contractor in dividing the work among Subcontractors or suppliers or delineating the work to be performed by any specific trade. The Division of the Specifications are complementary and anything mentioned or shown in a Division of the Specifications or in a specific trade drawing shall be of like effect as if shown in all Divisions of the specifications and in all drawings. In all cases figured dimensions shall govern over scaled dimensions, detail drawings shall govern over general drawings, larger scale details take precedence over smaller scale drawings, change order drawings govern contract drawings, and contract drawings govern over standard or shop drawings. Further, in all cases where details in two drawings conflict, the more restrictive requirement shall be binding upon the Contractor.

14. PLANS AND SPECIFICATIONS: INTERPRETATIONS

The Contractor shall keep at the site of the work one (1) copy of the Plans and Specifications, signed and identified by the Engineer, and shall at all times give the Engineer and other representatives of the Owner access thereto.

Anything shown on the Plans and not mentioned in the Specifications, or mentioned in the Specifications and not shown on the Plans, have the same effect as if shown or mentioned, respectively in both. In case of any conflict or inconsistency between the Plans and other contract documents, the other contract documents shall govern in the following order of precedence: (1) Addenda, (2) Instruction to Bidders, (3) Specific Contract Conditions, (4) Detail Specifications, (5) General Contract Conditions and (6) Plans. Any discrepancy between the specifications and drawings shall be submitted in writing by the Contractor to the Engineer. The Engineer shall in all cases determine the amount of quantity of the several kinds of work and the quality of materials which are to be paid for under this contract; he shall determine all questions in relation to the work and the construction thereof, and in all cases decide every questions which may arise relative to the performance of the work covered by this contract on the part of the Contractor. Any doubt as to the meaning of these specifications and drawings, or any obscurity as to the wording of them, will be explained by the Engineer and all directions and explanations requisite or necessary to complete, explain or make definite any of the provisions of these specifications and drawings and given them due effect, will be given by the Engineer in writing.

The Engineer will, within a reasonable time after presentation to him, make a determination in writing of all matters relating to the interpretation of the Contract Documents. If the Contractor does not agree with the Engineer's determination he may, within ten (10) days of the determination, file a protest with the Owner, stating clearly and in detail the basis thereof. Should the Contractor fail to file such a protest, he will be bound by the Engineer's determination; he will have waived further consideration. The Owner shall consider any protest timely filed by the Contractor and he

will render a decision thereon. If the Contractor does not agree with the Owner's decision, the matter shall be subject to the provisions of the General Contract Conditions entitled "Disputes".

15. ADDITIONAL INSTRUCTION AND DETAIL DRAWINGS

The Contractor may be furnished additional instructions and detail drawings to carry out the work included in the contract, if in the opinion of the Engineer, they are so required. The additional drawings and instructions, thus supplied to the Contractor, will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.

16. RECORD DRAWINGS

The Engineer will be responsible for recording field changes during construction and for maintaining record or as-built drawings. The Contractor shall cooperate with the Engineer in this regard by furnishing the Engineer with notes, sketches, drawings and all pertinent information about field changes.

17. REFERENCE TO STANDARDS

Whenever reference is made to the furnishing of materials or testing thereof to conform to the standards of any technical society, organization or body, it shall be construed to mean that latest standard, code, specification, adopted and published at the date of advertisement for bids, even though reference has been made to an earlier standard.

Reference to a technical society, organization or body may be made in the specifications by abbreviations in accordance with the following list:

A.C.I.	American Concrete Institute
A.G.A.	American Gas Association
A.I.S.C.	American Institute of Steel Construction
A.S.C.E.	American Society of Civil Engineers
A.S.T.M.	American Society for Testing & Materials
A.S.M.E.	American Society of Mechanical Engineers
A.W.S.C.	American Welding Society Code
A.W.W.A.	American Water Works Association
C.I.P.R.A.	Cast Iron Pipe Research Association
A.A.S.H.T.O.	American Association of State Highway and Transportation Officials
N.E.M.A.	National Electrical Manufacturers Assoc.
A.W.P.A.	American Wood Preservers Association
N.B.S.	National Bureau of Standards
C.R.S.I.	Concrete Reinforcing Steel Institute
A.N.S.I.	American National Standards Institute
I.E.E.E.	Institute of Electrical & Electronic Engineers
U.L.	Underwriter's Laboratories, Inc.

N.F.P.A.	National Fire Protection Association
N.E.C.	National Electrical Code
A.A.M.A.	Architectural Aluminum Manufacturers Association
S.S.P.C.	Steel Structures Painting Council
A.H.D.G.A.	American Hot Dip Galvanizing Association
A.I.A.	American Institute of Architects
A.I.E.E.	American Institute of Electrical Engineers
A.I.S.I.	American Iron and Steel Institute
A.P.I.	American Petroleum Institute
A.S.H.R.E.A.	American Society of Heating, Refrigerating and Air Conditioning Engrs
C.A.G.I.	Compressed Air and Gas Institute
A.W.S.	American Welding Society
B.O.C.A.	Building Officers and Code Administrators (Revision or Year in Force)
I.P.C.E.A.	Installed Power Cable Engineers Assoc.
P.S.	Product Standards
A.M.C.A.	Air Movement and Control Association
N.A.C.E.	National Association of Corrosion Engrs.
Fed.Spec.	Federal Specification
N.Y.S.D.O.T.	New York State Department of Transportation

When no reference is made to a code, standard or specification, the Standard Specifications of the A.S.T.M. shall govern.

The Contractor shall, when required, furnish evidence satisfactory to the Owner that materials and methods are in accordance with such standards where so specified.

18. SHOP DRAWINGS

The Contractor shall furnish the Engineer with detailed shop drawings of materials and equipment, including the names of companies who propose to furnish same, and any detailed layout drawings required, which are to be incorporated into permanent construction, and which are not furnished by the Engineer. Such tracings and prints, as required, shall become the property of the Owner.

19. APPROVAL OF SHOP DRAWINGS

The approval of shop drawings submitted by the Contractor shall not constitute a waiver of any of the requirements of this Contract, nor shall the Owner be compelled to accept any structure, equipment or apparatus unless it passes all the tests and requirements of these Specifications. The approval of shop drawings shall be general, and shall not relieve the Contractor of responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the work, nor for full compliance with the terms of the Contract Document

Checking of shop drawings is only for conformance with the design concept of the project and compliance with the information given in the Contract Documents. The Contractor is responsible for dimensions to be confirmed and correlated at the job site, for information that

pertains solely to the fabrication process or to techniques of construction, and for the coordination of the work of all trades

The procedure in seeking approval of shop drawings being submitted by the Contractor shall be as follows:

a) The Contractor shall submit four prints of drawings to the Engineer for his approval. The drawings shall be accompanied by a letter of transmittal, in duplicate, containing the name of the project, the name of the Contractor, the number of drawings, titles, and other requirements. Unless otherwise agreed to by the Owner, such drawings shall be submitted at least ten (10) calendar days before they are required for fabrication of the materials by the Contractor or supplier. This time requirement may be reduced only by the written authorization of the Engineer.

b) When a drawing is satisfactory to the Engineer, it will be stamped, "Approved", will be initialed and dated, and two copies thereof will be returned to the Contractor by letter. The Contractor shall then insert the date of the approval on the tracing and promptly furnish the Engineer with five (5) additional prints of the approved drawings.

c) When a drawing is generally satisfactory to the Engineer, but requires correction of minor detail, the Engineer will note thereon the corrections required, stamp the drawing "Approved as Corrected" and return two (2) copies to the Contractor. The Contractor shall thereupon make the corrections indicated and promptly furnish the Engineer with five (5) additional prints of the approved drawings.

d) Should a drawing be unsatisfactory to the Engineer, he will stamp thereon "Revise and Resubmit" and will return two (2) copies thereof to the Contractor with the portions to be revised indicated. The Contractor shall make the necessary revisions and again submit prints of the corrected drawings in quadruplicate for approval.

e) Should a drawing being submitted include equipment or materials which are unsatisfactory to the Engineer or which do not conform to the Drawings and Specifications, the Engineer will note the unsatisfactory portions, stamp the drawing "Not Approved" and return two (2) copies to the Contractor. The Contractor shall revise and resubmit the drawings as required by the Engineer, until approval thereof is obtained.

Shop drawings shall not be submitted to the Engineer piecemeal; each submission of shop drawings shall be sufficiently complete to permit adequate checking. In general, all drawings relating to a specific piece of equipment, or to a specific phase of building construction, shall be incorporated into one shop drawing submission. Shop drawing submissions which do not conform to the above requirements will be rejected.

20. MATERIALS AND WORKMANSHIP

Before placing orders, the Contractor shall submit to the Engineer for approval detailed lists and descriptions of the various materials, fixtures, fittings, and supplies which he proposes to use in the work, together with the name of the individual or company who will furnish

or manufacture the same. No manufacturer will be approved for any of the materials to be furnished under this Contract unless he shall be of good reputation, shall have a plant of ample capacity, and shall have been engaged upon and successfully done similar work for at least five (5) years.

All materials, fixtures, fittings, and supplies furnished under this Contract shall be of standard first grade quality and of the best workmanship and design. No inferior or low grade articles will be either approved or accepted, and all work of assembly and construction must be done in neat first-class and workmanlike manner. In asking for prices on materials intended for the work, the Contractor shall provide the manufacturer or dealer with such complete information from these Specifications as may in any case be necessary, and in every case, he shall quote this Section in full to each dealer or manufacturer.

21. CARE AND PROTECTION OF MATERIALS

The Contractor shall be solely responsible for properly storing and protecting all materials, equipment and work furnished under this Contract from the time such materials and equipment are delivered at the site of the work until final acceptance thereof. He shall, at all times, take necessary precaution to prevent injury or damage by water, or inclemency's of the weather to such materials, equipment or work. Damages resulting from any cause whatsoever shall be made good by the Contractor.

The Engineer shall, in all cases, determine the portion of the site to be used by the Contractor for storage plant or for other purposes. If, however, it becomes necessary to remove and restack materials to avoid impeding the progress of any part of the work or interference with the work to be done by any Contractor, the Contractor shall remove and restack such materials at his own expense.

22. STANDARD PRODUCTS

All materials, equipment and accessories shall be new and unused and shall be essentially the standard product of a manufacturer regularly engaged in the production of such material and equipment. The Contractor, when specifically requested in the detailed specifications for a particular material, equipment or accessory item, shall offer satisfactory evidence that such items have been in satisfactory operation for five (5) or more years, except that in the instances of recently developed items having a short service record, they may be considered if the deposit, which will guarantee replacement in the event of failure within a five (5) year period from the date of acceptance of the items. Such items proposed under these conditions must meet all the technical requirements as stated in the specifications.

23. EQUAL, SUBSTITUTION

Where items are specified by dimensions, this shall not preclude the furnishing of items having other than the specified dimensions, provided the quality, use and serviceability are the

same as or equal to that specified and no additional expense or inconvenience is imposed on the Owner or any other subcontractor.

If two or more choices of equipment, devices or materials are specified or shown (e.g. by brand name, model number and manufacturer) each shall be regarded as the equal of the other(s) and the choice shall be at the Contractor's option.

An item, device or material which was not specified or shown but which is proposed by the Contractor and approved in writing by the Engineer as equal to that which was specified or shown shall be regarded as a substitution.

In addition, the proposed substitutions shall be subject to the provisions hereinafter specified.

1. The Contractor shall submit for each proposed substitution complete descriptive literature and performance data together with samples of the materials where feasible. Requests for substitutions shall include full information concerning differences in cost and any savings in cost resulting from such substitutions shall be passed on to the Owner.
2. In all cases the Engineer shall be the sole judge as to whether a proposed product is to be approved and the Contractor shall have the burden of proving the same, at his own cost and expense to the satisfaction of the Engineer. The Contractor shall abide by the Engineer's decision when proposed substitute items are judged to be unacceptable and shall in such instances furnish the item specified or indicated. No substitute items shall be used in the work without written approval of the Engineer. The Contractor shall have and make no claim for an extension of time or for damages by reason of the time taken by the Engineer in considering a substitution proposed by the Contractor or by reason of the failure of the Engineer to approve a substitution proposed by the Contractor.
3. Where the approval of a substitution requires revision or redesign of any part of the work covered by this contract all such revisions and redesign and all new drawings and details required therefor, shall be subject to the approval of the Engineer and shall be provided by the Contractor at his own cost and expense. Any change in construction work arising out of such revisions and redesign shall be performed and paid for by the Contractor.

The Contractor shall be responsible for insuring that all materials and equipment furnished by him fit the spaces provided in the new construction as well as the spaces which are available in any existing structures. If equipment is substituted and does not meet the configuration shown on the Drawings, the Contractor shall be responsible for all costs involved. He shall make all necessary field measurements and shall order only those materials and equipment which can be accommodated in the spaced provided.

Where materials or equipment are approved which occupy more or less space than is shown on the Drawings or is available, which require different arrangements from those shown on the Drawings, or which require any modifications of the structures or other equipment or connections, the Contractor shall install the equipment so as to operate properly and in harmony with the intended design and shall provide all labor, materials and equipment necessitated by such

rearrangements or modifications at his own expense. Should any such changes cause the Owner to incur redesign costs, the actual redesign costs for said changes shall be deducted from the total contract amount due the Contractor.

Except as noted above, materials and equipment which do not conform to the requirements of the Contract Documents, do not fit the space requirements and arrangements shown, are not equal to the samples reviewed by the Engineer, or are in any way unsatisfactory or unsuited to the purpose for which they are intended, shall not be furnished nor installed by the Contractor and will not be paid for by the Owner.

24. APPLIANCES, EQUIPMENT, ETC.

The Contractor shall furnish all necessary transportation, scaffolding, forms, labor, tools and mechanical appliances and all other means, materials and supplies for properly prosecuting his work, unless otherwise expressly specified.

No direct payment shall be made for work in connection with Contractor's plant nor for his other requirements in carrying out the provisions of his contract. The compensation therefor shall be considered as having been included in the price of the contract.

25. CONTRACTORS TITLE TO MATERIALS

No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies used by him in the work.

26. CERTIFICATES

All materials or equipment delivered to the site shall be accompanied by certificates, signed by an authorized officer of the manufacturing company, guaranteeing that the materials or equipment conform to specification requirements. Such certificates shall be immediately turned over to the Engineer. Materials or equipment delivered to the site without such certificates will be subject to rejection.

27. SAMPLES

As ordered in the specifications or upon written demand of the Engineer, the Contractor shall submit to the Engineer for approval, samples of materials he proposes to use. Samples shall be in duplicate, of sufficient size, number or amount to show the quality, type, range of color, finish and texture of the material he intends to furnish under this contract.

Each sample shall be labeled bearing the name and quality of the material, the Contractor's name, date, specification and name of the project. A letter from the Contractor requesting approval

shall accompany all such samples. Transportation charges to the Engineer must be prepaid on samples forwarded.

Samples shall be submitted in due time so as to permit proper consideration without delaying the Contractor's operation. All materials shall be furnished equal to the approved samples. The use of any material will be permitted only so long as its quality remains equal to the approved sample and any material delivered to the site of the work, whether incorporated in the structure or not, which does not conform to the approved sample, will be rejected and shall be removed and replaced by approved materials at once at the Contractor's expense.

28. INSPECTION

The Engineer is the sole judge if it is necessary that any material or equipment be inspected at the place of manufacture.

These General Contract Conditions of the Specifications provide for proper inspection and testing of materials. The selection of bureaus, laboratories, and/or agencies for such inspection and testing is subject to the approval of the Engineer. Satisfactory documentary evidence that material has passed the required inspection and testing must be furnished to the Engineer prior to its incorporation in the work and rejected material must be promptly removed from the premises.

It must be distinctly understood that the inspection and acceptance of materials and work at the mills, shops, or at any place where material or work is in course of preparation, to facilitate the progress of the work, shall not preclude rejection at the site of proposed work, if the material is found unsuitable.

29. TESTS

The Contractor shall furnish all tests, except as noted below, as directed in the specifications or Contract Documents, on drawings or whenever directed to do so by the Engineer. Such tests shall be performed at the Contractor's expense by a reliable testing laboratory approved by the Engineer.

The Contractor shall retain, at his own expense, a qualified testing laboratory which shall make tests on the materials used in concrete, proportioning of concrete mixes and tests on concrete as the work progresses. Four (4) copies of all test reports shall be supplied to the Engineers by the laboratory.

The Owner reserves the right to independently perform at its own expense, laboratory tests on random samples of material or performance test on equipment delivered to the site. These tests, if made, will be conducted in accordance with the appropriate referenced standards or specification requirements. The entire shipment represented by a given sample, samples or piece of equipment may be rejected on the basis of the failure of samples or pieces of equipment to meet specified test requirements. All rejected materials or equipment shall be removed from the site, whether stored

or installed in the work, and the required replacements shall be made, at no additional cost to the Owner.

Field tests of material and equipment installed shall be made by the Contractor, at his own expense, when ordered by and under the supervision of the Engineer. Field tests of materials on the job site will be made by the Engineer at his discretion. The Contractor shall furnish at his own expense, the materials required for field tests and reasonable labor to assist the Engineer in conducting the tests.

Where operating tests are specified, the Contractor shall test his work as it progresses and shall make satisfactory preliminary tests in all cases before applying to the Engineer for official tests.

Tests shall be made in the manner specified for the different branches of the work. Each test shall be made on the entire system for which such test is required, wherever practical. In case it is necessary to test portions of the work independently, the Contractor shall do so without extra compensation. The Contractor shall furnish material and apparatus, make connections and conduct the official test. The test shall be conducted in the presence of a representative of the Engineer. Should defects appear they shall be corrected by the Contractor and the test repeated until the installation is acceptable to the Engineer.

The Contractor shall provide all labor, materials and devices, as approved for testing the water tightness of structures and piping.

30. COSTS OF TESTS

The cost of shop and field tests of equipment and of certain other tests specifically called for in the Specifications including the cost of all water, electrical energy, fuel, lubricants and other accessory items, shall be borne by the Contractors and such costs shall be deemed to be included in the price bid for the contract.

31. GENERAL ARRANGEMENT

The Contract Drawings indicate the extent and general arrangement of the work. If any departures from the Contract Drawings are deemed necessary by the Contractor to accommodate the materials and equipment he proposes to furnish, details of such departures and reasons therefore shall be submitted as soon as practicable to the Engineer for approval. No such departures shall be made except as provided for in Sections of these General Contract Conditions relating to changes in the work.

32. TIME OF COMMENCEMENT AND COMPLETION

When ordered in writing by the Engineer to commence work, the Contractor shall start his operations and complete the project in not more than 30 calendar days from the notice to proceed.

The determination of the Engineer upon any question or dispute that might arise as to the correct net cost of labor or materials furnished under a written order shall be final and conclusive. Any change orders shall contain provision for increase or decrease of time of completion of the Contract

33. DUTIES AND AUTHORITIES OF OWNER'S REPRESENTATIVE

The Engineer or his authorized representatives, will provide technical services on the project for the Owner, and shall decide in all cases every question relative to the fulfillment of the Contract on the part of the Contractor.

34. ENGINEER SOLE JUDGE OF QUALITY AND SUITABILITY

All materials becoming a part of the permanent construction as called for on the Drawings and in these Specifications, shall be first-class in every respect and subject to the approval of the Engineer, who shall be the sole judge of their quality and their suitability for the purposes for which they are to be used. He shall be notified whenever the preparation or manufacture of any material for the work is commenced. No material shall be shipped to the work before it has been inspected and accepted, unless inspection has been authorized by the Engineer to be made at the site or has been waived. If any material brought on the site for use in the work is condemned by the Engineer after arrival at the site or is unsuitable or not in conformity with the Contract Documents, the Contractor shall immediately remove from the site and replace such material, even though it may have been passed previously by the inspector as satisfactory. No such rejected material shall again be offered for use by the Contractor.

35. SITE INVESTIGATION

The Contractor acknowledges that he has satisfied himself as to the nature and location of the work, the general and local conditions, particularly those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, ground water table or similar physical conditions at the site, the conformation and condition of the ground, the character, quality and quantity of surface and subsurface materials to be encountered, the character of equipment and facilities needed prior to and during the prosecution of the work and all other matters which can in any way affect the work or the cost thereof under this contract. Any failure by the Contractor to acquaint himself with all the available information concerning these conditions will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work.

36. LINES AND GRADES

All work under this Contract shall be constructed in accordance with the lines and grades as given by the Engineer. The Engineer will establish the principal lines and grades required for construction of the project. The Contractor shall check such lines and grades by such means as he may deem necessary and, before using them shall call the Engineer's attention to any inaccuracies. The Contractor shall, at his own expense, establish all working or construction lines and grades as

required in accordance with the base measurements of the Engineer, and shall be solely responsible for the accuracy thereof. He shall, however, be subject to the check and review of the Engineer.

The Contractor shall furnish and maintain, at his own expense, stakes, batter boards, etc., and give assistance, including qualified helpers as may be required by the Engineer for setting and checking line and grade.

The Contractor shall so place excavation and other materials as to cause no inconvenience in the use of the lines and grades given. He shall safeguard all points, stakes, grade marks, monuments, and bench marks made or established on the work, reestablish them if disturbed, and bear the entire expense of rectifying work improperly installed due to improper maintenance or protection or for removing without authorization such established points, stakes and marks.

When any monument, whether of stone or concrete or a mark on the pavement, designating the lines of the streets or highways or of private property, is in the line of any trench or other construction work and may have to be removed, the Contractor shall notify the Engineer in writing at least seventy-two (72) hours in advance. Under no circumstances shall such monument be removed or disturbed by the Contractor or by any of his men without a written order from the Engineer. The Contractor shall furnish the labor required to reset any monument, under the direct supervision of the Engineer. Should any monument be destroyed through accident or neglect, the Contractor shall be required, at his own expense, to employ a licensed land survey to re-establish the monument.

37. SURVEY AND STAKE-OUT

A. Work by Contractor:

1. All work under this contract shall be constructed in accordance with the line and grades shown on the Plans or as given by the Engineer.

2. The Contractor shall at his own expense, establish all working or construction lines and grades as required, in accordance with the base measurement of the Engineer, and shall be solely responsible for the accuracy thereof. He shall, however, be subject to the check and review by the Engineer, and shall submit the field records for line and grade in an acceptable manner prior to the start of construction.

3. The Contractor shall keep the Engineer informed, a reasonable time in advance, of the times and places at which he intends to work, in order that the control points may be furnished and necessary measurements for record and payment may be made with the minimum of inconvenience to the Engineer or delay to the Contractor. It is the intention not to delay the work for control points, but when necessary, working operations shall be suspended for such reasonable time as the Engineer may require for this purpose.

4. The Contractor shall be held responsible for the preservation of all stakes, property lines, corners, control points and, if in the opinion of the Engineer, any items mentioned

above have been destroyed or disturbed, the cost to the Engineer of replacing them shall be charged against the Contractor at the Engineer's current rate for this type of work.

5. Property lines/corners which may be disturbed during construction shall be properly "tied-in" to fixed reference points before being disturbed and accurately reset in their proper position upon completion of the work by a licensed surveyor. This work is the responsibility of the Contractor.

6. The Contractor's horizontal control surveys shall close at least 1:10,000 and vertical control survey shall run 1/1000 of a foot.

38. MATERIALS

1. All instruments, equipment, stakes and any other material necessary to perform the work satisfactorily, shall be provided by the Contractor.

2. All stakes used shall be of a type approved by the Engineer.

3. It shall be the Contractor's responsibility to maintain these stakes in their proper position and locations at all times.

4. Materials to be used by the Engineer shall be delivered by the Contractor to the site of the work, where control surveying is required.

39. DATUM OF PLANS

All land, surface and water elevations refer to the datum specified on the Construction Drawings.

40. AREA FOR CONTRACTOR'S USE

The Contractor shall confine his activities to the area assigned by the Engineer, and shall take all required steps to assure that access by the Owner's personnel to all existing facilities shall be in no way restricted by his operations, nor shall the operations of the Owner be restricted in any way by the activities of the Contractor.

If the Contractor desires the temporary use, during construction, of the land or lands to which the Owner has no rights, he shall secure written permission from the owners and shall file a duplicate copy of such permission with the Engineer. Land shall not be used or occupied by the Contractor prior to the securing of permission. The Contractor shall at all times save harmless the Owner from actions by third parties by reason of any acts or omissions by the Contractor.

Before the final acceptance of the work, and as a prerequisite to the release of the final payment, the Contractor shall secure a written release from the authorities having jurisdiction over the lands, including easements, occupied by him certifying to the satisfactory restoration of all pavements and other surfaces and utility structures removed or safeguarded for the work.

The Contractor shall confine his materials and their storage, and the operation of his workmen to limits indicated by laws, ordinances, permits and directions of the Engineer, and will not unreasonably encumber the premises with such materials, but shall store them in orderly fashion, so that they will not interfere with the work under this Contract or other contracts, or with the operation of the Owner's facilities. The Contractor shall not load nor permit any part of the work to be loaded with a weight that will endanger its safety or unduly affect the structure or any part thereof.

41. PROTECTION OF PROPERTY

The Contractor shall be responsible for the preservation and protection of property adjacent to the work site against damage or injury as a result of his operations under this Contract. All damage to easements, as well as personal property, shall be repaired at the Contractor's expense. Easements and private properties shall be restored to their original conditions to the satisfaction of the Owners and the Engineer.

If it is necessary to remove any structures due to the requirements of the work, the structures removed shall be replaced so that they are equal to the original condition. The Contractor shall assume full responsibility for any damage done and shall save the Owner harmless in all respects. Adequate insurance, approved by the Owner, shall be carried by the Contractor to cover his responsibility.

Public utilities shall be protected and service maintained. If it is necessary to move any utilities, arrangements will be made by the Contractor with the utility company for said work. Permanent support for all trench crossings of existing utilities shall be provided and shall meet with the approval of the Owner or utility company concerned.

Any damage to gas mains, gas service, water mains, water services, cross drains, culverts, sewage disposal systems, electric conduits, utility poles and wires, guard rails, etc. shall be repaired or replaced at the Contractor's expense.

The Contractor shall include in the prices bid for the work the cost of relocation of all existing utilities (above & below ground) such as sewer and water pipe lines, poles, gas lines, etc.

The Contractor shall protect trees, shrubbery and other natural features or structures from being cut, trimmed or injured, unless ordered by the Engineer for clearing the site of the work. He shall prevent employees from tramping in shrubbery and vehicles from being driven through wooded lands. He shall protect trees adjacent to the work with plank wells, if necessary.

The Contractor shall provide and replant at his own expense, trees, lawns, shrubbery and other natural features destroyed or damaged. He shall conduct his operations within such limits as the Engineer directs.

It is the Contractor's responsibility to make himself aware of, and comply with, such safety regulations as may be required by jurisdictional agencies and shall at all times conduct his operations so as to avoid and eliminate any unsafe conditions created by his operations.

In the event of any claims for damage or alleged damage to private property as a result of work under this contract, the Contractor shall hold the Owner harmless and shall be responsible for all costs in connection with the settlement of, or defense against, such claims. Prior to commencement of work in the vicinity of private property, the Contractor at his own expense shall

take such surveys as may be necessary to establish the existing condition of the property. Before final payment can be made, the Contractor shall furnish satisfactory evidence that all claims for damage have been legally settled or sufficient funds to cover such claims have been placed in escrow, or that an adequate bond to cover such claims has been obtained.

42. CONTRACTOR'S AND SUBCONTRACTOR'S EMPLOYEES

The Contractor shall employ on the project at all times one or more competent superintendents with experience in the particular type of work under contract, and such other competent foreman, skilled tradesmen, and laborers as the work may require. Any incompetent or unfaithful employees shall be discharged from the work when a request is filed in writing by the Engineer.

43. PUBLIC SAFEGUARDS AND PROTECTION OF TRAFFIC

The Contractor shall provide suitable and legal barricades, "Danger" or "Caution" signs at all places where the work constitutes in any way a hazard to the public.

If at any time, in the opinion of the Engineer, the work is not properly barricaded, and in all respects safe for public travel or for persons on or about the work, the Engineer shall have the right to order such safeguards to be erected and such precautions to be taken as he deems necessary and the Contractor shall comply with such orders. If, under such circumstances, the Contractor does not or cannot immediately put the same into proper and approved condition or if the Contractor or his representative is not on the site so that he can be immediately notified of the insufficiency of safety precautions, then the Engineer may put the work in such a condition as in his opinion shall be safe in all respects, and the Contractor shall pay all expenses for labor and materials as may have been used for this purpose by him or the Engineer. Such action of the Engineer or his failure to take such action in no way shall relieve the Contractor of the entire responsibility for any cost, loss or damage by any party sustained on account of the insufficiency of the safety precautions taken by him or by the Engineer acting under authority of this section. Neither shall the Contractor be relieved from this obligation to comply with all laws and regulations concerning safety of persons or property.

The Contractor shall conduct the work at all times in such manner that public travel in any area open to such travel shall not be needlessly inconvenienced nor wholly obstructed at any point.

The Contractor shall inconvenience traffic as little as possible and shall provide suitable barricades, red lights, "Danger" or "Caution" signs at all places where the work constitutes in any way a hazard to the public. All barricades and obstructions along public roads shall be illuminated at night and all lights for this purpose shall be kept burning from sunset to sunrise.

In addition, the Contractor shall provide and maintain such other warning lights and barricades in other areas as may be required for the safety of those employed in the work or visiting the site.

The Contractor shall provide watchmen at particularly dangerous locations such as railroads, heavily traveled roadways and similar locations, and where ordered by the Owner.

Access to private properties over driveways shall be maintained. Temporary structures erected by the Contractor to accomplish this shall be safe. The Contractor shall be liable for any damage or injury resulting from the work.

Arrangements for traffic protection and control, detours, barricades, danger signs and warning lights shall be provided in accordance with local jurisdictional authorities' requirements.

44. TRAFFIC CONTROL

Efforts shall be made to preserve two-lane traffic on all roads except in areas where it becomes necessary; then one lane of traffic will be open for traffic. At all road crossings where "open cut construction" will be allowed, one lane of traffic will be preserved.

When it is necessary to close a street temporarily, detours shall be provided and plainly and adequately marked. Adequate barricades, lights and other warnings shall be provided and erected to protect the public from the work. The Contractor shall provide uniformed signalmen to direct traffic at major intersections and as directed by the Engineer.

No additional compensation shall be allowed for traffic control. All costs thereof shall be included in the lump sum bid for the work.

45. WORK ALONG HIGHWAYS, RAILROADS, WATERWAYS, AIRPORTS, ETC.

Work along and under roads, railroads, waterways, airports, etc. shall be made in accordance with the Plans and Specifications, and in compliance with permits for the work issued by the Agency of jurisdiction, which permits the Contractor shall secure and pay for. The cost of any temporary structures or facilities required by the agency having jurisdiction, shall be paid for by the Contractor. The cost of all additional insurance, etc. required by the permit shall be provided by the Contractor.

Any special backfill required shall be paid for under the appropriate bid item, unless otherwise indicated. All other work, materials and equipment shall be included in the construction prices and no extras will be allowed for such construction. The contractor shall determine the general requirements of permits of controlling agencies prior to submitting a bid.

The costs of flagging, protective personnel and engineering inspection provided by a railroad, airport, highway department, etc. shall be reimbursed by the Contractor. Costs arising from damage arising from the Contractor's work shall be reimbursed by the Contractor.

46. INCLEMENT WEATHER

Work that would be subject to damage shall be stopped during inclement, stormy or freezing weather. Only such work as will not suffer injury to workmanship or materials will be permitted. The Contractor shall carefully protect his work against damage or injury from the weather, and when work is permitted to proceed during freezing weather, he shall provide and maintain approved facilities for heating the materials and for protecting the finished work.

If, in the opinion of the Engineer, any work or materials shall have been damaged or injured, by reason of failure on the part of the Contractor or any of his subcontractors so to protect his work, such materials shall be removed and replaced at the expense of the Contractor.

47. DUST HAZARD

If, in the carrying out of this contract, a harmful dust hazard is created for which appliances or methods for the elimination of harmful dust have been approved by the Board of Standards and Appeals, then the General Contractor agrees to install, maintain and effectively operate such appliances and methods during the life of this contract; and in case of failure of compliance of the General Contractor as provided by Section 222-a of the Labor Law, the contract shall be void.

When directed by the Engineer, the General Contractor shall apply dust controlling agent(s) where directed and in such quantities and at such frequencies as may be required to control such dust and prevent it from becoming a nuisance to the surrounding area at no additional cost to the Owner. All roads must be maintained dust-free at all times. Daily cleaning will be required.

All dust controlling agents shall be approved by the Engineer before use. The use of calcium chloride and/or petroleum products to control dust is strictly prohibited.

48. ACCIDENT PREVENTION

Precaution shall be exercised at all times for the protection of persons (including employees) and property, and hazardous conditions shall be guarded against or eliminated.

The Contractor shall provide at the site, such equipment and medical facilities as are necessary to supply First-Aid service to any of his personnel who may be injured in connection with the work. The Contractor shall promptly report in writing to the Engineer all accidents whatsoever, arising out of, or in connection with, the performance of the work, whether on or adjacent to the site, which caused death, personal injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to both the Engineer and the Owner. If any claim is made by anyone against the Contractor or a subcontractor on account of any accidents, the Contractor shall promptly report the facts in writing to the Engineer, giving full details of the claim.

49. SANITARY REGULATIONS AND REVISIONS

The Contractor shall prohibit and prevent the committing of nuisances at the site of the work, or on adjoining property, and shall discharge any employee who violates this rule.

50. ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees, and shall assume all responsibility for damage to the Owner and defend all suits at his own expense, arising through infringements of patent rights, connected with any or all of the materials, appliances, articles or systems used in the performance of this work, and shall pay all royalties on apparatus or methods installed by him.

The Contractor shall hold and save the Owner and its officers, agents, servants and employees, harmless from liability of any nature of kind, including cost and expenses, for, or on account of, any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the Contract, including its use by the Owner, "except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified".

51. PERMITS AND LICENSES

In general, the Contractor shall procure all permits and licenses, pay all charges and fees and give all notices necessary and incident to the proper and lawful prosecution of the work as required by the Agency having jurisdiction.

The Contractor shall construct the improvements according to the requirements of permits to be issued by the various agencies. All work not in accordance with permits issued shall be removed by the Contractor at his own expense.

Where a particular agency requires that the permit and bond be obtained by the Owner, the Contractor shall so inform the Owner and the Engineer sufficiently in advance to allow the Owner to obtain said permits from the agency having jurisdiction. All costs associated with the permits will be paid for by the Contractor. Any delays encountered by the Contractor due to lack of sufficient time to obtain permits shall be borne fully by the Contractor.

If changes in the work or alignment require that additional permit(s) be obtained, the cost for any delays in construction shall be borne by the Contractor.

52. LAWS, TAXES

The Contractor shall comply with all laws, ordinances, rules and regulations affecting the work, and shall give proper public authorities all requisite notice in connection with the work. The Contractor shall be solely responsible for any damage resulting from his neglect to obey all laws, regulations, rules and ordinances, and should he perform any work called for by the specifications or drawings, knowing it to be contrary to such laws, regulations, rules, and ordinances, and without notifying the Engineer, in writing, and obtaining written consent to proceed, he shall bear all costs and damages arising therefrom.

The Contractor shall pay all taxes, applicable to the work and materials supplied under this contract, it being understood that in no case shall any such tax be borne by the Owner.

53. HOURS OF WORK

It is proposed that the work shall progress on the project every work day during the week and continuously week by week until the job is complete, except for holidays and such days as weather or working conditions make work impractical in the opinion of the Engineer.

Work after 4:00 P.M. and earlier than 8:00 A.M. shall not be performed without the written consent of the Owner, issued by the Engineer.

54. POSTING MINIMUM WAGE RATES

The Contractor shall post at appropriate conspicuous points at the site of the project a schedule showing all determined minimum wage rates for the various classes of laborers and mechanics to be engaged in work on the project under this Contract and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged. On projects involving both State and Federal Agencies the Contractor will be required to post both State and Federal Wage Rates, the higher of which shall apply in any classification.

55. PAYROLL RECORDS

The Contractor will be required to furnish to the Engineer duplicate copies of all payrolls incurred as a result of work on the project. Payrolls are to be submitted on forms to be supplied by the Owner or the Federal or State Agency having jurisdiction with every pay estimate.

56. APPRENTICES

The minimum wage rates, if any, herein specified, for apprentices, shall apply only to persons working with the tools of the trade they are learning under the direct supervision of journeymen mechanics. Except as otherwise required by law, the number of apprentices in each trade or occupation employed by the Contractor or any subcontractor shall not exceed the number permitted by the applicable standards of the United States Department of Labor.

57. COMPUTATION OF WAGES ON EIGHT HOUR DAY; OVERTIME COMPENSATION

The wages of each laborer and mechanic engaged in work on the project under this Contract shall be computed on a basic day rate of 8 hours per day, 8 hours of continuous employment, except for lunch periods, constituting a day's work when a single shift is employed, and 7-1/2 hours of continuous employment except for lunch period constituting a day's work when 2 or more shifts are employed. Work in excess of 8 hours per day shall be permitted upon compensation when a single shift is employed, at a minimum of 1-1/2 times the basic rate of pay (i.e., the rate actually payable to the laborer or mechanic, which may be higher but not lower than the minimum wage set forth in the foregoing schedule) for all hours worked in excess of 8 hours, on any one day, and when two or more shifts are employed, at a minimum of 1-1/2 times the basic rate of pay for all hours worked in excess of 7-1/2 hours on any one day. In addition, all laborers and mechanics shall receive compensation at a rate not less than 1-1/2 times their basic rate of pay for all hours of work in excess of forty in one work week when one shift is employed and all hours of work in excess of thirty-seven and one-half in one work week when two shifts are employed. The provisions of this article shall not limit agreements to the contrary, mandatory overtime compensation in excess of that stipulated herein and such extra compensation shall not constitute a claim for additional compensation under this Contract.

58. WAGE UNDERPAYMENTS AND ADJUSTMENTS

The Contractor agrees that in case of underpayment of wages to any worker on the project under this Contract by the Contractor or any subcontractor, the Owner may withhold from the Contractor out of payments due, an amount sufficient to pay such worker the difference between the wages required to be paid under this Contract and the wages actually paid such worker for the total number of hours worked, and that the Owner may disburse such amount so withheld by it for and on account of the Contractor to the Employee to whom such amount is due. The Contractor further agrees that the amounts to be withheld pursuant to this paragraph may be in addition to the percentages to be retained by the Owner pursuant to other provisions of this Contract.

59. PAYMENT OF EMPLOYEES

The Contractor and all subcontractors shall comply with the Regulations of the Secretary of Labor made pursuant to the Anti-Kickback Act of June 30, 1940, 40 U.S.C. 276 (c) and any amendments or modifications thereto. The Contractor and all subcontractors shall furnish the Owner with weekly statements of compliance. In case of subcontracts, the Contractor shall cause appropriate provision to be inserted in any subcontracts for the work which he may let to ensure compliance with said Anti-Kickback law by all subcontractors subject thereto, and the Contractor shall be responsible for the submission of all statements of compliance required of subcontractors by said Anti-Kickback Act except as the Secretary of Labor may specifically provide for reasonable limitations, variations, and exemptions from the requirements thereof.

The Contractor and each of his subcontractors shall pay each of his employees engaged in work on the project in conformance with Section 220, Article 8, New York State Labor Law.

60. ANTI-KICKBACK CLAUSE

The Contractor shall comply with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in the Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion or repair of a public work, to give up any part of the compensation to which he is otherwise entitled. The Owner will report all suspected or reported violations to EPA.

61. NOTIFICATION TO PROCEED AND SEQUENCE OF CONSTRUCTION

The Contractor shall commence work on the date ordered by the Owner. The Contractor shall acknowledge in writing receipt of the Owner's order to commence work.

The Engineer shall have the power to order the sequence of work on the project and order better progress on the work if the rate seems to fall below that necessary to finish on the completion date. The Contractor shall take all precautions in ordering materials and equipment to secure deliveries which will not delay the progress of the work

62. ADDITIONAL SUBMITTALS

The Contractor shall also furnish on forms to be approved by the Owner periodical itemized estimates of work done for the purpose of making partial payments thereon. As specified in Section 97, the values employed in making up any of these schedules will be used only in determining the percent completion on the job site.

63. SUBCONTRACTING

The Contractor shall utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors; provided that if the Owner shall determine that the specialty work in question has been customarily performed by the Contractor's own organization and that such organization is presently competent

to perform such work, the Contractor shall be permitted to do so: Provided further, that if the Owner shall determine that the performance of any specialty work by specialty subcontractors will result in materially increased cost or inordinate delays, the requirements of this paragraph shall not apply.

The Contractor shall not award any work to any subcontractor without prior written approval of the Owner, which approval will not be given until the Contractor submits to the Owner a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as the Owner may require. The Owner will then notify the Contractor of its decision.

The Contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the General Contract Conditions and other Contract Documents insofar as applicable to the work of subcontractors.

Nothing contained in this Contract shall create any contractual relation between any subcontractor and the Owner.

64. CHANGES TO THE CONTRACT

The Owner may at any time, without notice to surety, by written order, make any changes in the work, additions or deletions, within the general scope of the contract, including but not limited to changes:

- 1) In the specifications (including drawings and designs);
- 2) In the time, method or manner of performance of the work;
- 3) In the Owner furnished facilities, equipment, materials, services or site, or;
- 4) In directing acceleration of the performance of the work.

All change in the Contract, additions or deletions, must be approved in writing by the Owner prior to commencing the contract modifications. Any "extra work" or change order performed without a properly executed written change order shall be at no cost to the Owner.

In the absence of a written change order, if the Engineer or Owner shall direct, order or require any work, whether orally or in writing which the Contractor deems to be "extra work," the Contractor shall nevertheless comply therewith, but shall within five days give written notice to the Engineer stating why he deems it to be "extra work". The written notice is for the purpose of (1) allowing the Engineer the opportunity to cancel the order, direction or requirement; (2) allowing the Engineer an opportunity to keep accurate record of materials, labor and other items used to perform the work; (3) allowing the Engineer or the Owner an opportunity to take action as it may deem advisable in light of the Contractor's claim. Accordingly, the failure of the Contractor to serve notice shall be deemed to be a conclusive and binding determination on his

part that the direction, order or requirement of the Engineer is not "extra work" and shall be deemed to be a waiver by the Contractor of all claims for additional compensation or damages.

65. PRICING OF CHANGES

The equitable adjustment for any change in the work (increase/decrease, credit) shall be determined by one or more of the following methods:

- (a) By prices specifically named in the specifications or proposals.
- (b) By acceptance of agreed unit prices based on the estimated cost plus overhead and profit as applicable.
- (c) By estimate of the actual cost of labor and materials plus overhead and profit, cost to be determined as the work progresses.
- (d) By actual cost of labor and materials plus overhead and profit, cost to be determined as the work progresses.
- (e) By estimate of the value as discernible from the form of invoice.
- (f) By acceptance of agreed lump sum prices based on the estimated cost plus overhead and profit as applicable.

Overhead shall be defined as an allowance to compensate for all costs, charges and expenses, direct or indirect, except for the actual cost of labor and material as defined following. Overhead shall be considered to include, but not be limited to insurance bond or bonds, field and office supervisors and assistants above the level of foremen, use of small tools and minor equipment, incidental job burdens, general office expense, etc.

Actual cost of labor and material shall be defined as the amount paid for the following items, to the extent determined reasonable and necessary:

- Item 1 - Cost of materials delivered to the job site for incorporation into the contract work.
- Item 2 - Wage paid to workmen and foremen and wage supplements paid to labor organization in accordance with current labor agreements.
- Item 3 - Premiums or taxes paid by the contractor for workmen's compensation insurance, unemployment insurance, FICA tax and other payroll taxes as required by law, not of actual and anticipated refunds and rebates.
- Item 4 - Sales taxes paid as required by law.
- Item 5 - Allowance for use of construction equipment (exclusive of hand tools and minor equipment) as approved for use by the Engineer.
The rental rate for self-owned equipment used shall be reasonable and shall be based upon those prevailing in the area of the Town where such work is to be done, and shall be agreed to in writing before the work is begun. For equipment which is

already on the project, the rental period shall start when ordered to work by the Engineer, and shall continue until ordered to discontinue by him. For equipment which has to be brought to the project site for a specific operation ordered by the Engineer, the Town will pay all loading and unloading costs, also all transportation costs to and from the project within the boundaries of the Town of Orangetown provided, however, that the cost of return transportation shall not exceed that of moving the equipment to the project. The minimum payment for any one rental period shall be for 4 hours, unless otherwise agreed upon between the Engineer and the Contractor. The rental period shall begin at the time the equipment has been unloaded on the project, and shall end on and include the day the order to discontinue the use of the equipment is given to the Contractor by the Engineer. The daily rate shall apply for rental periods of 4 calendar days or less, the weekly rate shall apply for rental periods of more than 4 and not exceeding 21 calendar days, and the monthly rate shall apply for rental periods in excess of 21 calendar days. For fractional periods above the full unit rental period (day, week, month) reimbursement shall be proportioned on the basis of the applicable rental period (Day = 8 Hours; Week = 7 Calendar Days; Month = 30 Calendar Days). In the alternative, the Engineer-in-charge may approve for reimbursement a rate representing the allocable costs of ownership. Self-owned equipment is defined to include equipment rented from controlled or affiliated companies. Rented equipment shall be paid for at the actual rental cost. Gasoline, oil and grease required for operation and maintenance of all rental equipment shall be paid for at the actual cost.

Item 6 - When the material furnished under item (1) is used material, its value shall be pro-rated to the value of new material, but should be no more than its cost. When the salvage value of salvable material furnished under Item (1) exceeds the cost of salvage, a suitable credit shall be given the Owner.

Regardless of the method used to determine the value of any change, the Contractor shall submit evidence satisfactory to the Owner to substantiate each and every item that constitutes his proposal of the value of the change. The amounts allowed for overhead and profit shall not exceed the applicable percentages as established in the following paragraphs.

If the work is done directly by the Contractor, under method (b), (c), (d), or (f), overhead and profit may be added to the cost of the labor and materials. The amount allowed for overhead and profit shall be determined by negotiations. The objective of the negotiations shall be the exercise of sound business judgment including a fair and reasonable profit based on the Engineer's assumption of risk and input to total performance. In no case, however, shall the percentage for overhead be more than 10% of the cost of labor and materials. The percentage for profit shall in no case be greater than 10% of the cost of labor, materials and overhead. These maximum allowable overhead and profit percentages shall be applicable to all changes (increase/ decrease, credit). No amount for overhead and profit shall be allowed on the premium portion of overtime pay. No amount for overhead and profit shall be allowed on payroll taxes which include unemployment insurance, FICA tax, workman's compensation, personal liability and property damage.

If the work is done by a subcontractor under method (b), (c) or (d), the Sub-contractor may be compensated for overhead and profit negotiated but with a maximum allowable overhead of

5% of the cost of labor and materials and a maximum profit of 10% of the cost of labor, materials and overhead. These overhead and profit percentages shall be considered to include all allowances to subcontractors, including the subcontractor's overhead and profit. The Contractor is entitled to a maximum combined overhead and profit allowance of 10% added to the subcontractor's total cost. These maximum allowable overhead and profit percentages shall be applicable to all changes (increase/decrease, credit). No amount for overhead and profit shall be allowed on the premium portion of overtime pay.

The Owner shall determine by which of the foregoing methods the value of any changes shall be computed.

In computing the value of a change order which involves additions and deductions of work and the added work exceeds the omitted work, overhead and profit shall be computed on the amount by which the cost of additional labor and material exceeds the cost of the omitted labor and material, except no additional overhead and profit shall be allowed on value of work determined by method (a).

In computing the value of a change order which involves deductions and additions of work and the omitted work exceeds the added work, the Contractor will be allowed to retain the overhead and profit on the amount which the omitted work exceeds the added work, except that no overhead and profit shall be retained on value of work determined by method (a).

The Contractor may retain overhead and profit on a change order which involves deductions only in accordance with the maximum allowable percentages defined previously, except that no overhead and profit shall be considered on value of work determined by method (a). Overhead and Profit cannot be applied to payroll taxes such as Unemployment Insurance, FICA, Workmen's Compensation, Personal Liability and Property Damage Insurance.

66. MUTUAL ACCORD AND SATISFACTION

The increase or decrease in Contract price and/or Contract Time stated in a change order shall unequivocally comprise the total price and/or time adjustment due or owed the contractor for the work or changes ordered by the change order. By accepting a change order, the Contractor acknowledges and agrees that the stipulated price and/or time adjustments represent full compensation for all increases or decreases in the cost of or the time required to perform the Contract as a whole arising directly or indirectly from the change order, including costs and delays associated with the interruption of schedules, extended overheads, delays, cumulative impacts or ripple effect on all other parts of the work under the contract not changed by the change order. Signing of the change order constitutes full and mutual accord and satisfaction for the adjustment in contract price and/or time, subject to the current scope of the entire work as set forth in the Contract Documents. Acceptance of this waiver constitutes an agreement between Owner and Contractor that the change order represents the due and owed adjustment to the Contract, and that the Contractor will waive all rights to file a claim on this change order after it is properly executed.

67. DEDUCTIONS FOR UNCORRECTED WORK

If the Engineer and Owner deem it inexpedient to correct work damaged or not done in accordance with the Contract, an equitable deduction from the Contract Sum shall be made therefor.

68. CORRECTION OF WORK BEFORE FINAL PAYMENT

The Contractor shall promptly remove from the premises all materials condemned by the Engineer as failing to conform to the contract, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement. Acceptance of material and workmanship by the inspectors shall not relieve the Contractor from his obligation to supply other materials and workmanship when so ordered by the Engineer.

If the Contractor does not remove such condemned work and materials within 10 days after written notice, the Owner may remove them and may store the materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal within 10 days' time thereafter, the Owner may, upon ten days' written notice, sell such materials at auction or at private sale and shall pay to the Contractor the net proceed thereof, after deducting all the costs and expenses that should have been borne by the Owner.

If, in the opinion of the Engineer, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the Compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Engineer shall be equitable.

Neither the final certificate, nor payment, nor any provision in the plans and specifications shall relieve the Contractor of responsibility for faulty materials or workmanship and he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from date of final certificate. The Owner shall give notice of observed defects with reasonable promptness.

69. ADDITIONAL OR SUBSTITUTE BOND

If at any time the Owner shall be or become dissatisfied with any surety or sureties then upon the Performance Bond or if for any specific reason such bond shall, in the Owner's opinion, cease to be adequate security to the Owner, the Contractor shall within five (5) days after notice from the Owner, substitute an acceptable bond in such form and sum signed by such other sureties, as may be satisfactory to the Owner. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor be made until the new sureties shall have qualified.

70. LIENS

Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the Owner a complete release of all liens arising out of

this Contract, or receipts in full in lieu thereof and, if required in either case, an affidavit which certifies so far as he has knowledge or information that the releases and receipts include all the labor and materials for which a lien could be filed; but the Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Engineer, to indemnify the Owner against any lien. Upon request of the Owner, the Contractor shall at his own expense, by bonding it or otherwise, secure the prompt discharge of any lien or liens which may be filed against the property as a result of this Contract.

71. ASSIGNMENT

Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due to him hereunder, without the prior written consent of the Owner.

72. NO WAIVER OF LEGAL RIGHTS

The Owner or the Engineer shall not be precluded or stopped by any measurement, estimate, or certificate, made or given by them, or any agent or employee of the Owner, under any provision or provisions of the contract, at any time, either before or after the completion and acceptance of the project and payment thereof pursuant to any measurement, estimate, or certificate, from showing the true and correct amount and character of the work performed and materials furnished by the Contractor, or from showing at any time, that any such measurement, estimate, or certificate is untrue or incorrectly made in any particular, or that the work or materials, or any part thereof do not conform in fact to the specifications and contract, and the Owner shall have the right to reject the whole or any part of the aforesaid work or materials, should the said measurements, estimates, certificate, or payment be found, or be known to be inconsistent with the terms of the contract or otherwise improperly given, and the Owner shall not be precluded and stopped, notwithstanding any such measurement, estimate, certificate or payment in accordance therewith, from demanding and recovering from the Contractor and his surety such damages as it may sustain by reason of his failure to comply with the terms of the specifications and contract, or on account of any overpayment or overpayments made on any estimate or certificate. Neither the acceptance of the Engineer or any agent or employee of the Owner, nor any estimate or certificate by the Engineer, for any payment of money, nor any payment, for, nor acceptance of the whole or any part of the work by the Owner, or the Engineer nor any extension of time, nor any possession taken by the Owner or its employees, shall operate as a waiver of any portion of the contract or of any power herein reserved by the Owner or any right to damages herein provided, nor shall any waiver of any breach of the contract be held to be a waiver of any other or subsequent breach.

73. ESTIMATES AND PAYMENTS

In computing the amount of the estimates of work done, the stated unit prices will be used when the estimate is on a unit price basis. On lump sum bids the Contractor shall within three weeks after award of the Contract prepare and submit to the Engineer for approval a complete breakdown of all lump sum bid prices contained in the Contract with the total prices apportioned into component parts of the various types and categories of material and labor involved in each

lump sum item. After approval by the Engineer, this breakdown will be used as a basis for preparing partial estimates and establishing progress payments.

When the project has been completed in accordance with the plans and specifications, and has been accepted, payment in full will be certified by the Engineer provided the work is accepted on or before the specified completion due or any authorized extension thereof.

In making up the final estimate, the linear measurement made along the horizontal axis of the surface of the finished work will be considered the length of the work. All estimates, including the final, will be made for actual quantities of work performed and materials in place as determined by the measurements of the Engineer, and this determination as to the quantities involved in any contract shall be accepted as final, conclusive and binding upon the Contractor.

The final certificate will constitute the acceptance of the work by the Owner except as to the work thereafter found to be defective. The date of such certificate shall be regarded as the date of acceptance of the work.

For computation of the quantities to be paid for under the various items of this contract, it is agreed that the planimeter shall be considered an instrument of precision and quantities computed from areas obtained by its use shall be accepted by all parties hereto as accurate.

Upon satisfactory completion of the work performed under this agreement as a condition before final payment under this agreement or as a termination settlement under this agreement the Contractor shall execute and deliver to the Owner a release of all claims against the Owner arising under or by virtue of this agreement except claims which are specifically exempted by the Contractor to be set forth therein. Unless otherwise provided in this agreement or by State law or otherwise expressly agreed to by the parties to this agreement final payment under this agreement or settlement upon termination of this agreement shall not constitute a waiver of the Owner's claims against the Contractor or his sureties under this agreement or applicable performance and payment bonds.

74. OWNER'S RIGHT TO WITHHOLD PAYMENTS

The Owner may withhold from the Contractor so much of any payments due him as may in the judgment of the Owner be necessary:

- (a) to assure the payment of just claims then due and unpaid of any persons supplying labor or materials for the work;
- (b) to protect the Owner from loss due to defective work not remedied; or
- (c) to protect the Owner from loss due to injury to persons or damage to the work or property of other contractors, subcontractors, or others caused by the act or neglect of the Contractor or any of his subcontractors. Owner shall have the right as agent for the Contractor to apply any such amounts so withheld in such manner as the Owner may deem proper to satisfy such claims or to secure such protection. Such application of such money shall be deemed payments for the account of the Contractor.
- (d) a reasonable doubt that the Contract can be completed for the balance then unpaid.
- (e) damage to another Contractor.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

75. FINAL INSPECTION AND TIME OF COMPLETION

A date for final inspection of the work by the Engineer and Owner shall be set by the Contractor in a written request therefor, which date shall be not less than ten (10) days after the date of such request. Prior to the final inspection, the various items of equipment and related work shall be placed in operation by the respective contractors whose work is involved, to satisfactorily demonstrate that the various elements of work will operate in accordance with the intent of the Plans, Specifications and approved Shop Drawings.

The work will be deemed complete as of the date so set by the Contractor, if, upon such inspection the Engineer determines that no further work remains to be done at the site. However, if such inspection, in the opinion of the Engineer, reveals items of work still to be performed, the Contractor shall promptly perform them and then request a reinspection. If, under any reinspection the Engineer determines that the work is complete, the date of completion shall be deemed to be the actual date of such reinspection, which shall be made not less than one (1), no more than ten (10) days after the date of the request therefor.

In the event that certain portions of the work are required to be placed in use before completion of all work included under the Contract, the Contractor shall request an inspection of such portions of the work so required in the same manner as specified above for final inspection.

During such inspections, the work shall be clean and free from materials which would interfere with the inspection.

In no case will the final estimate be prepared until the Contractor has complied with all the requirements set forth and the Engineer has made his final inspection of the entire work and is satisfied that the work has been properly and satisfactorily constructed in accordance with the requirements of the Plans and Contract Documents.

76. CERTIFICATE OF COMPLETION

Upon the completion of all work whatsoever required, the Engineer shall file a written certificate with the Owner, and with the Contractor as to the entire amount of work performed and compensation earned by the Contractor, including extra work and compensation therefor.

77. TERMINATION FOR DEFAULT-DAMAGES-TIME EXTENSION

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the Owner may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event, the Owner may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage or cost to the Owner resulting from his refusal or failure to complete the work within the specified time.

(b) If fixed and agreed liquidated damages are provided in the contract and if the Owner so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages for each day of delay until such reasonable time as may be required for final completion of the work, together with any increased costs occasioned by the Owner in completing the work.

(c) If fixed and agreed liquidated damages are provided in the contract and if the Owner does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages for each day of delay until the work is completed or accepted.

(d) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

- 1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather or delays or subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers;
- 2) The Contractor, within 5 days from the beginning of any such delay notifies the Owner in writing of the causes of delay. The Owner shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in its judgment, the findings of fact justify such an extension.

(e) The rights and remedies of the Owner provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(f) As used in paragraph (d)(1) of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier.

78. DELAYS AND TIME EXTENSIONS

If the Contractor is delayed at any time in the progress of work by any act or neglect of the Owner or by any separate Contractor employed by the Owner, or by changes in the work, or by labor disputes, fire, unusual delay in transportation, unusually severe weather conditions, adverse soil conditions, unavoidable casualties, delays specifically authorized by the Owner, or by causes beyond the Contractor's control, avoidance, or mitigation, and without the fault or negligence of the Contractor and/or subcontractor or supplier at any tier, then the Contract time shall be extended by change order for such reasonable time as the Owner may determine that such event has delayed the critical path of the work or overall completion of the work if the Contractor complies with the notice and documentation requirements set forth below.

Any claim for extension of time shall be made in writing to the Owner, not more than 5 calendar days from the beginning of the delay. The notice shall indicate the cause of the delay, the anticipated length of the delay, and the probable effect of such delay upon the progress of the work. If the cause of the delay is continuing, the Contractor must give written notice every month at the same time it submits the updated progress narrative report to the Owner. Within thirty days after the elimination of any such delay, the Contractor shall submit further documentation of the delay and a formal change order request for an extension of time for such delay. The written

request for time extension shall state the cause of the delay, the number of days extension requested, and such analysis and documentation of the schedule of the project and other documentation to demonstrate a delay in the critical path of the work or the overall project completion. If the Contractor does not comply with the notice and documentation requirements set forth above, the claim for delay shall be waived by the Contractor.

Except as otherwise provided, extension of time shall be the Contractor's sole remedy for any and all delays. No payment or compensation of any kind shall be made to the Contractor for damages because of hindrance in the orderly progress of the work or delay from any cause in the progress of the work, whether such hindrances or delays be avoidable or unavoidable. The Contractor expressly agrees not to make, and hereby waives any claim for damages on account of any delay, obstruction, or hindrance for any cause whatsoever, including but not limited to the aforesaid causes and agrees that the Contractor's sole right and remedy in the case of any delay shall be an extension of the time fixed for completion of the contract. Without limitation, the Owner's exercise of its rights under the changes clause, regardless of the extent or number of such changes, shall not under any circumstances be construed as compensable delays, it being acknowledged that the Contract Amount includes and anticipates any and all delays whatsoever from any cause, whether such delays be avoidable or unavoidable.

79. REMOVAL OF EQUIPMENT AND SUPPLIES

In the case of termination of this Contract before completion from any cause whatever, the Contractor, if notified to do so by the Owner, shall promptly remove any part of all of his equipment and supplies from the property of the Owner, failing which the Owner shall have the right to remove such equipment and supplies at the expense of the Contractor.

80. CLEAN UP

During construction of the work, the Contractor shall, at all times keep the site of the work and adjacent premises as free from material, debris and rubbish as is practical and shall remove the aforementioned from any portion of the site, if in the opinion of the Engineer such material, debris or rubbish constitutes a nuisance or is objectionable.

Off site disposal of construction and demolition debris shall be handled in accordance with all State and local regulations. In no case shall such debris be disposed of in water bodies, flood plains or wetlands. The Contractor is responsible for all debris removal and obtaining all required permits and licenses for the disposal and transporting of debris. The Contractor is responsible for disposing debris at an approved site and transporting debris in licensed vehicles with proper permits.

All materials, debris, soils etc. not to be utilized on the project shall be removed from the construction site and properly disposed of by the Contractor at an approved location other than within Town Of Orangetown property. The site for the disposal of this material shall be approved by NYSDEC, Albany, New York. The material may be stockpiled on the site at a location approved by the Engineer and removed in a timely manner.

The Contractor shall remove from the site all of his surplus materials and temporary structures when no further need therefor develops.

At the conclusion of the work and before final payment, all erection plant, tools, temporary structures and materials belonging to the Contractor shall be promptly taken away and he shall remove and promptly dispose of all water, dirt, rubbish or any other foreign substances.

Precautions will be taken to maintain cleanliness on roadways and other areas used by the Contractor. The Contractor will be held responsible for immediate removal of all spillage on the roads and other areas, both on and off site.

81. POWER OF CONTRACTOR TO ACT IN AN EMERGENCY

In case of an emergency that threatens loss or injury of property or safety of life, the Contractor shall act, without previous instructions from the Owner or Engineer, as the situation may warrant. The Contractor shall notify the Owner of the emergency action immediately thereafter. Any claim for compensation by the Contractor, together with substantiating documents in regard to expense, shall be submitted to the Owner and the amount of compensation if any shall be determined by agreement prior to the issuance of a formal contract modification to the contract. However, if the emergency is created or aggravated by the Contractor, he shall be liable for the resulting damages. If the Contractor fails to take the necessary action as required by such an emergency, the Owner has the option to assign another Contractor or use his own forces to perform the emergency work.

82. CONTRACTORS' INSURANCE

The CONTRACTOR shall procure and maintain, at his own expense and without expense to the OWNER, until final acceptance by the OWNER of the work covered by the Contract, insurance for liability for damages imposed by law, of the kinds and in the amount hereinafter provided, in insurance companies authorized to do such business in the state in which the project is to be performed, covering all operations under the Contract, whether performed by him or by subcontractors. Before commencing the work, the CONTRACTOR shall furnish to the OWNER a certified copy of the original policy and such number as OWNER may request of a Certificate or Certificates of Insurance in form satisfactory to the OWNER, showing that he has complied with this paragraph, which certificate or certificates shall provide that the policies shall not be changed or canceled until thirty (30) days written notice has been given to the OWNER. The CONTRACTOR's insurance policy shall cover all the work performed by his subcontractors. The subcontractor shall provide workmen's compensation insurance for their employees. A copy of said policy shall be furnished to the ENGINEER.

A. Workmen's Compensation Insurance

A policy covering the obligations of the CONTRACTOR in accordance with the provisions of the New York State Workmen's Compensation Law covering all operations under the Contract, whether performed by him or his subcontractors. The Contract shall be void and of no effect unless the person or corporation making or executing the same shall secure compensation coverage for the benefit of, and keep insured during the life of

said Contract, such employees in compliance with the provisions of the Workmen's Compensation Law. (State Finance Law, Section 142).

B. Bodily Injury and Property Damage Liability Insurance

Unless otherwise specifically required by special specifications, each policy with limits of not less than \$1,000,000 combined single limit with \$2,000,000 excess limits for all claims arising out of occurrences during the policy period, shall be furnished in the types specified, viz:

(1) Comprehensive General Liability Insurance covering the liability of the CONTRACTOR imposed by law for bodily injury or property damage with respect to all work performed by him under this Contract, including:

- a) Broad Form Contractual Liability coverage
- b) Broad Form Property Damage coverage
- c) Personal Injury coverage
- d) Contractor's Protective Liability coverage
- e) Completed Operations coverage to extend for a period of not less than three years from the date of acceptance by the OWNER.
- f) Waiver of Subrogation in favor of the Owner, Engineer, Architect, state and federal agencies and/or agents, inspectors and employees of this or any other municipal body or public utility which may have granted permits in connection with the work.
- g) Any exclusions pertaining to blasting, explosion, collapse or underground property damage shall be deleted.

(2) Contractor's Protective Liability Insurance issued to and covering the liability for damages. imposed by law upon the Contractor with respect to all work under this Contract performed for the CONTRACTOR by subcontractors.

(3) The Town of Orangetown shall be named an additional named insured (not an additional insured) on all policies.

(4) CONTRACTOR's Automobile Bodily Injury and Property Damage Liability Insurance including:

- a) Coverage of Owned, Hired and Non-Owned Vehicles.
- b) OWNER, ENGINEER, Architect, etc. are designed as Additional Insured. The CONTRACTOR shall procure and shall maintain during the life of this Contract, Automobile Bodily Injury Liability Insurance in an amount not less than \$1,000,000 for injuries including accidental death, to any one person, and subject to the same limit for each person, in an amount not less than \$2,000,000 in excess of single coverage limit on account of one accident; and Automobile Property Damage Liability Insurance in an amount not less than \$1,000,000 for each accident and \$2,000,000 in excess of single limit for aggregated liability.

(5) Builder's Risk

The CONTRACTOR shall effect and maintain a builder's risk "all risk" policy, including fire, extended coverage, vandalism, collapse and flood, upon all the work in place and all materials stored at the project site, whether or not covered by partial payments made by the OWNER. This insurance shall be in an amount equal to the full insurance value thereof at all times and shall be for the benefit of the OWNER, the CONTRACTOR and such subcontractors as their interest may respectively appear. The OWNER shall be furnished with a certified copy of the policy as soon after the work has started as is practicable and, in any event, prior to the issuance of the first certificate for partial payment under the Contract.

(6) Additional Insurance

The CONTRACTOR shall effect and maintain at his own expense such additional insurance policies as are required by the various public agencies, railroad companies, utility companies, etc., that have jurisdiction over, or are adjacent to, the construction site.

C. Certificate of Insurance

The CONTRACTOR shall furnish Certificates of Insurance on each subcontractor employed in the performance of the work under this Contract, showing the said subcontractors have complied with all requirements of this Contract with reference to insurance to be furnished by such subcontractor.

83. INDEMNITY, DEFENSE OF ACTIONS OR SUITS

The Contractor shall defend, indemnify, save and hold harmless the Owner and the Engineer and their agents and employees from and against all claims, damages, losses and expenses including attorneys' fees that shall or may happen to the said work or to any part or parts thereof, or to any materials, building, equipment or other property that may be used or employed therein, or placed upon the ground, during the progress of the work, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder, nor shall the Owner be in any manner answerable or responsible for any injury done or damages or compensation required to be paid under any present or future law, to any person or persons whatever, whether employees of the Contractor or otherwise, or for damage to any property, whether belonging to the Owner or to others, occurring during or resulting from the said work. The Contractor also agrees that he will properly guard against all such injuries, damages and compensation. The Contractor also agrees that he shall at all times defend, indemnify and save harmless the Owner, its officers and agents against all such injuries, damages and compensation arising or resulting from causes other than its neglect.

The named insured agrees to defend, indemnify, save and hold harmless the Town of Orangetown, any Agency, Department or Commission thereof, from any claims arising out of the

work performed under any contract or permits issued by the Town Of Orangetown to perform work upon owned, rented, or leased Town properties.

The Contractor will, at his own expense, defend, indemnify and save harmless the Owner, its officers and agents, and make good any damage and/or physical injuries that shall in the course of the work and construction under this Contract be done or caused to any adjacent, abutting, or overhead property, which shall include, but shall not be limited to lands, foundations, walls, buildings (abutting, under or overhead) and structures of all kinds, lessees, operators or occupants of any buildings and/or structures.

84. MUTUAL RESPONSIBILITY OF CONTRACTORS

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

85. OWNER'S CONTROL SHALL NOT LIMIT CONTRACTOR'S RESPONSIBILITY OR RISK

The Contractor shall be solely, completely and continuously responsible, during the performance of this Contract, including such periods during which actual work may not be in process such as normal non-working hours, holidays, Saturdays and Sundays, strikes, for the conditions of the job site, which responsibility shall include the safety, directly or indirectly, or all persons and property involved in, related to or entering into or in the proximity of said job site whether or not such involvement, relation or entry is for performance of work or provision of services under this contract, and shall be held liable for any bodily injury, death or property damage arising, due to job site conditions, out of or contingent to the performance of all work under this contract.

The Contractor shall take all necessary precautions to prevent the same. Neither the completion of the work nor the final payment therefor shall discharge the Contractor from his responsibility for any claims from injury to persons or property which may have arisen during the work.

The Owner shall not be responsible, in any way, for the adequacy or inadequacy of any action taken or not taken by the Contractor which affects or might affect the safety of any individual or property, either directly or indirectly, during the performance of this Contract and the Engineer shall be held blameless and shall accrue no liability for any bodily injury, death or property damage arising out of or contingent to the performance of all work under this Contract.

86. SOIL EROSION AND SEDIMENT CONTROL PLAN

Soil erosion and sediment control shall conform to the requirements of the New York State Department of Transportation "Construction Guidelines for Temporary Erosion Control" dated July, 1987.

87. SALVAGED MATERIALS

All material and equipment removed from the site, which is deemed salvageable by the Engineer shall remain the property of the Owner. All equipment designated as salvage shall be delivered to the Town Of Orangetown facilities as directed or otherwise specified. All rubbish shall be removed from the site and disposed of by the Contractor at his own expense.

88. SALE OF TANGIBLE PERSONAL PROPERTY TO CONTRACTOR OR SUBCONTRACTOR

A. Transfer of Title to Material Delivered to Site:

Title to all materials to be sold by the Contractor to the Owner pursuant to the provisions of the Contract Documents shall immediately vest in and become the sole property of the Owner upon delivery of such materials to the site. Notwithstanding such transfer of title, the Contractor shall have the sole continuing responsibility to install such materials, protect them, maintain them in proper condition and forthwith repair, replace and make good any damage hereto without cost to the Owner until such time as the work covered by the Contract is fully accepted by the Owner. Such transfer of title shall in no way affect any of the Contractors' obligations under the Contract. In the event that after title has passed to the Owner, any of such materials are rejected as being defective or otherwise unsatisfactory, the Contractor must then replace said defective or unsatisfactory materials with other acceptable materials at no additional cost to the Owner.

B. Exemption from Sales and Compensating Use Taxes of the State of New York and Cities and Counties

1. The Owner is exempt from payment of sales and compensating use taxes of the State of New York and of cities and counties on all supplies and materials sold to the Owner pursuant to this Contract. This exemption does not, however, apply to tools, machinery, equipment or other property leased by or to the Contractor or a subcontractor or to supplies and materials not incorporated into the completed Project and the Contractor and his subcontractor shall be responsible for and pay any and all applicable taxes, including sales and compensating use taxes, on such leased tools, machinery, equipment or other property or such unincorporated supplies and materials and the provisions set forth below will not be applicable to such tools, machinery, equipment, supplies and materials.

2. The purchase by the Contractor of the supplies and materials sold hereunder will be a purchase or procurement for resale and therefore not subject to the New York State sales or compensating use taxes or any such taxes of cities or counties. The sale of such supplies and materials by the Contractor to the Owner, which is a government agency, will not be subject to the

aforesaid sales or compensating use taxes. With respect to such supplies and materials sold hereunder, the Contractor, at the request of the Owner, shall furnish to the Owner such bills of sale and other instruments as may be required by it, properly executed, acknowledged and delivered, assuring to it title to such supplies and materials free of encumbrances and the Contractor shall mark or otherwise identify all such supplies and materials as property of the Owner.

3. The purchase by subcontractors of supplies and materials to be sold hereunder will also be a purchase or procurement for resale to the Contractor (either directly or through other subcontractors) and therefore not subject to the aforesaid sales or compensating use taxes, provided that the subcontract agreements provide for the resale of such supplies and materials prior to and separate and apart from the incorporation of such supplies and materials into the permanent construction and that such contract agreements are in a form similar to this contract with respect to the separation of the sale of supplies and materials from the work and labor to be provided.

4. If as a result of such sale of supplies and materials (1) any claim is made against the Contractor by the State of New York or any city or county for sales or compensating use taxes on the aforementioned supplies and materials or (2) any claim is made against the Contractor by a materialman or a subcontractor on account of a claim against such materialmen or subcontractor by the State of New York or in any city or county for sales or compensating use taxes on the aforementioned supplies and materials, then, if the Contractor and subcontractor have complied with the provisions of this Contract relating thereto, the Owner will reimburse the Contractor for an amount equal to the amount of such tax required to be paid in accordance with the requirements of law, provided that:

- a. The subcontract agreements in connection with this Contract provide for the resale of such supplies and materials prior to and separate and apart from the incorporation of such supplies and materials into the permanent construction; such subcontract agreements are in a form similar to this contract with respect to the separation of the sale of supplies and materials from the other work and labor to be provided; and such separation is actually followed in practice, including the separation of payments for supplies and materials from the payments for other work and labor;
- b. The Contractor and his subcontractors and materialmen obtain any and all necessary resale exemption certificates from the appropriate governmental agency or agencies and furnish a resale certificate to all persons, firms or corporations from which they purchase supplies and materials for the performance of the work covered by this Contract;
- c. The Contractor and all subcontractors maintain and keep for a period of six (6) years after the date of final payment for the sale or, if a claim for sales or compensating use tax is pending or threatened at the end of such six year period, until such claim is finally settled, records which, in the judgment of the Department of Taxation & Finance, adequately show (1) all materials and supplies purchased by them for resale pursuant to the provisions of this Contract

and (2) all materials and supplies sold to the Owner pursuant to the provisions of this Contract.

d. The Owner is afforded the opportunity before any payment of tax is made, to contest said claim in the manner and to the extent that the Owner may choose and to settle or satisfy said authorized to act for the purpose of contesting, settling and satisfying said claim; and

e. The Contractor and the subcontractor give immediate notice to the Owner of any such claim, cooperate with the Owner and its designated attorney in contesting said claim and furnish promptly to the Owner and said attorney all information and documents necessary or convenient for contesting said claim, said information and documents to be preserved for six (6) years after the date of final payment for the sale or, if such a claim is pending or threatened at the end of such six (6) years, until such claim is finally settled. The Owner elects to contest any such claim, it will bear the expense of such contest.

5. Nothing in this Section is intended or shall be construed as relieving the Contractor from his obligations and the Contractor shall have the full continuing responsibility to install the materials and supplies purchased in accordance with the provisions of this Contract, to protect the same, to maintain them in proper condition and to forthwith repair, replace and make good any damage thereto without cost to the Owner until such time as the work covered by the Contract is fully accepted by the Owner.

89. ACCEPTANCE AND FINAL PAYMENT

- (a) Upon completion of the project, the Engineer shall make a final inspection for approval of all the work done under this contract and shall, within 15 days after the acceptance of the work by the Engineer and the Owner, prepare a final certificate of the work done and the value thereof. The Owner shall upon approval of the final certificate promptly pay the Contractor the entire sum so found due thereunder, after deducting all previous payments and all percentages and amounts to be kept and retained under provisions of this contract, including **2.5% of the value of the Contract to be held by the Town for a period of one year from date of completion of the work to insure that all work completed was done in a proper, workmanlike manner** All prior partial payments shall be subject to correction in the final estimate and payment.
- (b) Before issuance of final certificate the Contractor shall submit evidence satisfactory to the Owner and Engineer that all payrolls, material bills and other indebtedness connected with the work have been paid.
- (c) The acceptance by the Contractor of the Final Payment shall be and shall operate as a release to the Owner of all claims and of all liability to the Contractor for all things done or furnished in connection with this work, and for every act and neglect of the Owner and others relating to or arising out of this work, excepting the Contractor's claim for interest upon the Final Payment, if this payment be improperly delayed. No payment, however, final or otherwise, shall operate to

release the Contractor or his sureties from any obligations under the Contract or the Performance Bond.

90. OPTIONAL TERMINATION

The Owner may, at its option, terminate the Contract, in whole or in part, at any time by ten (10) days written notice (delivered by Certified or Registered Mail, Return Receipt Requested) to the Contractor, whether or not the Contractor is in default. Upon such termination, Contractor shall waive any claims for damages, including loss of anticipated profits, on account thereof, but as the sole right and remedy of Contractor, Owner shall pay Contractor in accordance with subparagraph (b) below, provided, however, that those provisions of the Contract which by their very nature survive final acceptance under the Contract shall remain in full force and effect after such termination.

(a) Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

- i) immediately discontinue work on the date and to the extent specified in the notice;
- ii) place no further orders or subcontracts for materials, services or facilities, other than as may be necessary or required for completion of such portion of work under the Contract that is not terminated;
- iii) promptly make every reasonable effort to obtain cancellation upon terms satisfactory to the Owner of all orders and subcontracts to the extent they relate to the performance of work terminated or assign to Owner those orders and subcontracts and revoke agreements specified in such notice and;
- iv) assist Owner, as specifically requested in writing, in the maintenance, protection and disposition of property acquired by the Owner under the Contract.

(b) Upon any such termination, Owner will pay to the Contractor an amount determined in accordance with the following (without duplication of any item):

- i) all amounts due and not previously paid to the Contractor for work completed in accordance with the contract prior to such notice and for work thereafter completed as specified in such notice;
- ii) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in subparagraphs (a) (iii) above;
- iii) the reasonable costs incurred pursuant to subparagraph (a) (iv) above;
- iv) any such reasonable costs incidental to such termination of work.

The foregoing amounts will include a reasonable sum, under all of the circumstances, as profit for all work satisfactorily performed by the Contractor.

91. OPERATIONS MAINTAINED

It is essential to the public health that the operations of the existing facilities be maintained. Interruptions of normal operations shall be held to the minimum necessary for the construction purposes, and only such changes in the normal operating procedures as are approved by the Engineer will be permitted. The Contractor will be required to work in close cooperation and coordination with the Owner and its duly authorized agents to assure that a minimum of changes in the normal operating procedures, and minimum of nuisances, result from his operations.

92. RELOCATION OF OWNER'S, COUNTY'S OR MUNICIPALITY'S STRUCTURES

The Contractor shall remove and replace or rebuild existing sewer or drain pipes and appurtenances owned, controlled or operated by the Owner, County or Municipality, or any part of the fire alarm, telegraph system of the Owner, County or Municipality, or any duct line or conduit owned, leased or operated by the Owner, County or Municipality, occupying the place of the sewer or force main, or sewers or force mains and appurtenances to be laid or built as required herein.

93. DRAINAGE

In accordance with the applicable provisions of the Specifications, the Contractor shall provide all materials required for the removal and disposal of water from trenches, tunnels, excavations for pipes, structures, and other points of the work. Ground water shall be lowered and maintained at such elevation that there will be no spring action or flow of water into excavations until pipes and manholes have been backfilled and concrete has received its initial set. Adequate facilities shall be provided for the interception of suspended matter from the pump discharge before its disposal into existing drainage facilities.

The Contractor shall provide and maintain acceptable ditches, flumes, or pumping installations, as required, to care for water courses and drainage facilities (natural or artificial) intercepted by his operations or by structures. Such facilities shall be adequate to carry peak storm flows, or any other of the normal functions of the water courses and drainage facilities. Plans for such facilities shall be submitted to the Engineer for approval prior to construction. Rerouted drainage channels shall be returned to their original position upon completion of the work, or as approved.

The Contractor will be held responsible for flooding of existing structures or adjacent properties due to any of his operations, and will be held liable for all claims due to flooding, or other damage caused by the above operations.

**NEW DUCTILE IRON PIPE
SPRINKLER MAIN INSTALLATION
119 ROUTE 303, ORANGEBURG, NY
LOCATION MAP**



ROUTE 303

WATERMAIN SHED

Water Main

SOUTH STORAGE BUILDING

