

ROCKAWAY VALLEY REGIONAL SEWERAGE AUTHORITY
MORRIS COUNTY, NEW JERSEY

JERSEY CITY TRUNK SEWER REHABILITATION 2014
CONTRACT NO. 39
STATE LOAN PROJECT NO. S340821-06

THIS AGREEMENT, made and entered into this 27th day of January, 2016,
by and between the ROCKAWAY VALLEY REGIONAL SEWERAGE AUTHORITY, Morris
County, State of New Jersey, party of the first part, hereinafter designated as the Owner, and
National Water Main Cleanings Co.
with legal address at 1806 NEWARK TURNPIKE KENNY NJ.
Hudson in the County of HUDSON, State of NEW JERSEY, party of the second
part, hereinafter designated as the Contractor.

WITNESSETH, that the parties to these presents, each in consideration of the undertakings,
promises and agreements on the part of the other herein contained, have undertaken, promised and
agreed, and do hereby undertake, promise and agree, the party of the first part for itself and for its
successors and assigns, and the party of the second part for itself and for its heirs, executors,
administrators, successors and assigns, as follows:

ARTICLE I - DEFINITIONS

Wherever the words defined in this Article, or pronouns used in their stead, occur in the Contract
Documents (as defined herein), they shall have the following meanings:

The word "Owner" shall mean the party of the first part above designated or any agency or officer
duly authorized to act in its place under this Contract.

The word "Contractor" shall mean the party of the second part above designated, entering into this
Contract for the performance of the work required to be performed hereunder, and the legal
representatives of the said party, or agents appointed to act for the said party in the performance of
the work.

The word "Engineer" shall mean Hatch Mott MacDonald, of 111 Wood Avenue South, Iselin, New
Jersey, 08830-4112 acting through properly authorized agents or project representatives, such
agents or project representatives acting within the scope of their authority; or such other engineer
named by the Owner in the event that Hatch Mott MacDonald is unable to act or ceases to act as
the Engineer for the Owner.

The word "Contract" shall mean this Contract No. 39 of the Rockaway Valley Regional Sewerage
Authority, Morris County, New Jersey, Jersey City Trunk Sewer Rehabilitation 2014.

The words "Contract Documents" shall mean, collectively, all of the covenants, terms and

conditions in this Contract and in the documents which constitute essential parts of this Contract and which are hereby made part hereof as if set forth at length herein, to wit:

- I. General Conditions
 - A. Notice to Bidders
 - B. Information for Bidders
 - C. Special Information for Bidders
 - D. Labor Standards
 - E. Equal Employment Opportunity
 - F. Supplemental General Conditions
 - G. State and Federal Wage Rates
 - H. Scope of Contract
 - I. Bid
 - (1) Schedule of Bid Items
 - (2) Ownership Disclosure Statement
 - (3) Contractor's Certification
 - (4) Certification of Nonsegregated Facilities
 - (5) Listing of Subcontractors to be Used
 - (6) Non-Collusion Affidavit
 - (7) Certification of Bidders Status
 - (8) Requirement for Certificate of Surety
 - (9) Certificate of Surety
 - (10) Bid Bond
 - (11) Equipment Certification
 - J. Special Conditions
 - K. Contract
 - L. Performance Labor and Material Payment Bond
 - M. Maintenance Bond
 - N. Environmental Maintenance Bond
- II. Specifications
 - A. General Requirements
 - B. Detailed Specifications
 - C. Appendices
- III. Drawings

The words "Contract Price" shall mean the total amount earned by the Contractor and paid in the final estimate and payment under the Article of the Contract entitled, "Final Estimate and Payment".

The word "Specifications" shall mean, collectively, all of the terms and stipulations contained in the General Requirements and in the Detailed Specifications. The requirements of the General Requirements shall be considered part of each Division of the Detailed Specifications.

The words "Final Completion" or "final completion" shall mean the proper completion of all work, for the entire project as contemplated and provided for under the Contract, sufficient for the acceptance by the Owner. If any items of work shall not have been properly completed, e.g., should any punch list items remain uncompleted, Final Completion shall not have been achieved. The Owner, with the advice of the Engineer, shall fix the date of Final Completion of all the work and shall annotate the date of Final Completion upon the Contractor's final Application for Payment.

The words "Substantial Completion" or "substantial completion" or "substantially complete" shall mean satisfactory completion of the major portions of the Contract work, including, without limitation, inspection and testing and the issuance of any necessary governmental Certificates of Occupancy, so that the facility may be turned over to the Owner for its intended use or occupancy. The date of Substantial Completion shall be certified by the Engineer.

The words "Drawings" and "Contract Drawings" shall mean the drawings which show the character and scope of the work to be performed and which are described in the Article of the Information for Bidders entitled, "Contract Drawings".

The words "General Conditions" shall mean everything hereinbefore defined under the word "Contract Documents", except for the Specifications and the Drawings.

The words "Work" or "work" shall refer to any and all labor, construction, demolition, materials, or equipment to be performed by or furnished by Contractor under the Contract.

Wherever in the Contract Documents the terms "ordered", "directed", "required", "allowed", "permitted", "instructed", "designated", "considered necessary", or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of the Engineer as to the work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing or performance of the work or any duty or authority to undertake responsibility contrary to the provisions of the Article of this Contract entitled, "Responsibility of the Engineer".

ARTICLE II - RIGHTS AND RESPONSIBILITY OF CONTRACTOR

A. General

All work shall be performed in strict accordance with and completed in strict compliance the Contract Documents. Observations, construction review, tests, recommendations, acceptances or approvals by the Engineer or by others, shall in no way relieve the Contractor of the obligation to perform and complete all work in accordance with the Contact Documents.

All work shall be performed under the direction and supervision of the Contractor.

The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction except where specific means, methods, techniques, sequences or procedures of construction are required by the Contract Documents.

B. Supervision

The Contractor shall provide and maintain a qualified superintendent, acceptable to the Owner, at all times during the progress of the work and such superintendent shall give efficient supervision to the work until its completion.

The superintendent shall have full authority to act in behalf of the Contractor, and all communications and instructions given to the superintendent shall be considered as given to the Contractor. It shall be the responsibility of the Contractor's superintendent to coordinate the work of the Contractor with the work of the Contractor's subcontractors and with the work of other contractors and subcontractors working on the site.

The superintendent shall be present at the construction site at all times so as to ensure the proper performance and coordination of the Contractor's work and that of its subcontractors.

C. Use and Care of Construction Site and Property

The Contractor shall ensure that its personnel and equipment and those of its subcontractors, materialmen, suppliers, etc., shall enter only the land and areas identified in and expressly permitted by the Contract Documents. The Contractor shall further ensure that the use of the construction site or any other lands or areas to which the Contractor or any of its personnel, equipment, subcontractors, materialmen, suppliers, etc., are permitted entry (including, without limitation, easement and right-of-way areas), shall be limited to the uses permitted by the Contract Documents and such uses shall be conducted in the manner required by the Contract Documents.

The Contractor shall be fully responsible for all damage to the construction site and any other lands or areas (including, without limitation, any improvements, monuments, structures, trees or shrubs thereon) damaged by, in connection with or in any way related to the performance of the work. Any injury or damage to the same shall be made good at the Contractor's expense.

The Contractor shall not enter upon or use private property for any purpose without obtaining the written permission of the owner.

The Contractor is responsible for locating all underground structures and facilities (whether shown in the Contract Drawings or not), for coordinating the work with the owners of such underground structures and facilities, for the safety and protection thereof, and for repairing any damage thereto resulting from or in any way connected with the work. The Contractor shall protect carefully from disturbance or damage all monuments and property markers until the Engineer has witnessed or otherwise referenced their location and consented to their removal in writing. The cost of such location, coordination, safety, protection and repair is deemed to be included in the accepted bid price for this Contract.

D. Safety

The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work and for construction site safety, generally. The Contractor shall be solely responsible for and shall take all precautions for the safety of all persons on the work and other persons who may be affected thereby. The Contractor shall provide the necessary protection to prevent damage to all work and materials and equipment to be incorporated in the work and all other property at the construction site and at lands and areas which the Contractor is authorized to enter under the Contract Documents. These requirements will apply continuously 24 hours per day until final acceptance of the work by the Owner. The Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property in or about the construction site and to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall develop and maintain a safety plan, and shall keep it on site such that it is accessible for inspection at all times. All safety rules of the RVRSA shall be followed. For example, RVRSA does not allow smoking on site at any time, and requires Confined Space Entry permits for entering manholes and similar structures. See additional requirements in Contract Article XXV. The Engineer's observation of the Contractor's performance of the work is to be solely in behalf of the Owner and not in behalf of the Contractor and is not intended to relieve or absolve the Contractor for any inadequacy of the Contractor's safety measures or safety plan(s).

E. Indemnification

The Contractor shall indemnify, defend, save and hold the Owner, Engineer and their consultants, and the officers, employees and agents of each of them and all owners of property upon which work is being performed hereunder pursuant to easement or right-of-way agreements, harmless from and against any damage, liability, loss, costs (including but not limited to attorneys' fees and court and arbitration costs) or claims arising out of, resulting from or related to, the performance or nonperformance of the work provided for in the contract documents, except to the extent such claims arise from negligence of the Owner, the Engineer, or their consultants, officers, employees or agents. The Contractor's indemnification obligation shall not be limited by the amounts of insurance required to be carried by the Contractor under this Contract.

The Contractor shall indemnify and save harmless the Owner and Engineer and all persons acting for or on behalf of them from all claims and liability of any nature or kind, including costs and expenses arising from or occasioned by any infringement or alleged infringement of patent rights on any invention, process, article or apparatus, or any part thereof, furnished and installed by said Contractor or arising from or occasioned by the use or manufacture thereof, including their use by the Owner.

These Indemnifications are intended to provide the broadest indemnification permitted by law and shall be construed consistent with all applicable laws, including but not limited to the laws pertaining to indemnification. These indemnification provisions shall survive the completion and acceptance of the Contract, and shall be effective until the statutes of limitation and repose have run.

ARTICLE III - RESPONSIBILITY OF THE ENGINEER

The Engineer shall initially decide, as an independent professional, questions which may arise as to the quality, quantity and acceptability of materials furnished, acceptability of the work performed, rate of progress of the work, interpretation of Drawings and Specifications and items related thereto, as provided herein. The duties and responsibilities of the Engineer as set forth herein shall not be extended except through written consent of the Engineer and the Owner.

a. Observation of the Work: The Engineer will make visits to the construction site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the Contract Documents. The Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. The Engineer shall be provided access to all parts of the work and shall be furnished with such information and assistance by the Contractor as the Engineer may require to make its observations and construction review. The Contractor shall also make all materials and equipment available at all times for observation by the Engineer. Observations may be made at the source of material or supply, whether mill, plant or shop, as well as at the construction site. The Engineer will keep the Owner informed of the progress of the work and will endeavor to guard the Owner against defects and deficiencies in the work.

b. Acceptability of Work: The Engineer shall have authority to disapprove or reject work which the Engineer believes to be defective work or work not in accordance with the Contract Documents and shall also have authority to require special inspection or testing of the work as authorized in the Contract Documents, whether or not the work is fabricated, installed or completed. The Contractor agrees to abide by the Engineer's decisions relative to the acceptability of the work.

c. Engineer's Decisions: The Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder in behalf of the Owner. Claims, disputes and other matters relating to the acceptability of the work or the interpretation of

the requirements of the Contract Documents will be referred to the Engineer in writing with a request for a formal decision in accordance with this subparagraph, which the Engineer will make within a reasonable time. Written notice of each such claim, dispute or other matter will be delivered by the claimant to the Engineer and to the other party promptly (but in no event later than thirty (30) days) after the occurrence of the event giving rise thereto, and adequate written supporting data will be submitted to Engineer within sixty (60) days after such occurrence unless the Engineer allows an additional period of time to ascertain more accurate data in support of the claim. The rendering of a formal decision by the Engineer with respect to any such claim, dispute or other matter will be a condition precedent to any exercise by the claimant of such rights or remedies as it may have under the Contract Documents or by laws or regulations in respect of any such claim, dispute or other matter.

d. Limitations of Engineer's Responsibilities: Neither the Engineer's authority nor responsibility under the Contract Documents shall give rise to any duty or responsibility of the Engineer to the Contractor, or any subcontractor or materialman of the Contractor, or to any other person performing any of the work. The Engineer will not be responsible for the Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for construction site safety generally, and the Engineer will not be responsible for the Contractor's failure to perform or complete the work in accordance with the Contract Documents. The Engineer will not be responsible for the acts or omissions of the Contractor or of any subcontractor, any materialman, or any other person performing or furnishing any of the work. Nothing herein shall be construed to increase, change, limit or reduce Engineer's obligations to Owner as set forth in prior consulting agreements or contracts relating to this project.

ARTICLE IV - EXPLANATIONS AND WORK SEQUENCE

The Engineer shall make any explanations, clarifications and interpretations, requested in writing by the Contractor and considered necessary by the Engineer, as to the meaning and intention of the Contract Drawings and Specifications. Such explanations, clarifications and interpretations shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

The Contractor's order or sequence of execution of the work and the general conduct of the work shall be subject to the disapproval of the Engineer. The Engineer shall have authority to direct the Contractor that changes in the Contractor's means, methods, techniques, sequences or procedures of construction are necessary to accord with the intent of the Contract Documents or with good construction practice. However, the Engineer shall not be required to advise the Contractor on the substitute means, methods, techniques, sequences or procedures of construction to be utilized or on how the Contractor may overcome any particular problems or difficulties, but the Contractor shall have the responsibility to make proposals in this regard for the consideration of the Engineer.

The Contractor must consult with the Engineer as to sequence of work and intermediate times of completion as set forth in the Schedule of Intermediate Completion Times. The Contractor is hereby notified that the approved Construction Schedules must be considered the general sequence

of the work and the Engineer may request that they be amended, supplemented or modified from time to time during the period of construction to accord with the intent of the Contract Documents, good construction practice, and the actual progress of the work.

Such changes, amendments, supplements or modifications shall in no way entitle the Contractor to additional compensation or affect the responsibility of the Contractor for the work.

ARTICLE V - CONTRACTOR'S REPRESENTATIVES, EMPLOYEES & OFFICE

The Contractor shall at all times enforce strict discipline and good order among the Contractor's employees and those of its subcontractors (of any tier) and materialmen and shall not employ on the work any unfit person or anyone not skilled in the task assigned them.

The Contractor shall maintain an office at the site of the work, where copies of the Contract Documents and of all working drawings shall be kept available for use at any time.

ARTICLE VI - DISCREPANCIES, ERRORS & OMISSIONS

The Contract Documents are intended to be mutually explanatory of each other, but should any discrepancy appear or any contradiction arise or be detected by the Contractor as to anything contained therein, the Contractor shall promptly call the same to the attention of the Engineer and the Contractor shall be deemed to have bid the Contract predicated on the more expensive way of performing such work and the interpretation and decision of the Engineer shall be binding on the Contractor. The Contractor shall be held responsible for all corrective measures and associated costs for failure to notify the Engineer of such discrepancy or contradiction.

Any correction of errors or omissions in the Contract Documents may be made by the Engineer when such correction is necessary for the proper fulfillment of the Contract as construed by him. Except as otherwise provided in this Article, where said correction of errors or omissions materially adds to the cost of or time required for the work to be done by the Contractor, compensation for said additional work and/or an extension of time may be granted under the Article of this Contract entitled, "Changes".

If any item of work is required by the Drawings but is omitted in the Specifications, such item shall be required. If any item of work is required by the Specifications but omitted in the Drawings, such item shall be required. If any item of work is omitted both in the Drawings and Specifications, whether intentionally or otherwise, when the same is usually and customarily required to complete fully the work specified herein, such item shall be required. None of the foregoing shall entitle the Contractor to extra compensation or an extension of time, but the said items of work shall be provided as if called for by all of the Contract Documents.

ARTICLE VII - INSURANCE

In accordance with the provisions of the Article of the Information for Bidders entitled, "Failure to Enter Contract", as a condition precedent to the Owner's obligation to execute this Contract, the Contractor is required to submit evidence (consisting of Certificates of Insurance, Insurance Binders, Insurance Policies, and such other information and/or documentation that may be requested by the Owner) satisfactory to the Owner showing that the Contractor has obtained all insurance coverages required herein. Neither the Contractor nor any of the Contractor's agents, employees or subcontractors are permitted to enter the site or to perform any work on the Contract unless all of the insurance required by the Contract Documents is in effect.

Nothing contained in this Article entitled, "Insurance" or in the Contract Documents shall be construed as limiting the extent of the Contractor's liability for claims or damages resulting from or related to the Contractor's operations under this Contract.

All insurance required hereunder (except Workers' Compensation Insurance policies) shall include the interests of the Contractor, Rockaway Valley Regional Sewerage Authority, City of Jersey City, Town of Boonton, Hatch Mott MacDonald, the State of New Jersey and its agencies, employees and officers, all of whom shall be listed as additional insureds on such policies. Contractor waives all rights of subrogation against the Owner, Engineer and all parties named as additional insureds in such policies for all losses and damages caused by any of the perils covered by such policies and all such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any of the parties named as additional insureds.

The Contractor acknowledges that the Owner, Engineer and Engineer's consultants have insurable interests in the project under the Contractor's insurance policies.

The Contractor shall purchase and maintain, at its sole expense, insurance as will provide protection from claims and liabilities which may arise out of or result from Contractor's performance and furnishing of the work and Contractor's other obligations under the Contract Documents, whether it is to be performed or furnished by Contractor, by any of Contractor's subcontractors or sub-subcontractors (of any tier), by anyone directly or indirectly employed by any of them to perform or furnish any work, or by anyone for whose acts any of them may be liable, with companies satisfactory to the Owner, as follows:

a. Worker's Compensation and Employer's Liability Insurance - covering all of the Contractor's employees directly or indirectly engaged in the performance of this Contract. This insurance shall comply with the statutory requirements of the State or States involved and shall have an Employer's Liability Insurance limit of not less than \$500,000 for bodily injury by accident, \$500,000 for occupational disease and \$500,000 aggregate limit.

b. Commercial General Liability Insurance - shall include Bodily Injury and Property Damage. Combined Single Limit with a limit not less than \$1,000,000 for any one occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products and Completed Operations Aggregate. Personal Injury coverage must be included with a \$1,000,000 limit. A Per Project Aggregate must

be included. Broad Form Property Damage must be included. Contractual Liability Insurance must be included, expressly insuring the Contractor's liability for occurrences assumed by the Contractor under the indemnification clause set forth in the Article of the Contract entitled, "Rights and Responsibility of Contractor", to the extent covered by the standard form of Commercial General Liability policy in New Jersey. Completed Operations coverage must be provided for a minimum of 2 years from completion of the project.

c. Comprehensive Automobile Liability Insurance - covering Contractor for claims arising from all owned, hired and non-owned vehicles with a limit of not less than \$1,000,000 combined single limit for bodily injury and property damage.

d. Umbrella Liability Insurance - providing coverage at least as broad as that provided by the Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Employers Liability Insurance required in a., b., and c. above, with a limit of not less than \$3,000,000 per occurrence and \$3,000,000 aggregate.

e. Builder's Risk Insurance - covering the project under construction in an amount equal to the accepted total bid price of the Contract. The insurance shall cover all risks of physical loss and damage including but not limited to theft, vandalism and malicious mischief, collapse, earthquake, flood and water damage, and shall include damages, losses and expenses arising out of or resulting from any insured loss incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers, architects, attorneys and other professionals). The insurance may have a deductible not to exceed \$10,000.00 which shall be borne by the Contractor.

f. Policy Limits - specified above are minimum, and wherever the law requires higher limits, the higher limits shall govern.

g. Periods of Coverage - The Builder's Risk Insurance shall remain in full force and effect until Substantial Completion shall have been certified by the Engineer, provided, however, that such coverage shall not be terminated unless and until the Owner shall have acknowledged in writing to the Contractor that the Owner's insurers have placed permanent insurance for the facility. All other policies required under this Contract shall remain in full force and effect until the Contractor's Maintenance Bond has been released.

h. Copies of Insurance Policies and Certificates of the insurance required above must be filed with the Owner with a copy to the Engineer before the Contract is signed on behalf of the Owner. All Certificates of Insurance must provide for a minimum thirty (30) days prior written notice to the Owner of any policy cancellation, material change, or non-renewal.

i. Forms of Policies - all liability insurance shall be on an occurrence basis.

j. Subcontractors - shall be required by the Contractor to provide the following insurance:

(1) Worker's Compensation and Employer's Liability Insurance - covering all of the subcontractor's employees directly or indirectly engaged in the performance of this Contract. This insurance shall comply with the statutory requirements of the State or States involved and shall have an Employer's Liability Insurance limit of not less than \$500,000 for bodily injury by accident, \$500,000 for occupational disease and \$500,000 aggregate limit.

(2) Commercial General Liability Insurance – shall include Bodily Injury and Property Damage. Combined Single Limit with a limit of not less than \$1,000,000 for any one occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products and Completed Operations Aggregate. Personal Injury coverage must be included with a \$1,000,000 limit. A Per Project Aggregate must be included. Broad Form Property Damage Insurance must be included.

(3) Comprehensive Automobile Liability Insurance - covering subcontractor for claims arising from all owned, hired and non-owned vehicles with limits of not less than \$1,000,000 aggregate for bodily injury and property damage.

(4) Policy Limits - specified above are minimum, and wherever the law requires higher limits, the higher limits shall govern.

(5) Periods of Coverage - All policies required under this Contract for subcontractors shall remain in full force and effect until the Contractor's Maintenance Bond has been released.

(6) Certificates of Insurance and Insurance Binders, Insurance Policies, as well as any additional information and/or documentation requested by the Owner, of the insurance required above must be filed with the Owner and the Engineer, in triplicate, before the subcontractor is permitted to start work. The Rockaway Valley Regional Sewerage Authority, City of Jersey City, Town of Boonton, Hatch Mott MacDonald, the State of New Jersey and its agencies, employees and officers must appear as additional insureds on all liability policies. All Certificates of Insurance and Insurance Binders must provide for a minimum thirty (30) days prior written notice to the Owner and Engineer of any policy cancellation, material change, or non-renewal.

The Contractor shall not allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been so obtained and the proper Certificates of Insurance and Insurance Binders have been provided to the Owner and Engineer.

Acceptance of the Contractor's insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.

ARTICLE VIII - PATENTS AND COPYRIGHTS

The Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the work or the incorporation in the work of any invention, design, process, product or publication which is the subject of patent rights or copyrights held by others. The Contractor shall provide the Owner with the vested rights to use such inventions, designs, processes, procedures or publications, as are related to the Work, in perpetuity.

The Contractor shall indemnify and save harmless the Owner and Engineer, and all persons acting for or on behalf of them, from all claims and liability of any nature of any kind, including costs and expenses, arising from or occasioned by any infringement or alleged infringement of patent rights or copyrights on any invention, design, process, product or publication, or any part thereof, furnished or installed or used in the performance of the work by said Contractor or arising from or occasioned by the use or manufacture thereof, including their use by the Owner.

These provisions shall survive the completion and acceptance of the Contract, and shall be effective until the statutes of limitation and repose have run.

ARTICLE IX - REGISTRATION OF MOTOR VEHICLES

All motor vehicles used in connection with this Contract shall be registered in the State of New Jersey, to the extent required by the laws, rules or regulations of the State of New Jersey.

ARTICLE X - PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision and clause required by law to be inserted in this Contract shall be deemed to be inserted herein as if set forth at length herein, and the Contract shall be read and enforced as though it were included herein, and if through mistake or inadvertence 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 and such adjustment shall be made without adjustment of the Contract Price or the time for performance of the Contract.

ARTICLE XI - PREVAILING WAGES

The Contractor shall pay not less than the prevailing wage rates as required by the New Jersey Prevailing Wage Act, the Article of the Information for Bidders entitled, "State Wage Rates" and the Contractor shall comply with the applicable provisions of the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.25).

All laborers, workers and mechanics shall be paid not less than the prevailing rate of wage established by law for the type of work to be done in the place in which it is or is to be performed. The Contractor is obligated to pay the higher of the State or Federal wage rates. The violation of the foregoing provision shall constitute a breach of the Contract, and the foregoing provision shall be considered to be a contract for the benefit of the workers, laborers and mechanics, upon which such laborers, workers and mechanics shall have the right to maintain an action against their employers for the difference between the prevailing rate of wage and the rate of wage actually received by them. Any such action by the workers shall be against their respective employers and not against the Owner or Engineer.

In the event it is found that any workman, employed by the Contractor or any subcontractor covered by this Contract, has been paid a rate of wages less than the prevailing wage required to be paid by this Contract, the Owner may terminate the Contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and to prosecute the work to completion or otherwise. The Contractor and his sureties shall be liable to the Owner for any excess costs occasioned thereby.

ARTICLE XII - COMPLIANCE WITH LAWS

The Contractor shall keep itself fully informed of all existing and future federal and state laws and municipal ordinances and regulations in any manner affecting the work, those engaged or employed in the work, the materials used in the work, or in any way affecting the conduct of the work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the Contract Documents pertaining to the work in relation to any such law, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the Engineer in writing.

The Contractor shall at all times observe and comply with and cause all its subcontractors agents and employees to observe and comply with, all applicable statutes, regulations, ordinances, orders and decrees in effect prior to or during the life of this Contract and shall indemnify the Owner and the Engineer, and their officers, agents and employees against any claim or liability arising from or based upon the violation or alleged violation of such statute, regulation, ordinance, order or decree, whether by himself, his subcontractors, or their agents or employees.

The provisions of the U.S. Occupational Safety and Health Act (OSHA) and its implementing regulations and all safety standards promulgated thereunder shall be observed by the Contractor in the performance of the Contract, whether or not they would otherwise be applicable.

ARTICLE XIII - RIGHTS-OF-WAY AND EASEMENTS

The Owner will obtain such rights-of-way and easements from federal, state, county, municipal and any other public authorities, railroad and utility companies and all other property owners, as are indicated in the Contract Documents. The Contractor shall inform himself of the location and extent of such rights-of-way and easements.

Any land, access, right-of-way or easement, not specifically shown in the Contract Documents as being furnished by the Owner, that may be required by the Contractor for temporary construction facilities or for storage of materials, shall be provided by the Contractor with no cost or liability to the Owner and the Contractor shall indemnify the Owner and the Engineers from and against all claims and liabilities arising out or connected therewith.

The Contractor is responsible for the restoration of rights-of-way and easement areas provided under the Contract Documents to good condition and as near to the original condition prior to disturbance by the Contractor as practicable. The required restoration includes, without limitation,

the restoration of roads and other structures, trees, shrubbery, lawns and environmental features. Such restoration is a part of the Contract work and shall be included in the coverage of the Contractor's bonds.

ARTICLE XIV - ACCESS TO THE WORK, DOCUMENTS AND INFORMATION

The Contractor shall provide the representatives of the Owner, the Engineer, and testing agencies and governmental agencies with jurisdictional interests, with access to the work under this Contract, whenever it is in preparation or progress, for observation, inspection and testing. The Contractor shall provide proper facilities and safety protections for such access.

ARTICLE XV - PERMITS

- a. Federal, State, County and municipal permits required as a result of the construction activity within the delineated project site shall be obtained by the Owner and associated fees shall be paid by the Owner. In addition, permits required for construction activities on railroad properties shall be obtained by the Owner.
- b. The Contractor shall be responsible for obtaining any permits to use explosives for rock excavation and for such other permits which by law are required to be obtained by the Contractor and the Owner will reimburse the Contractor for the direct cost of obtaining such permits. The Contractor shall, at its own expense, post all necessary sureties required by the agencies issuing the permits to be obtained by the Contractor.
- c. Conditions pertaining to construction activity made a part of any permit shall be imposed upon the Contractor at no additional charge. Additional costs associated with a permit resulting from the construction activity which is beyond that stipulated in the Contract shall be the responsibility of the Contractor.
- d. The methods of construction to be utilized by the Contractor must satisfy the requirements of the agencies having jurisdiction. Generally, the "methods of construction" are defined as the means to be employed by the Contractor to obtain the end results required by the design.
- e. Whenever requested, the Contractor shall assist the Owner in the acquisition of permits.
- f. The Contractor shall obtain the consent of and shall bear the charges of all utilities and agencies involved for connections with the work.
- g. The Contractor shall notify, cooperate with and arrange for inspections from all agencies having jurisdiction over the work.

ARTICLE XVI - ASSIGNMENT

The Contractor shall not assign, transfer, convey, hypothecate, or otherwise dispose of this Contract, or his right, title or interest in or to the same or any part thereof, without the prior express consent, in writing, of the Owner, and the Contractor shall not assign, by power of attorney or otherwise, any of the moneys to become due and payable under this Contract unless by and with the like consent of the Owner. Consent by the Owner to an assignment of this Contract shall not, in any way, release the Contractor from the conditions, covenants and agreements herein undertaken to be done and performed by the Contractor, but such duty to perform shall continue as though such assignment had not been made.

ARTICLE XVII - SUBCONTRACTS

At the times set forth in the Contract Documents for certain subcontractors (See "Listing of Subcontractors to be Used" in Proposal Pages), and when requested by the Owner for other subcontractors, but in any case (for all subcontractors) prior to the subcontractor's being permitted to enter the construction site or to perform any work, the Contractor shall submit, in writing, to the Owner and the Engineer, the names and addresses of all subcontractors proposed for the work. The Contractor shall also submit to the Owner at such time(s) satisfactory evidence of the required insurance coverage for each proposed subcontractor.

Subcontractors named under N.J.S.A. 40A:11-16 may not be changed except at the request of or with the express prior written approval of the Owner for good cause shown. The Contractor shall be fully responsible to the Owner and Engineer for the acts and omissions of the Contractor's subcontractors (of any tier), materialmen and other persons and organizations performing or furnishing any of the work and of their direct and indirect employees, to the same extent as Contractor is responsible for its own acts and omissions and those of its agents and employees. The Contract Documents shall not be construed as creating any contractual relation between any subcontractor (of any tier) and the Owner or Engineer.

The Contractor shall bind every subcontractor in writing to the terms of the Contract Documents applicable to the subcontractor's work and the Contractor shall require every subcontractor so to bind every sub-subcontractor of any tier. In such writing the subcontractor or sub-subcontractor (as the case may be) shall be required to indemnify, for the actions or omissions of such subcontractor or sub-subcontractor in the performance of its work, the indemnities identified in the Clause of this Contract entitled, "Rights and Responsibility of Contractor", in the Subclause entitled, "Indemnification", to the same extent as the Contractor is required to indemnify such indemnities for claims and liabilities arising out of or in connection with the Contractor's work.

For convenience of reference and to facilitate the letting of Contracts and subcontracts, the Specifications are separated into titled sections. Such separation shall not, however, operate to make the Owner or the Engineer arbiters to establish limits of responsibility in the subcontracts between the Contractor and his subcontractors or sub-subcontractors.

ARTICLE XVIII - TIME OF BEGINNING WORK

The Contractor shall commence work within ten (10) days after receipt of written Notice to Proceed from the Owner.

ARTICLE XIX - INTERMEDIATE TIMES OF COMPLETION AND DEFAULT

The Contractor hereby warrants that it will complete the Contract within the overall time period as set forth in the Contract Documents. It further warrants that it will complete its construction work as set forth in the Schedule of Intermediate Completion Times set forth in the Article of the Information for Bidders entitled, "Time Limit" and "Damages", in the Special Conditions and any amendments, addenda, supplements and modifications thereto.

The time set forth therein and elsewhere for final completion and acceptance of the various phases of the work are hereby made "time of the essence". In the event that Contractor fails to complete work within the time period required, at the option of the Owner, the Contractor shall be in default of this Contract.

In the event that the Contractor defaults in meeting a time period as set forth herein then the Owner shall, at any time thereafter before the Contractor has timely achieved a subsequent Intermediate Completion Time and before the full completion of the Contract, have the option of terminating the Contract. In the event that the Owner so terminates the Contract, the Contractor shall be paid for only such work installed under the terms of the Contract, as shall be determined by the Engineer, and shall not be entitled to any additional monies for loss of profit for the work to be performed under the terms of the Contract. The Owner shall withhold any payments due to the Contractor at the time of such termination until such time the Owner enters into an agreement for the balance of the work. In the event that the Owner, in accordance with the bids received, awards the Contract to the lowest responsible bidder which requires the Owner to pay for the balance of the work to be done in excess of the amount which was to be paid the Contractor for balance of work, as determined by Engineer, then the Owner shall be authorized to apply any monies of the Contractor retained by the Owner toward this difference, remitting to Contractor the balance if any. In the event that such monies are insufficient to cover the said difference, the Contractor shall promptly pay any deficiency to the Owner.

In the event that the Owner elects not to declare Contractor in default, then Owner shall not be required to pay Contractor any monies for work performed by Contractor until such time that Contractor overcomes his delay and completes the work in accordance with a subsequent Intermediate Completion Time or completes the whole of the work.

The Owner's remedies under this Article are in addition to and not in lieu of the Article of this Contract entitled, "Damages and Liquidated Damages".

ARTICLE XX - FINAL COMPLETION

The Contractor's rate of progress shall be such that the Base Bid work shall be finally completed in accordance with the terms of this Contract within the time limit established for the project starting from the Contractor's receipt of the Notice to Proceed, unless and except as the Contractor shall be granted to an extension of time under the Article of this Contract entitled, "Suspension of Work, Delay and No Damage for Delay" or under the Article entitled, "Changes".

It is expressly understood and agreed by and between the Contractor and the Owner, that the Contract time for the completion of the work and the intermediate Completion Times described in the Contract Documents are reasonable times taking into consideration the climatic conditions, economic conditions, labor force and other factors prevailing in the locality of the work.

The time in which this contract is to be performed and completed and the Intermediate Completion Times are of the essence of this Agreement.

ARTICLE XXI – LIMITATION OF CONTRACTOR DAMAGES, SUSPENSION OF WORK DELAY AND NO DAMAGES FOR DELAY

If the Contractor is delayed at any time in the progress of the work for any of the following reasons than, the Time of Completion may be extended for such reasonable time as the Owner may decide, provided, however, that in no case shall the additional time exceed the time of the delay; but the Contractor shall have no right to, nor shall he make any claim whatsoever for damages, additional compensation or costs of any type by reason of the delay if caused by:

- (1) Lock-outs, strikes, fire, unavoidable casualties, war, natural disasters, acts of terrorism, or political disturbances; or
- (2) The negligence, tortious conduct, other wrongful acts or the default of other contractors, subcontractors, utility companies, or other companies or businesses, or their employees, agents or assigns, involved in the Project.

In the event that the delay is caused by the Owner's negligence, bad faith, active interference, or tortious conduct, then the Contractor may make a claim for its damages caused by said delay. The Owner will review and evaluate the merits of each claim submitted. The Owner will endeavor to work cooperatively with the Contractor to resolve these issues in a timely manner.

The Contractor shall, as a condition precedent to any entitlement to an extension of time, notify the Engineer and the Owner in writing, as soon as possible but in any case within four (4) calendar days of the beginning of the delay, referencing this Article, the precise cause or causes of the delay, and any measures taken or to be taken to prevent or minimize the delay. The Contractor shall, as a further condition precedent to any entitlement to an extension of time, provide the Engineer and the Owner, in writing, as soon as possible and in any case within thirty (30) calendar days of the delay,

the full particulars of the delay. The Contractor shall take all necessary action to prevent or minimize any such delay. The burden of proving that any extension of time is warranted shall rest with the Contractor.

Notwithstanding the foregoing or any language to the contrary, in no event shall Owner or Engineer, or any other related entity of each of them (including but not limited to any officer, director, partner, employee, agent, or consultant) be liable to Contractor, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for any claims, costs, losses or damages arising out of or resulting from delays, disruption, loss of productivity, escalation, home office overhead, extended or disrupted performance, mobilizations, demobilizations, remobilizations, indirect or impact claims, construction acceleration claims or other damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or mediation or other dispute resolution costs) caused by or within: (1) the control of Contractor, Subcontractor of any tier, or any supplier; or (2) caused by events beyond the control of Owner and/or Contractor including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work.

In addition to the foregoing, Owner, Engineer, or any other related entity of each of them (including but not limited to any officer, director, partner, employee, agent, or consultant) shall not be liable to Contractor for any claims, costs, losses, delays, disruption, loss of productivity, home office overhead, extended or disrupted performance, mobilizations, demobilizations, remobilizations, indirect or impact claims, construction acceleration claims or other damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or mediation or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

ARTICLE XXII - DAMAGES AND LIQUIDATED DAMAGES

The parties acknowledge that in the event of a default in performance by the Contractor it is foreseeable that the Owner will suffer damages for which it is entitled to be compensated, both by virtue of the provisions of this Contract and as a matter of applicable law. Certain of these damages may be reasonably ascertaining. Others shall consist of intangible losses which are difficult of calculation, including but not limited to revenue losses and general and administrative costs. For these intangible losses, in the event the Contractor fails satisfactorily to complete all work for the entire project as contemplated and provided for under this Contract on or before the time wherein final completion is required under the terms of the Contract Documents, the Contractor shall be liable for, and the Owner may deduct from the Contract price, the sum of \$200.00 as liquidated damages for each calendar day (Sundays and legal holidays included) of delay. Such damages shall continue for the period of time that final completion has not been met and the sum thereof is hereby, in view of the difficulty of estimating such damages, fixed and determined as liquidated damages which the Owner will suffer by such time delay. The sum determined pursuant to this paragraph is not a penalty but an attempt reasonably to forecast the

potential harm due to intangible losses caused by delay. The Contractor acknowledges that in submitting its bid and in setting the amount thereof it has ascertained the risk of nonperformance under this Article to the same extent as if the Contractor and the Owner had negotiated the amount of liquidated damages at arm's length.

In addition to and not in lieu of liquidated damages for the intangible costs of delay, the Contractor shall be liable for compensatory damages as allowed by law and in addition as hereinafter provided.

The Contractor agrees that, as compensatory damages due on account of delay in performance of the Contract, the Contractor shall be liable for and the Owner may deduct from the Contract Price the actual costs, resulting from the Contractor's failure to complete the work contemplated herein within the time provided, for payment for the services of construction observers necessarily employed on the work and for the services of the Engineer for any number of days in excess of the time allowed in the Contract Documents and for payment for all fines and penalties of whatever description imposed by the State of New Jersey or other governmental agency.

If the amounts of liquidated or compensatory damages due from the Contractor exceed the amounts of all monies due and to become due to the Contractor, the Contractor or his Surety shall pay the balance to the Owner.

ARTICLE XXIII - NIGHT, WEEKEND & HOLIDAY WORK

The Contractor shall notify the Engineer in advance of the nature and timing of the work which it intends to do during nights or on weekends or holidays.

No night, weekend or holiday work shall be conducted in violation of law, including, without limitation, applicable noise restrictions.

The Contractor shall not be entitled to compensation beyond the bid amount for any costs incurred for work done during nights, weekends or holidays in order to accommodate the Owner's operational requirements.

Except where it is necessary for the Contractor to work nights, weekends, and holidays, as indicated above, the Contractor shall not schedule work to be done at night or on weekends or holidays except for the usual protective work such as pumping, tending of lights and heating apparatus, etc.

The Contractor's attention is called to the fact that certain aspects of the construction work may have to be scheduled outside of normal working hours due to operational requirements of existing facilities and the Owner's ability to interrupt or modify existing operations. The Contractor may be obligated to work nights, weekends, or holidays to accommodate the Owner's operational requirements.

ARTICLE XXIV - ACCELERATION

If, in the opinion of the Owner, upon the advice of the Engineer, the Contractor is not making sufficient progress to complete this Contract within the time specified in the Contract Documents, based upon the remaining time within which the work is required to be completed, the Owner may, after giving written notice to the Contractor, require the Contractor to accelerate its performance and employ sufficient means and make sufficient progress so that final completion will be achieved by the time required by the Contract Documents.

Neither the Owner so notifying the Contractor, nor the Owner's failure to notify the Contractor shall in any way relieve the Contractor from its obligation to complete its performance in a timely manner.

The Contractor shall not be entitled to any additional compensation by reason of such acceleration.

ARTICLE XXV - ILLEGAL DRUGS AND INTOXICATING LIQUORS

The Contractor shall strictly prohibit all persons from using or being under the influence of illegal drugs or intoxicating liquors upon or about the work site(s).

ARTICLE XXVI - EXAMINATION OF WORK AND TESTING

The representatives of the Engineer, the Owner, testing agencies and governmental agencies with jurisdictional interests will have access to the work at all reasonable times for their observation, inspection and testing. The Contractor shall provide proper and safe conditions for such access.

No work shall be covered without the advance authorization of the Engineer. The Contractor shall give the Engineer timely notice of the Contractor's intention to cover the work and the Engineer shall act with reasonable promptness in response to such notice. If work is covered without the Engineer's advance authorization, it must, if requested by the Engineer, be uncovered for the Engineer's observation and replaced at the Contractor's expense.

If the Engineer considers it necessary or advisable that work which had been covered with the authorization of the Engineer be observed, inspected or tested, Contractor, at the Engineer's request, shall uncover, expose or otherwise make available for such observation, inspection or testing, that portion of the work in question, furnishing all necessary labor, material and equipment.

If it is found that such work is defective, Contractor shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and Owner shall be entitled to an appropriate decrease in the Contract Price for such costs. If, however, such work is found not to be defective, Contractor shall be

allowed an increase in the Contract Price for those costs directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

ARTICLE XXVII - DEFECTIVE WORK

Observation of the work by the Owner and/or Engineer shall not relieve the Contractor of any of his obligations to fulfill the Contract as herein described, and defective work shall be made good, and unsuitable materials may be rejected, notwithstanding that such defective or unsuitable work or materials may previously have been overlooked by the Owner and/or Engineer and accepted or approved for payment. If the work or any part thereof shall be found defective at any time before the final acceptance of the whole of the work, the Contractor shall forthwith make good such defect in a manner satisfactory to the Owner upon the advice of the Engineer, and if any material for use in the work, or selected therefore, shall be condemned by the Engineer as unsuitable or not in conformity with the Contract Documents, the Contractor shall forthwith move such material from the vicinity of the work. If the Contractor shall fail to remove or replace any defective or unsuitable materials or work within a reasonable time after written notice to the Contractor, the Owner may, without prejudice to any other remedy it may have, correct such deficiencies, and the expense thereof shall be borne by the Contractor.

ARTICLE XXVIII - PROTECTION OF WORK

The Contractor shall take all precautions to prevent damage to the work, including, without limitation, damage caused by surface or ground waters. In case of damage to the work of any kind whatsoever, the Contractor shall, at its own cost, make such repairs or replacements or rebuild such parts of the work, in order that the finished work may be completed as required by the Contract Documents.

ARTICLE XXIX - MISTAKES OF CONTRACTOR

The Contractor shall pay to the Owner all expenses, losses and damages caused by or relating to any defect, omission or mistake of the Contractor or of his materialmen, suppliers or subcontractors (of any tier), or their agents, or employees, or caused by or relating to the making good of such defect, omission or mistake.

ARTICLE XXX - TITLE TO WORK, MATERIALS AND EQUIPMENT

The Contractor warrants and guarantees that title to all work, materials, and equipment covered by an Application for Payment, whether incorporated in the project or not, will pass to the Owner upon receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances.

The Contractor shall furnish releases of all liens, claims, security interests and encumbrances at the time the Contractor submits an Application for Payment for the work, materials and equipment.

ARTICLE XXXI - CHANGES

The Owner may, at any time, by written order, and without notice to the sureties, make changes in the work within the general scope of the Contract Documents, consisting of additions, deletions or other revisions. Such changes may include, without limitation, changes in the Contract Documents, Contract Drawings and Specifications, changes in the quantities, estimated quantities, design, line, grade, plan, form, dimensions or materials of the work or any part thereof, changes in the method or manner of performing the work, and changes in Owner-furnished property.

Any other written or oral orders (including, without limitation, directions, instructions, interpretations, or determinations) from the Owner or Engineer to the Contractor that cause material change in the requirements of the Contract Documents, may be authorized as changes under this Clause; provided, as conditions precedent, that the Contractor gives the Owner and Engineer advance written notice at the earliest practicable time (in any case before beginning the work which will be the subject of the claimed change and before incurring any costs in connection with the claimed change) of the date, circumstances and source of the alleged change; provided that the Contractor expressly states in the notice that the Contractor regards the order as a change in the requirements of the Contract Documents and cites this Article of the Contract; and provided that the Owner determines that the claim of the Contractor is meritorious and issues a duly authorized written change order to that effect.

If any such change causes an increase or decrease in the cost of or time required for the performance of any part of the work under this Contract, the Owner shall make an adjustment in the Contract Price, the required completion times for the Contract work, or both. If any change decreases the work to be performed, the Contractor shall not be entitled to damages or anticipated profits on the work that is eliminated.

As a condition precedent to the Contractor's right to any entitlement to increased costs or an extension of time under this Clause, the Contractor must fully document its claim to an adjustment within thirty (30) days after receipt of a written change order from the Owner or within thirty (30) days after the Contractor gives notice of a constructive change. Such documentation shall, without limitation, include a written statement to the Owner and Engineer setting forth the full particulars of the Contractor's claimed entitlements and the claimed amounts, accompanied by full documentation and detailed accounting in support of all aspects of the claim. The Contractor shall update and supplement its claim and documentation as necessary at intervals not greater than thirty (30) days.

No claims for an adjustment shall be allowed if asserted after final payment under this Contract.

The following general policies shall apply to adjustments under this Article:

- (a) The Contractor shall be entitled to any additional identifiable Contract Direct Costs associated with the changed work excluding Subcontractor's costs. For adjustments not

in excess of \$10,000 per change order (total of Contractor's direct cost, overhead and profit), the Contractor may include up to 10-percent overhead factor to its additional identifiable direct job costs, but excluding the cost of any subcontracting, plus up to a 10-percent profit factor to its identifiable direct costs plus overhead amount.

- (b) These overhead and profit factors may be accepted by the Owner as reasonable in lieu of requiring the submission of additional supporting data. However, the Owner reserves the right to review any cost or profit element on a case-by-case basis.
- (c) Adjustments relating to changes in subcontracted work may be similarly handled and the Contractor may add up to 10 percent to the total cost (including overhead and profit factors) incurred by the subcontractor. In such cases, the same reservation of rights shall apply.
- (d) For adjustments in the amount of \$10,000 to \$100,000, the above factors may be included initially for adjustments but will be subject to negotiation, cost and pricing data, and Owner review requirements.

In order to be allowable in adjustments, costs must be reasonable in nature and amount. Indirect Costs (overhead costs) must be allocable to the Contract, i.e., chargeable to the Contract on the basis of relative benefit received or other relationship. Direct Costs for changed work shall be limited to increases or decreases in the identifiable direct cost of the following:

- (a) Direct Labor costs, including the time of a foreman while engaged directly upon changed work.
- (b) Direct Labor employee insurance, social security and other direct costs assessed on Direct Labor payrolls by properly authorized public agencies.
- (c) Direct costs of equipment, materials and supplies installed in the work. The direct cost of these items shall be the actual costs paid by Contractor to the suppliers of these items, without markup.
- (d) Direct costs of job equipment associated with the changed work. The compensable cost for construction equipment shall be based upon the most current costs established in the "Rental Rate Blue Book for Construction Equipment" (published by Equipment Guide-Book Company) for each piece of equipment having a value in excess of \$50.00. Equipment and tools of lesser value are considered "small tools" and, as such, are considered to be part of overhead. Costs shall be based on an hourly rate determined by dividing the monthly rate listed in the cited "Blue Book" by 176. Overhead and profit factors shall only be applied to the rates charged for rental equipment. No overhead or profit will be allowed for Contractor-owned equipment.

Should the Owner and Contractor fail to agree upon any adjustment addressed by this Article, the Engineer shall initially fix the terms of the adjustment and if the Owner or Contractor shall be dissatisfied with the Engineer's actions in this regard, such party may give notice to the Engineer of a dispute and a request for a formal decision under the Clause of this Contract entitled, "Responsibility of the Engineer". However nothing shall excuse the Contractor from proceeding with the Contract as changed.

The change orders executed for this Contract shall, in no event, cause the originally awarded Contract Price to exceed limitations set forth in N.J.A.C. 5:34-4.1 et. seq., except as may be authorized under such regulation.

ARTICLE XXXII - CHANGES NOT TO AFFECT BOND

No modifications, omissions or additions to the terms of the Contract Documents shall in any way affect the obligations of the sureties on the Contractor's bonds.

ARTICLE XXXIII - DISCONTINUANCE OF WORK

If the work to be done under this Contract shall be abandoned, or if this Contract or any part thereof shall be sublet without the previous written consent of the Owner, or if the Contract or any claim thereunder shall be assigned by the Contractor otherwise than as herein specified, or if at any time the Engineer or Owner shall be of the opinion, and shall so certify in writing, that the conditions herein specified as to the rate of progress are not fulfilled, or that the work or any part thereof is unnecessarily or unreasonably delayed, or that the Contractor has violated any of the provisions of this Contract, the Owner may notify the Contractor by seven (7) days advance written notice with a copy mailed to the Contractor's sureties to discontinue all work, or any part thereof; and thereupon the Contractor shall discontinue such work or such part thereof as the Owner may designate, and the Owner may thereupon, by contract or otherwise as it may determine, complete the work, or such part thereof, and charge the reasonable expense of so completing the work or part thereof to the Contractor; and for such completion the Owner for itself or its contractors may take possession of and use or cause to be used in the completion of the work or part thereof, any of such materials, equipment, machinery, implements, and tools of every description as may be found at the location of said work.

All expenses charged under this Article shall be deducted and paid by the Owner out of any monies then due or to become due the Contractor under this Contract, or any part thereof; and in such accounting the Owner shall not be held to obtain the lowest reasonable figures for the work of completing the contract or any part thereof, or for insuring its proper completion, but all sums actually and reasonably paid therefore shall be charged to the Contractor. In case the expenses so charged exceed the sum which would have been payable under this contract if the same had been completed by the Contractor, the Contractor shall pay the amount of the excess to the Owner.

ARTICLE XXXIV - MONEY MAY BE RETAINED

The Owner may keep any monies which would otherwise be payable at any time hereunder, and apply the same or so much as may be necessary therefor, to the payment of any expenses, losses or damages, incurred by the Owner, and may retain until all claims are settled, so much of such money as the Owner shall be of the opinion shall reasonably be required to settle all claims filed with the Owner, its officers and agents, relating to this Contract.

ARTICLE XXXV - APPLICATIONS FOR PAYMENT

Except as hereinafter provided, the Contractor shall submit monthly a written Application for Payment for the approval of the Engineer on forms furnished by the Engineer for the value of the work done to the date of the Application for Payment and the amount earned by the Contractor under the terms of the Contract Documents.

The Owner shall withhold 2% of the amount due on each Application for Payment for Contracts pursuant to N.J.S.A. 40A:11-16.3 unless the Contractor makes the deposits referred to in N.J.S.A. 40A:11-16.1. Such withholding shall be in addition to any retainage otherwise authorized by law or the Contract Documents.

The Owner shall make payments to the Contractor once each month as the work progresses. Payment may be withheld at any time if the work is not proceeding in accordance with the Contract Documents.

At least twenty (20) days before each monthly progress payment falls due for approval by the Owner (but not more often than once per month), the Contractor will submit to the Engineer an Application for Payment filled out and signed by the Contractor covering the work performed during the period covered by the Application for Payment and supported by such data as the Engineer may reasonably require.

Accompanying each Application for Payment shall be releases of any and all lien claims which may have been filed by persons claiming to have performed any labor or furnished any materials toward performance or completion of this Contract.

All invoices for payment shall be accompanied by the calculation of any applicable price adjustment (asphalt/fuel) as defined in the Information for Bidders 0.34 – Allowances. Calculations shall include the current price index, and the basic price index established at the time of bid.

Where any specific item(s) in the Application for Payment is questioned, the Engineer may delete those items from the Application for Payment and approve the acceptable portion of the Application for Payment.

For unit price work the quantities set forth in the Contract Documents are estimated quantities. Such quantities are not guaranteed but are solely for the purpose of comparing Bids and determining the initial Contract Price. Determinations of the actual quantities for unit price work will be made by the Engineer, whose decisions (by recommendation of an Application for Payment or otherwise) will be final and binding unless a formal decision is requested within the time provided in the Article of this Contract entitled, "Responsibility of the Engineer" in the Subarticle entitled, "Engineer's Decisions".

Prior to performing unit price work which would cause a net increase in the Contract Price by reason of the estimated quantity(ies) for such unit price work being exceeded, the Contractor shall request that the Owner issue a change order under the Article of the Contract entitled, "Changes" to cover such increase. No increase in the Contract Price will be authorized without advance approval by change order.

Payment requested for stored materials and/or equipment shall, in addition to the conditions set forth in N.J.S.A. 40A:11-16.4, be subject to the following conditions:

- (a) The materials and/or equipment shall be received in a condition satisfactory for incorporation in the work.
- (b) The materials and/or equipment shall be stored on Owner's Property or at an approved secure location in such manner that they will not be damaged due to weather, construction operations or any other cause.
- (c) An invoice from the supplier shall be furnished for each item which payment is requested.
- (d) The Contractor shall furnish written proof from the supplier of payment for at least 90% of the cost of the materials and/or equipment, no later than thirty (30) days after Contractor's receipt of the payment for such materials and/or equipment from the Owner. The Owner shall have the right to deduct from the next Application for Payment an amount equal to the cost of the said materials and/or equipment if adequate and timely proof of payment is not submitted by the Contractor.
- (e) Title to the stored materials and/or equipment shall pass to the Owner immediately upon the Owner's issuance of payment for the same. All stored materials and/or equipment for which the Owner has title shall be prominently labelled by the Contractor to indicate that title is in the Owner.
- (f) Risk of loss for the stored materials and/or equipment shall remain in the Contractor until the materials and/or equipment shall be incorporated into the works and finally accepted by the Owner. The Contractor shall maintain (and provide evidence of) adequate insurance to cover the risk of loss of the stored materials and/or equipment.

- (g) All stored materials and/or equipment shall be, at all reasonable times, subject to the inspection of the Engineer and the Owner. The Contractor shall bear the cost of Engineer's time and expense incurred in travelling to the Contractor's storage site(s).

The Engineer will, within 20 days after receipt of each Application for Payment, either indicate in writing its approval of payment and present the Application for Payment to the Owner, or return the Application for Payment to the Contractor indicating in writing its reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the Application for Payment. The Owner shall review the Application for Payment at its next regularly scheduled meeting (provided that the Owner has received the Application for Payment in accordance with the Owner's standard payment procedure). Any Application for Payment shall be subject to correction in any subsequent Application for Payment. Upon presentation of invoice by the Contractor, Owner shall make payment in 30 days according to N.J.S.A. 2A:30A-1.

The Contractor shall be paid up to ninety percent (90%) of a fully installed and accepted work item including both labor and materials. Additional percentage payments will be made upon completion/receipt of the following items:

- 2% Approved O&M Manual
- 1% Manufacturer's representative preliminary checklist.
- 2% Manufacturer's start-up
- 2% Final acceptance testing
- 2% Approved Manufacturer's training outline and training manual, and completion of personnel training.
- 1% Spare parts/tools.

ARTICLE XXXVI - FINAL ESTIMATE AND PAYMENT

The Contractor shall, as soon as practical after the final completion of this Contract, submit to the Engineer, in writing, for his approval, a final Application for Payment.

All prior Applications for Payment shall be subject to correction in the final Application for Payment.

The Owner shall pay to the Contractor within 30 days of final completion and acceptance by the Owner, as provided by law, the entire balance of the Contract Price due hereunder, including the amount withheld pursuant to N.J.S.A. 40A:11-16.3, after deducting therefrom all previous payments and all amounts to be deducted and all amounts to be retained under the provisions of this Contract and as permitted by law. Such final payment shall not be made before the expiration of the time within which claims for labor performed and materials furnished under the Contract must

be filed under the "Municipal Mechanics Lien Law" (N.J.S.A. 2A:44-125, et seq.) (Contract completion or acceptance by the Owner and payment to the Contractor within 60 days thereof).

The Owner, with the advice of the Engineer, shall fix the date of final completion of the work and shall annotate the date upon the final Application for Payment.

ARTICLE XXXVII - LIENS

If at any time before final payment any person or persons claiming to have performed any labor or furnished any materials, toward the performance or completion of this Contract, shall file proper notice of claim, the Owner shall retain, until the discharge thereof from the monies under its control, so much of such monies as shall be sufficient to satisfy and discharge the amount claimed to be due in such notice, together with the estimated cost of any action or actions to be incurred by the Owner in connection with the filing of such notice.

After such retainage, the balance of money which may be due to the Contractor shall not be paid by the Owner until the Contractor has delivered to the Owner an Affidavit to be signed personally by the Contractor, or by a General Partner if Contractor is a Partnership, or by the President or Secretary if Contractor is a Corporation, attesting to the payment of all others who supplied labor, materials or equipment for the Contract and for which a lien claim could be filed, with receipts in full to cover the potential claims of such other suppliers of labor, materials or equipment, such receipts to be attached to such Affidavit.

ARTICLE XXXVIII - WAIVERS

Neither the observation by the Owner or the Engineer nor any of their agents, nor any order, measurement, or certification by the Engineer, nor any order by the Owner for the payment of money nor payment for, nor acceptance of, the whole or any part of the work by the Owner, nor any extension of time, nor any possession taken by the Owner or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the Owner, or any right to damages herein provided, nor shall any waiver of any breach of this Contract be held to be a waiver of any other or subsequent breach. Any remedy provided in this Contract shall be taken and construed as cumulative, that is, in addition to each and every other remedy herein provided, and, in addition to all other suits, actions, or legal proceedings, the Owner shall also be entitled as of right to a writ of injunction as a relief against any breach of any of the provisions of this Contract.

ARTICLE XXXIX - LIABILITY OF OWNER

No person, firm or corporation, other than the Owner, the Engineer and the Contractor, now has any interest hereunder, and no claim by any other person to be a beneficiary of this Contract shall be made or be valid, and neither the Owner nor any agent of the Owner, shall be liable for, or be held to pay, any money, except as herein provided. The acceptance by the Contractor of the final payment shall operate as and shall be a release to the Owner, the Engineer and every agent of the Owner and Engineer, for all claims by and liabilities to the Contractor for anything done or

furnished for, or relating to the work, or for any act or neglect of the Owner or the Engineer or of any person relating to or affecting the work except the claim against the Owner for the remainder, if any there be, of the amounts deducted or retained as herein provided.

ARTICLE XL - WARRANTY

The Contractor warrants to the Owner and Engineer that the materials and equipment furnished by the Contractor or any Subcontractor (of any tier) under the Contract Documents will be fit for the intended purpose, of good quality and new unless otherwise required or permitted by the Contract Documents, that the work will be free from defects not inherent in the quality required or permitted, and that the work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. This warranty excludes remedy for damage or defect caused by others for whom the Contractor is not responsible, modifications not executed by the Contractor or its Subcontractors (of any tier), improper operation, or normal wear and tear under normal usage. In case of inquiry by the Engineer, the Contractor shall furnish evidence, satisfactory to the Engineer, as to the nature and quality of any work, materials or equipment furnished under the Contract. The foregoing warranty shall remain in effect until the end of the Maintenance Period described in the Article of this Contract entitled, "Maintenance Period" and the Owner shall have the remedies provided therein.

The Contractor will provide the Owner with all available manufacturer's warranties and the documentation therefore, covering the materials, equipment and goods supplied under the Contract. Such manufacturer's warranties shall survive the completion and acceptance of the Contract, and shall remain in effect according to their terms.

ARTICLE XLI - MAINTENANCE PERIOD

In addition to, and not in lieu of the Contractor's warranty, above, if, within one year from the date of Owner's final acceptance of the Contractor's work or such longer period of time as may be prescribed by law or regulation or by the terms of any special warranty required by the Contract Documents, any such work is found to be defective or requires repair, amendment, reconstruction, or rectification to keep the facility and its appurtenances in good and serviceable condition, the Contractor shall promptly, without cost to the Owner and in accordance with Owner's written instructions, either correct such condition or, if the work has been rejected by the Owner, remove it from the site and replace it with proper work. Such one-year period is referred to here as the "Maintenance Period."

The Contractor's maintenance obligation excludes remedy for damage or defect caused by others for whom the Contractor is not responsible, or caused by Owner's improper use or operation, or caused by the failure of the Owner to provide necessary lubricants.

Throughout the Maintenance Period, the Contractor shall also correct any settlement or erosion in fills or cuts and restore all ground areas to elevations indicated on the Contract Drawings when so instructed by the Owner or the Engineer.

The Contractor's Maintenance Bond shall remain in effect until the end of the Maintenance Period. The Maintenance Bond shall be in a sum equal to 100% of the Contract Price, less the amount of the Environmental Maintenance Bond, and furnished as specified in Section 0.17, "Security for Faithful Performance and Maintenance (Bonds)," of the Information for Bidders.

If the Contractor does not comply with the requirements of the above stated warranty obligations or maintenance obligations, promptly correct the work, promptly comply with the terms of instructions of the Owner or Engineer, or, in an emergency where delay would cause material risk of loss or damage, the Owner may have the work corrected or the rejected work removed and replaced and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be borne by Contractor and may be deducted from amounts payable to the Contractor under the Contract under the Contract. If instead of requiring correction or removal and replacement of the work, the Owner prefers to accept it, the Owner may do so and the Owner shall be entitled to an appropriate decrease in Contract Price.

ARTICLE XLII - LEGAL ADDRESS OF CONTRACTOR

The address given in the bid or proposal submitted by the Contractor and the Contractor's office at or near the site of the work are hereby designated as places to either of which notices, letters, and other communications to the Contractor may be certified, mailed or delivered. The delivery at the site office, or delivery to the address given in the bid or proposal or depositing in a postpaid wrapper directed to the address given in the bid or proposal, in any post office box regularly maintained by the U.S. Postal Service of any notice, letter or other communication to the Contractor, shall be deemed sufficient service thereof upon the Contractor, and the date of said service shall be the date of such delivery or mailing. The Contractor's address may be changed at any time by an instrument in writing, executed and acknowledged by the Contractor and delivered to the Owner with a copy to the Engineer. Nothing herein contained shall be deemed to preclude or render inoperative the personal service of any notice, letter or other communication upon a Contractor's representative.

ARTICLE XLIII - RIGHT OF THE OWNER TO TERMINATE CONTRACT OR GIVE A THREE (3) DAY DEFICIENCY NOTICE

In the event of any material delay or default in the performance of any of the provisions of the Contract Documents by the Contractor, or by any of his Subcontractors (of any tier), the Owner may serve written notice upon the Contractor and the surety(ies) of its intention to terminate the Contract, such notice to contain the reasons for the Owner's intention to terminate the Contract, and unless within ten (10) days after the serving of such notice upon the Contractor, such delay or

default shall cease or arrangements for the correction and cure of the delay or default satisfactory to the Owner shall be made, the Owner may, upon the expiration of said ten (10) days, terminate the Contract. In the event of any such termination, the Owner shall immediately serve notice thereof upon the Contractor and the surety(ies), and the surety(ies) shall have the right to take over and perform the Contract; provided, however, that if the surety(ies) do not commence performance of the Contract within ten (10) days from the date of the mailing to such surety(ies) of the notice of termination and correct and cure such delay or default or make arrangements for the correction and cure of the delay or default satisfactory to the Owner, the Owner may take over the work and prosecute the same to completion by contract or by force account for the account of and at the expense of the Contractor and may deduct the cost thereof from the payment then or thereafter due to the Contractor, and the Contractor and the surety(ies) shall be liable to the Owner for any excess cost caused to the Owner thereby, and in such event the Owner may take possession of and utilize in completing the work, such of the Contractor's materials, equipment appliances, and plant as may be on the site of the work and necessary or convenient therefor.

In addition to and not in lieu of the termination remedy provided above or any other remedy the Owner may have, if the Contractor or Subcontractor (of any tier) should fail or neglect at any time to prosecute the work properly or fail to perform any provision of the Contract Documents, the Owner may give a three (3) day written deficiency notice. The Owner, after three (3) days from the service of the three (3) day deficiency notice to the Contractor, may make good such deficiencies for the account of and at the expense of the Contractor and may deduct the cost thereof from the payment then or thereafter due to the Contractor and the Contractor and the surety(ies) shall be liable to the Owner for any excess cost caused to the Owner thereby.

In addition to and not in lieu of the termination remedies provided above, the Owner may terminate this Contract, in whole or in part, for the convenience of the Owner, if the Owner determines that such termination is in the Owner's interest. Such termination shall be by written notice to the Contractor specifying the extent of termination and the effective date. In case of such termination for convenience, the Contractor shall be paid for the work satisfactorily completed to the date of termination, together with the reasonable costs of settlement of the work terminated, but not for lost or anticipated profits on the work terminated.

ARTICLE XLIV - USE AND OCCUPANCY PRIOR TO ACCEPTANCE BY OWNER

The Owner shall have the right to the possession, use and occupancy of any portion or unit of the project upon Substantial Completion as defined in this Agreement.

The possession, use or occupancy of any part or parts of the project by the Owner on Substantial Completion shall not operate to relieve the Contractor from its responsibility to complete all of the work as specified in the Contract Documents. The possession, use or occupancy by the Owner of any part of the project, on Substantial Completion or otherwise, shall not constitute or necessarily imply final completion or acceptance of that part of the project or work by the Owner or Engineer. The statutes of limitation and repose shall commence to run on the date of Substantial Completion certified by the Engineer.

ARTICLE XLV - PAYMENT FOR UNCORRECTED WORK

Should the Owner direct the Contractor not to correct work that has been damaged or that has not been performed in accordance with the Contract Documents, a deduction from the amount payable under the Contract, as determined by the Engineer, shall be made to compensate the Owner for the uncorrected work.

ARTICLE XLVI - ORAL AGREEMENTS

No oral order, objection, claim or notice by any party to the other shall affect or modify any of the terms or obligations contained in any of the Contract Documents, and none of the provisions of the Contract Documents shall be held to be waived or modified by reason of any act whatsoever, other than by an express waiver or modification to the Contract Documents, in writing, and no evidence shall be introduced in any proceeding of any other alleged waiver or modification.

ARTICLE XLVII - CONTRACTOR BOOKS AND RECORDS

The Contractor shall maintain its books and records in accordance with generally-accepted accounting principles and auditing standards throughout the performance of this Contract and for five (5) years after final completion and acceptance.

Document Retention: The Contractor shall maintain all documentation related to products, transactions or services under this Contract for a period of five (5) years from the date of the final payment to the Contractor by the Authority. Such records shall be made available to the New Jersey Office of State Comptroller upon request.

ARTICLE XLVIII - DISPUTES

Disputes arising under this Agreement shall be submitted to a process of resolution pursuant to alternative dispute resolution practices, such as mediation, binding arbitration or non-binding arbitration, as required by P.L. 1997, c. 371, pursuant to industry standards, prior to being submitted to a court for adjudication. The specific type of alternate dispute resolution to be utilized shall be selected by the Owner and the costs payable to the mediator or arbitrator(s) shall be borne equally by the Owner and Contractor.

Nothing in this Article shall prevent the Owner from seeking injunctive or declaratory relief in court at any time.

The alternative dispute resolution practices required by this Article shall not apply to disputes concerning the bid solicitation or award process, or to the formation of contracts or subcontracts to be entered into pursuant to P.L. 1971, c. 198 (N.J.S.A. 40A:11-1, et seq).


The joinder of parties to any dispute hereunder shall be governed by the provisions of P.L. 1997, c.371.

Pursuant to the provisions of P.L. 1997, c. 371, the OWNER and the Contractor hereby agree with, represents and warrants to the ENGINEER that the ENGINEER shall not be made a party to any alternate dispute resolution process relating to the Construction Contract or its breach, other than non-binding mediation, the costs of which shall be borne by either the Owner of Contractor or both the Owner and the Contractor, as the case may be, but in no event by the Engineer.

Should the Contractor make any claim or claims against the OWNER or ENGINEER, or their agents and employees, based, in whole or in part, upon any alleged ENGINEER error or omission in connection with the project; the Contractor shall be responsible for the payment of ENGINEER's costs of defense against such claims (including but not limited to reasonable attorneys' fees), unless the ENGINEER is proved, in a court of competent jurisdiction, to have been guilty of negligence or willful misconduct which is determined to be the sole proximate cause of such claim or claims.

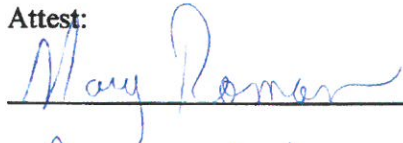
IN WITNESS WHEREOF, the parties to these presents have hereunto set their names and affixed their seals:

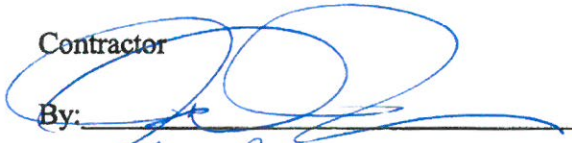
ROCKAWAY VALLEY REGIONAL SEWERAGE AUTHORITY

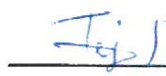
By: 

(Seal)

Executive Director
Title

Attest:

Administrative Assistant
Title

Contractor
By: 
VICE PRESIDENT (Seal)
Title

Attest:

PROJECT MANAGER
Title