

**CONTRACT DOCUMENTS
FOR
COLLECTION AND DISPOSAL OF REFUSE, RUBBISH,
GARBAGE, AND RECYCLABLES
FOR
VILLAGE OF SOLVAY**

ONONDAGA COUNTY, NEW YORK

VILLAGE BOARD

**THOMAS TAROLLI
WILLIAM MCVICKER
DANIEL BELLOTTI**

**RAYMOND FOUGNIER
JOHN FALL SR.
JOHN CREGG**

DEREK BAICHI, VILLAGE MAYOR

HARRY DECARLO, VILLAGE CLERK

KEVIN GILLIGAN, ATTORNEY

MARK CAZZOLLI, DPW SUPERINTENDENT

**VILLAGE OF SOLVAY, VILLAGE HALL
1100 WOODS ROAD
SOLVAY, NEW YORK 13209**

MARCH 2018

**C&S ENGINEERS, INC.
499 COLONEL EILEEN COLLINS BOULEVARD
SYRACUSE, NEW YORK 13212**

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**ADVERTISEMENT
NOTICE TO BIDDERS
FOR
COLLECTION & DISPOSAL OF ALL REFUSE, RUBBISH,
GARBAGE AND RECYCLABLES FOR
VILLAGE OF SOLVAY
ONONDAGA COUNTY, NEW YORK**

Bids for the Collection of Disposal of All Refuse Rubbish, Garbage, and Recyclables within the Village of Solvay, will be received until **11:00 a.m. local time Tuesday April 17, 2018** at the Village of Solvay, Village Hall, 1100 Woods Road, Solvay, New York 13209. Bids will be publicly opened and read at that time.

This Contract includes all the labor, equipment and materials necessary for the Collection and Disposal of All Refuse Rubbish, Garbage, and Recyclables from parcels within the Village of Solvay, beginning June 1, 2018, and continuing until midnight May 31, 2021. A reduced copy of the Collection Route Map (Figure1) is included with the Contract Documents and shows the locations of the areas to be served.

The Disposal for all solid waste and recyclables collected shall be the responsibility of the Contractor. All solid waste collected by the Contractor shall be transported to the Onondaga County Resource Recovery Agency (OCRRA) Waste to Energy Plant on Rock Cut Road in the Town of Onondaga, New York. All recyclables shall be transported to an OCRRA approved materials recycling facility. All credit due for disposal of recyclables collected under this Contract shall accrue to the Contractor.

The boundary description and a full-size Collection Route Map is on file in the office of the Village Clerk and may be examined by all persons interested therein during regular business hours. Any Contractor bidding to perform services under this proposal shall be solely responsible for determination of the volumes and tonnages involved. Bidders should note that this is a prevailing wage rate job in accordance with the New York State prevailing wage schedule attached to the bid specifications.

Contract Documents may be reviewed at the office of the Village Clerk, Village Hall, 1100 Woods Road, Solvay, New York 13209 or <http://www.villageofsolvay.com>; at the office of C&S Engineers, Inc., 499 Col. Eileen Collins Boulevard, Syracuse, New York 13212; the offices of the Syracuse Builders Exchange, 6563 Ridings Road, Syracuse, New York 13206 and through F.W. Dodge Division, McGraw-Hill Information Systems Company. Electronic copies are available by contacting Rita Fendick @ ritaf@cscos.com. and Harry DeCarlo Village Clerk at hdecarlo@villageofsolvay.com.

Bids must be submitted in sealed envelopes with the Project Name plainly written on the outside. No Bidder may withdraw his bid within forty-five (45) days after the Bid Opening. The successful Bidder must furnish Performance and Payment Bond, in an amount at least equal to the Total Bid, with a surety authorized to do business in the State of New York and acceptable to the Village.

The Village Board of the Village of Solvay, hereinafter called the Owner, reserves the right to waive any informalities in the Bid and to reject any or all bids and re-advertise for new bids. Each bidder is responsible for familiarizing themselves with all the terms and conditions of the Contract and the provisions contained therein.

Dated: March, 2018

BY ORDER OF THE VILLAGE BOARD,
VILLAGE OF SOLVAY, ONONDAGA COUNTY, NY

By: _____


Derek Baichi, Mayor

Instructions to Bidders

INSTRUCTIONS TO BIDDERS

1. DEFINED TERMS

Terms used in these Instructions to Bidders which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8, 1990 Edition), have the meanings assigned to them in the General Conditions. The term "Bidder" means one who submits a Bid directly to Owner, as distinct from a sub-bidder, who submits a bid to a Bidder. The term "Successful Bidder" means the lowest, qualified, responsible and responsive Bidder to whom Owner makes an award. The term "Bidding Documents" includes the Advertisement or Invitation to Bid, Instructions to Bidders, the Bid Form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

2. COPIES OF BIDDING DOCUMENTS

2.1 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Advertisement or Invitation to Bid may be obtained at the location stated therein. Deposits will be refunded in accordance with the criteria set forth in the Advertisement or Invitation to Bid to all document holders of record who return the Bidding Documents in good condition within thirty days after opening of Bids.

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

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

3. QUALIFICATIONS OF BIDDERS

To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five days after Bid opening upon Owner's request written evidence, such as financial data, previous experience; present commitments and other such data as may be called for in the Bid Proposal. Each Bid must contain evidence of Bidder's qualification to do business in the jurisdiction where the Project is located or covenant to obtain such qualification prior to award of the contract.

4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

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

4.1.1 To examine thoroughly the Contract Documents and other related data identified in the Bidding Documents (including "technical data" referred to below);

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

4.1.3 To consider federal, state and local laws and regulations that may affect cost, progress, performance or furnishing of the Work;

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

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

4.2 Before submitting a Bid, each Bidder will be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

4.3 On request in advance, and after indemnifying Owner from any and all claims of any kind whatsoever arising directly, indirectly, or consequently as a result of Bidder or its representative having access to the site, Owner will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the site to its former conditions upon completion of such explorations, investigations, tests and studies.

4.4 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and applying the specific means, methods, techniques, sequences or procedures (if any) that may be shown or indicated or expressly required by the Contract Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Contract Documents and the written resolutions thereof by the Engineer is acceptable to Bidder, and that the Contract

Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

5. AVAILABILITY OF LANDS FOR WORK, ETC.

5.1 The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work is as described in these Contract Documents. All additional lands and access there to required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

6. INTERPRETATION AND ADDENDA

6.1 All questions about the meaning or intent of the Bidding Documents are to be directed to the Engineer. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed, sent by facsimile, or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than five (5) days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

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

6.3 Failure of a Bidder to receive any Addendum, or to acknowledge receipt thereof, will not relieve such Bidder from conforming with the requirements which such Addendum imposes on his Bid or the Contract Documents, and may subject his Bid to disqualification by Owner.

7. BID SECURITY

7.1 Bid security shall be made payable to the owner, in the amount of \$15,000.00 (fifteen thousand dollars) and in the form of a certified or bank check, or a Bid Bond issued by a Surety certified to do business in New York State.

Such bid security shall become the property of the Owner, if, in case this bid shall be accepted by the Owner, the Bidder shall fail to execute a Contract with and give the required bonds and insurance to the Owner within seven days after the date of said mailing, telegraphing or delivering of said notice of acceptance.

7.2 Such bid security will be returned to all except the three lowest formal Bidders within five (5) days after the formal opening of bids, and the remaining bid securities will be returned to the three lowest Bidders within the forty-eight (48) hours after approval by the Owner's attorney of the executed Contract and the insurance furnished, or if no Contract has been so executed within forty-five (45) days after the date of the opening of bids, upon

demand of the Bidder at any time thereafter so long as he has not been notified of the acceptance of bid.

8. CONTRACT TIMES

The number of days within which, or the dates by which, the Work is to be substantially completed and also completed and ready for final payment (the Contract Times) are set forth in the Agreement. Intermediate stages to be completed by prescribed Milestone Dates, if any, are also set forth in the Agreement.

9. LIQUIDATED DAMAGES

The successful Bidder, upon his failure or refusal to execute and deliver the Contract together with all policies and certificates of insurance within ten (10) days after he has received notice of acceptance of his bid, shall forfeit to the Owner, as liquidated damages for such failure or refusal, the security deposited with Bid.

10. SUBSTITUTE OR "OR-EQUAL" ITEMS

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in Paragraphs 6.7.1, 6.7.2 and 6.7.3 of the General Conditions, Supplementary Conditions, and in the General Requirements. Disapproval or rejection of an "or-equal" or substitute by Engineer shall not result in any modification to the Contract amount as originally bid.

11. BID FORMS AND CERTIFICATION

11.1 The Bid forms, certificates, etc., required for preparing a Bid appear in the bound Bidding Documents and are not to be removed. All bidders shall utilize such pages in preparing and submitting their Bid. Forms must be completed by printing neatly in black or blue ink.

11.2 Fill in blanks on Page BP-1, including identification of Contract for which a Bid is being submitted, Bidder's Name, and listing of Addenda received by Bidders.

11.3 Fill out the appropriate blanks in the Schedule of Prices by inserting amounts, both in words and in figures, consistent with the Contract for which a Bid is being submitted. Compute and enter Total Bid Price or Prices, as set forth in the Schedule of Prices.

11.4 Bids by corporations must be executed in the corporate name by the President or Vice-President (or other authorized corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant

INSTRUCTIONS TO BIDDERS

secretary. The corporate address and state of incorporation must be shown below the signature.

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

11.6 All names must be typed or printed above or below the signature.

11.7 The address and telephone number for communications regarding the Bid must be shown in the space provided.

11.8 Attach Bid security.

11.9 Execute the certifications, assurances or affidavits which are attached to the Bid Form and which are identified therein.

12. SUBMISSION OF BIDS

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

12.2 The Bid constitutes all elements of the Bid Form and its attachments, as furnished to prospective Bidders, and as amended by applicable Addenda, if any, during the bidding period.

13. MODIFICATION AND WITHDRAWAL OF BIDS

13.1 A Bidder may withdraw his/her bid where a unilateral error or mistake is discovered in the bid, after a showing of the following:

13.1.1 The mistake is known or made known to the OWNER prior to the awarding of the Contract or within three days after the opening of the bid, whichever period is shorter; and

13.1.2 The price bid was based on an error of such magnitude that enforcement would be unconscionable; and

13.1.3 The bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error; and

13.1.4 The error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, or

services made directly in the compilation of the bid, which can be shown by objective inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and

13.1.5 It is possible to place the OWNER in status quo ante; the same position he/she enjoyed prior to bid.

13.2 The sole remedy for a bid mistake shall be withdrawal of the bid and the return of the bid bond or other security, if any, to the Bidder. Thereafter, the OWNER may, in its discretion award the Contract to the next lowest bidder or rebid the Contract.

14. OPENING OF BIDS

14.1 Bids will be opened as indicated in the Advertisement or Invitation to Bid. Only the total bid prices and major alternate prices (if any), will be read aloud. A Tabulation of Bids will be mailed to each Bidder within ten days of the Bid Opening.

15. BIDS TO REMAIN SUBJECT TO ACCEPTANCE

15.1 All Bids will remain subject to acceptance for forty-five days after the day of Bid opening, but Owner may, in its sole discretion, release any Bid and return the Bid Security prior to that date.

16. AWARD OF CONTRACT

16.1 Owner reserves the right to reject any and all Bids, including without limitation, the rights to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bid and to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Owner also reserves the right to waive all informalities not involving price, time or changes in the Work and Award a Contract to the Successful Bidder. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words. Bids containing incomplete or no price information for any Bid item which thus prevents evaluation of the extended total for that Bid item will be rejected.

16.2 In evaluating Bids, Owner will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

16.3 Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

16.4 Bids will be compared on the basis of the total bids for the three-year contract period. The lowest Bidder will be that Bidder whose bid totals the lowest number of dollars as determined above.

16.5 Award of Contract. The award of the Contract will be made to the lowest bidder for the three-year contract period for each year that, in the opinion of the Owner, is qualified to perform the work required and is responsible and reliable.

16.6 If the Contract is to be awarded, OWNER will give the Successful Bidder a Notice of Award within forty-five (45) days after the day of the bid opening.

17. CONTRACT SECURITY AND INSURANCE

17.1 Article 5 of the General Conditions and the Supplementary Conditions set forth the Owner's requirements as to the types and extent of bonds and insurance coverage which are to be furnished and maintained by the Contractor. When the Successful Bidder delivers the executed Agreement to Owner, the required Bonds, Certificate of Insurance and endorsements shall be submitted at that time.

18. SIGNING OF AGREEMENT

18.1 The required number of the unsigned counterparts of the Agreement, together with attached Contract Documents, will be forwarded to the Successful Bidder following issuance of the Notice of Award. Within fifteen days thereafter, the Contractor shall sign and deliver to the Owner all counterparts of the Agreement, together with attached Contract Documents, the required Contract Security, and duly executed acknowledgement of signatures. Within ten days thereafter, provided that signatures are in order and Contract Security is acceptable, Owner will sign all counterparts of the Agreement, including duly executed acknowledgment of signature, and return one executed copy thereof to Contractor with attached Contract Documents. Each counterpart is to be accompanied by a complete set of Drawings with appropriate identification.

19. COPIES OF DOCUMENTS

OWNER will furnish copies of contract documents to CONTRACTOR as follows:

Three sets of Contract Documents.

20. SPECIAL CONDITIONS

- a. The Contract(s) for the Refuse, Rubbish, Garbage and Recyclables will be awarded by the Village Board to the lowest qualified responsible bidder(s) subject to such bidder(s) applying for, qualifying for, and obtaining a license to collect such Refuse, Rubbish, Garbage and Recyclables pursuant to the provisions of Village of Solvay Code Chapter 96, and the Contractor permit issued by the Onondaga County Resource Recovery Agency, ten (10) days after notification of award of the Contract. The Village Board in determining the lowest qualified responsible bidder shall

INSTRUCTIONS TO BIDDERS

consider the past performance in supplying such services by such bidder in other areas or municipalities where such bidder has rendered such service. Past failure to collect Refuse, Rubbish, Garbage and Recyclables in accordance with established schedules of collection or unsatisfactory performance or any other failure to render such service without just cause in the opinion of the Village Board shall be full and sufficient reason for the Village Board of the Village of Solvay to reject such bid on the basis that the bidder is not a qualified responsible bidder.

- b. The successful Contractor shall establish, for the duration of the awarded contract, a four day week, excluding Saturday and Sunday, for collections. All collections in the Village need not be completed in four days. Deviation from the scheduled collection day will be allowed during the weeks in which legal holidays may fall. The Village shall provide each property owner, via the United States Postal Service, written notice of the scheduled collection days, the Village regulations regarding the collection and disposal of Refuse, Rubbish, Garbage and Recyclables and any other information required by the Village of Solvay. The Village shall mail said schedule prior to the start of this contract. A copy of the collection schedule shall be filed with the Village Clerk, Village of Solvay, prior to commencement of the contract. No deviation shall be made from said established collection day without the prior written approval of the Mayor of the Village of Solvay. The collection services within this agreement shall consist of regularly scheduled weekly pick-ups of Refuse, Rubbish, Garbage and Recyclables from all residential and commercial properties within the Village of Solvay. No industrial enterprises located within the Village of Solvay are covered by this contract. The Bidder shall submit bids on three consecutive years being: 2018, 2019, 2020 and 2021 for Refuse, Rubbish, Garbage and Recyclables.

A route map is enclosed (Figure 1). The Contractor shall make arrangements for picking up the entire Village on weekdays during those times in which a legal holiday falls on a weekday, and shall notify the Village DPW Department at least two weeks in advance of the alternate schedule. The legal holidays that may interfere with scheduled pick-ups are Memorial Day, 4th of July, Labor Day, New Year's Day, Thanksgiving and Christmas. The Contractor may suggest a different schedule subject to approval of the Village Board.

- c. Sherfield Drive is the only private road within the Village. The homeowners located on Sherfield Drive leave their Refuse, Rubbish, Garbage and Recyclables on Orchard Road. Access to Sherfield Drive will not be required.
- d. All collections shall be made from just outside of the pavement and emptied containers and receptacles shall be returned to just outside of the pavement in such a manner that they shall not constitute an obstruction to traffic of pedestrians lawfully using the streets and sidewalks. The containers used shall be covered rigid plastic or metal and including contents, shall not weigh more than 75 lbs. If plastic bags are to be used, they must be placed inside rigid containers.
- e. The Contractor shall use proper care in the handling and emptying of such containers and receptacles so that the same are not unnecessarily damaged or destroyed, or in

INSTRUCTIONS TO BIDDERS

the event that he/she shall fail to comply with this provision, the Contractor shall replace such receptacle at their own cost and expense, or make financial restitution there for, and deliver same to the owner of the damaged receptacle within seven (7) days after notification by the Village DPW Superintendent of a valid claim.

- f. The disposal of all Refuse, Rubbish, Garbage and Recyclables collected shall be the responsibility of the Contractor. The Disposal for all solid waste and recyclables collected shall be the responsibility of the Contractor. All solid waste collected by the Contractor shall be transported to the Onondaga County Resource Recovery Agency (OCRRA) Waste to Energy Plant on Rock Cut Road in the Town of Onondaga, New York. All recyclables shall be transported to an OCRRA approved materials recycling facility. All credit due for disposal of recyclables collected under this Contract shall accrue to the Contractor. Copies of the Agreements with OCRRA are attached here to for Contractors compliance.
- g. All Refuse, Rubbish, Garbage and Recyclables collected under the Contract shall be collected, hauled and transported in fully enclosed, leak-proof Refuse, Rubbish, Garbage and Recyclables trucks, and these vehicles shall comply with Part 301 of the NYS Vehicle Traffic Law and Part 79 of the Commissioners Regulations (NYS Inspection Program).
- h. All work performed by the Contractors under the Contract shall be performed in a good and workmanlike manner approved by the Village of Solvay.
- i. The Contractor shall faithfully perform and fulfill the agreement and the Contractor will not sublet or assign this Contract without the written consent of the Village of Solvay.
- j. If, in the opinion of the Village DPW Superintendent, any Contractor shall fail in any manner to properly perform any part of this Contract, including failure to pick up waste and/or recycling, the Village shall notify the Contractor, and the Contractor shall have 24 hours to correct such failure. If the Contractor continues to fail to perform, than the Village reserves the right to perform such services itself and may deduct such expenses from the amounts otherwise payable to the Contractor. The rate to be used to compensate the Village under such surcumstances shall be \$108 per service unit for failure to collect waste/recycling and \$108.00 per hour hour for all other purposes plus tipping fees.
- k. The Owner in this Contract hereby reserves the right to terminate the contract and to declare this contract null and void upon 60 days written notice to the Contractor, delivered by certified mail to the Contractor's address set forth in this contract
- l. The Village requires the collection of Refuse, Rubbish, Garbage and Recyclables be made on a four-day schedule, between the hours of 6:00 a.m. and 3:00 p.m.
- m. Refuse, Rubbish, Garbage and Recyclables Items.

The successful Contractor shall be responsible for the pickup and disposal of:

INSTRUCTIONS TO BIDDERS

- Refuse, Rubbish, Garbage and Recyclables, which includes ashes, cardboard, and scraps of wood. Scraps of wood shall be separately and securely bound and placed outside the container(s). Only one bundle shall be permitted each week at the residential or commercial address, and the bundle shall be less than three feet long and weigh less than 25 pounds.
- Recyclables shall include those recyclable items as defined by the Onondaga County Resource Recovery Agency in the Contractor permit.
- Garbage, which includes every accumulation of both animal and vegetable matter, both liquid or otherwise, which accumulation and preparation of food and all sorts of meat, fish, fowl or vegetables are stored or dealt in are subject to decay and include in general all items of a similar nature which are subject to decay.

n. Excluded Items

Items which are not to be picked up as part of this contract are brush, leaves, grass clippings, cuttings, construction materials, furniture, tubs, sinks, white goods and other appliances, tires, batteries, automobile parts, carpet and hazardous material of any sort.

o. Contract Adjustments

If the price of fuel increases or decreases by more than fifteen (15) percent during the term of this Contract, the monthly payment shall be adjusted up or down by an amount equal to the number of gallons consumed per month times the fuel cost difference per gallon. In the event adjustment is required, the Contractor shall furnish the Owner with an accurate record of fuel consumption. The record shall be subject to verification by the Village Engineer. If the record cannot be verified, the Village Engineer may estimate fuel consumption to calculate the adjustment. The price of fuel shall be the monthly average price for No. 2 Diesel Retail Sales for the Central Atlantic (PADD1B) region as published by the United States Energy Information Administration. The base price shall be three dollars and twenty five cents \$3.25 a gallon.

p. Environmental

The Contractor who is awarded the contract for the collection and disposal of all Refuse, Rubbish, Garbage and Recyclables in the Village of Solvay shall be responsible for the protection of the environment during the performance of the Contract.

Any action taken and/or funds expended by the Owner to address or correct environmental violations, caused by the operations of a Contractor, shall be recovered from the Contractor.

INSTRUCTIONS TO BIDDERS

q. Pickup

As a requirement of this contract, the pickup of Recyclables shall be once a week and on the same day as the scheduled pickup of Refuse, Rubbish, Garbage and Recyclables.

r. Refuse, Rubbish, Garbage and Recyclables Collection

For the purpose of determining the amount of tonnage on an annual basis for this contract, the bidder may make use of the following information from the following Tables:

Table A shows the approximate total tonnage of garbage and recyclables picked up in the Village over the Contract period from 2015 to 2017.

TABLE A - TONNAGE

	2015	2016	2017
REFUSE, RUBBISH, GARBAGE	1,703.10	1,727.97	1,842.31
RECYCLABLES	497.35	498.78	453.88

Table B shows the number of parcels based on the 2015, 2016, 2017 Collection Figures for the Village of Solvay.

TABLE B - PARCELS

PARCELS	GARBAGE PICK UP	RECYCLABLES PICK UP
Single Family	1587	1587
Two Family	347	347
Three Family	42	42
Multi Family	82	82
Subtotal	2060	2060
Commercial	114	114
Park Cans	30	0
Total	2204	2174

These figures are approximate only.

s. Additional Services

The Contractor will be required to pick-up the excluded items (listed in Instructions to Bidders Section 20. Special Conditions); on a case by case basis, at an additional cost to the resident if an agreed upon price can be arranged. The Contractor will also be required to provide roll-out carts, at an additional cost to the resident(s) requesting them if an agreed upon price can be arranged. The capacity of these carts would be between 90 and 100 gallons.

t. Receiving Refuse, Rubbish, Garbage and Recyclables

Should the Refuse, Rubbish, Garbage and Recyclables Receiving Agency, during the Term of this Contract, refuse to accept any Refuse, Rubbish, Garbage and Recyclables or Recyclable items being collected under the contract, the Owner and Contractor shall negotiate an adjustment to the contract amount.

u. Payment

The Contractor will be paid in twelve (12) monthly payments in equal amounts at the end of each month. **Copies of all garbage and recyclable tonnage vouchers are to be submitted with monthly bills along with Certified Payrolls of employees involved with this contract.** All payments are expressly conditioned upon submission of this information by the Contractor.

v. Resolution of Homeowner/Customer Complaints

1. The customer and the contractor should first attempt to resolve the problem by contacting one another directly. If agreement is not reached;
2. The complaint is then presented to the Village DPW Superintendent. In the case the customer has a complaint about the Contractor, the Village DPW Superintendent has the authority to back charge the Contractor for the services used to resolve the complaint. In addition, the Village has the option of utilizing Village Personnel in charging the services back to the contractor. In the case the contractor has a complaint about the customer, the Village DPW Superintendent is authorized to intervene and establish an equitable resolution. If the complaint involves Refuse, Rubbish, Garbage that is being brought into the Village for disposal, the Village DPW Superintendent is authorized to resolve the complaint using all available means of remedy. The Village DPW Superintendent has the authority to deal with complaints without the approval of the Village Board.

21. SALES AND USE TAXES

21.1 Owner is exempt from State Sales and Use Taxes on materials and equipment to be incorporated in the Work. Said taxes shall not be included in the Contract Price. Refer to Supplementary Conditions; paragraph SC-6.15 for additional information.

22. RIGHT TO TERMINATE AND RE-BID FOR SOLID WASTE AND RECYCLING COLLECTION WITH THE TOWN OF GEDDES

22.1 The Village of Solvay reserves the right to re-bid services after December 31, 2015, of this contract in conjunction with the Town of Geddes and to cancel the balance of this contract after said date should the Village decide to consolidate solid waste collection and disposal services with the Town of Geddes.

CONTRACTOR'S BID PROPOSAL

CONTRACTOR'S BID
FOR
COLLECTION & DISPOSAL OF ALL
REFUSE, RUBBISH, GARBAGE AND RECYCLABLES FOR
VILLAGE OF SOLVAY
ONONDAGA COUNTY, NEW YORK

THIS BID IS SUBMITTED TO:

Village of Solvay
1100 Woods Road
Solvay, New York 13209

By: _____
(Name of Bidder)

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Contract Documents to perform and furnish all work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Times included in this Bid and the Agreement, respectively, and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for forty-five days after the day of Bid opening. BIDDER will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen days after the date of OWNER's Notice of Award.
3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:
 - (a) BIDDER has examined and carefully studied the Bidding Documents and the following Addenda, receipt of all which is hereby acknowledged:

Date	Number
_____	_____
_____	_____

- (b) BIDDER has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the Work.
- (c) BIDDER is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect cost, performance and furnishing of the Work.
- (d) BIDDER has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1 of the General Conditions. BIDDER accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which BIDDER is entitled to rely as provided in paragraph 4.2 of the General Conditions. BIDDER acknowledges that such reports and drawings are not Contract Documents and may not be complete for BIDDER's purposes. BIDDER acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Bidding Documents with respect to Underground Facilities at or contiguous to the site. BIDDER has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by BIDDER and safety precautions and programs incident thereto. BIDDER does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents.
- (e) BIDDER is aware of the general nature of Work to be performed by OWNER and others at the site that relates to Work for which this Bid is submitted as indicated in the Contract Documents.
- (f) BIDDER has correlated the information known to BIDDER, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

- (g) BIDDER has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that BIDDER has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to BIDDER, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which the Bid is submitted.
 - (h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.
- 4.
- (a) BIDDER will complete the Work for the prices entered in the Schedule of Bid Items which follows. Individual Bid Items are more fully defined in the Bid Item Description pages Section 01026 of the Specifications.
 - (b) The BIDDER has included the cost of all Work described in the Contract Documents and if any Work is not listed in the Bid Item Descriptions, the BIDDER has included the cost in the Bid Item under which it most logically ought to have been included.
 - (c) Unit Prices have been computed in accordance with paragraph 11.9.2 of the General Conditions. BIDDER acknowledges that quantities are not guaranteed and final payment will be based on actual quantities determined as provided in the Contract Documents.
5. BIDDER agrees that the Work will be completed within the time periods stipulated in the Agreement from the date when the Contract Time commences to run as provided in paragraph 2.3 of the General and Supplementary Conditions.
6. BIDDER and his surety, where appropriate, have completed and executed the following documents which are attached to and made a condition of this Bid:
- (a) Required Bid Security in the form of a Bank or Certified Check or a Bid Bond.
 - (b) Required BIDDERS's Qualification Statement with supporting data.
 - (c) Certification of Equipment
 - (d) Non-Collusive Bidding Certification

7. Communications concerning this Bid shall be addressed to:

The address of BIDDER indicated below.

The following address: _____

8. The terms used in this Bid which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents have the meanings assigned to them in the General Conditions.

THIS BID SUBMITTED ON _____, 2018.

9. Signature of BIDDER and other appropriate information, if BIDDER is:

* * * * *

(ACKNOWLEDGMENT OF OFFICER OF OWNER)

STATE OF)
) ss:
COUNTY OF)

On this _____ day of the Month _____ in the year of, 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in he/she capacity, and that by he/she signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(SEAL)

Notary Public

* * * * *

(ACKNOWLEDGMENT OF OFFICER OF OWNER)

STATE OF)
) ss:
COUNTY OF)

On this _____ day of the Month _____ in the year of, 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in he/she capacity, and that by he/she signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(SEAL)

Notary Public

* * * * *

(ACKNOWLEDGMENT OF OFFICER OF OWNER)

STATE OF)
) ss:
COUNTY OF)

On this _____ day of the Month _____ in the year of, 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in he/she capacity, and that by he/she signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(SEAL)

Notary Public

ATTACHMENTS

BIDDER and his surety, where appropriate, have completed and executed the attached documents which are identified below.

BID SECURITY (CERTIFIED CHECK) (BANK CHECK) (BID BOND)

BIDDER'S QUALIFICATION STATEMENT

CERTIFICATION OF EQUIPMENT

NON-COLLUSIVE BIDDING CERTIFICATION

**ATTACH BID SECURITY
TO THIS PAGE**

BIDDER'S QUALIFICATION STATEMENT

To induce the making of this Contract, the Bidder represents to the Owner the following, as evidence of Bidder's Qualifications to perform the work herein specified:

1. How many years has your organization been in business under the name in which you propose to execute this Contract?
 _____ Years

2. What project of character similar to that proposed has your present organization completed? Additionally, please identify any projects of similar character for which you are currently under Contract. Give the information indicated by the following tabulations.

Name, Address, and Phone No. of Owner for whom work was done	Description of Work	Approximate Amount of Contract	Approximate Date Work was Performed

3. Has your present organization ever failed to complete any work awarded to it? If so, state when, where and why. _____

4. Do you have, or can you procure the necessary personnel, equipment, facilities and financial resources to immediately undertake and satisfactorily complete the work contemplated in this Contract? _____

**CERTIFICATION OF EQUIPMENT
TO VILLAGE OF SOLVAY**

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:
VILLAGE OF SOLVAY)

_____, being duly sworn, deposes and says:

1. That the bid as set forth in the attached proposal sheet has been submitted by deponent on behalf of_____.

2. That as an inducement to the Village of Solvay and for the purposes of reliance thereon by the Village of Solvay, deponent certifies that the following itemized equipment is owned by _____ and all of said equipment will be regularly used in performing the services bid for in the attached proposal sheet.

3. That the following is an itemized statement of the equipment to be used:
(Give make and model of truck and body, and year of manufacture.)

_____ L.S.

Subscribed and sworn to before me

this _____ day of _____, 20 _____

Notary Public

NON-COLLUSIVE BIDDING CERTIFICATION

Section 103-d of the General Municipal Law requires the following statement: subscribed by the bidder as true under the penalties of perjury: Non-Collusive Bidding Certification.

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

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

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

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

Section 103-d of the General Municipal Law, as amended by Chapter 675 L 1966, in addition to requiring the above certification, provides as follows:

(b) A bid shall not be considered for award nor shall any award be made where (1), (2) and (3) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (1), (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items or (c) has sold the same items to other customers at the same price being bid, does not constitute, without more, a disclosure within the meaning of subparagraph one (a).

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

Dated: _____, 2015

Signed: _____
Name

Title

Company

Address

Corporate Seal

**BID
COLLECTION AND DISPOSAL OF REFUSE, RUBBISH, GARBAGE & RECYCLABLES
VILLAGE OF SOLVAY**

P.I. No.	Contract Period	Price in Words for Refuse, Rubbish, Garbage and Recyclables from the Entire Village for One Year	Price in Figures	
			\$	¢
1	June 1, 2018 – May 31, 2018			
1	June 1, 2019 – May 31, 2019			
1	June 1, 2020 – May 31, 2021			
TOTAL CONTRACT AMOUNT (THREE YEARS OF COLLECTION – IN FIGURES)				

Note: The price for collection can not be reduced from one year to the next.

AGREEMENT

AGREEMENT

AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is dated as of the ___ day of _____ in the year 2018 by and between the Village of Solvay hereinafter called (OWNER) and _____ hereinafter called (CONTRACTOR).

OWNER AND CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agrees as follows:

ARTICLE 1 - WORK

CONTRACTOR shall perform and complete all Work as specified or indicated in the Contract Documents. The CONTRACTOR will have an exclusive contract to collect and dispose of all refuse, rubbish, garbage and recyclables from all houses and located within the boundary of the Village of Solvay, as described herein within the areas shown on the Collection Route Map (Figure 1) included in these Contract Documents.

ARTICLE 2 - ENGINEER

The Project has been designed by C&S Engineers, Inc., who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIMES

3.1 Upon execution and delivery of the Contract, and the delivery of the required insurance certificates and policies by the Contractor to the Owner and the approval thereof by the Owner's attorney, the Contractor will be notified to proceed with the work of the Contract commencing on June 1, 2018 and continuing through May 31, 2021. The parties may agree to extend this Contract for one additional year, on the same terms provided in year three of the bid.

ARTICLE 4 - CONTRACT PRICE

4.1 The OWNER will pay CONTRACTOR monthly, in equal amounts, at the end of each month as prescribed by the Village of Solvay Treasurer.

ARTICLE 5 - PAYMENT PROCEDURES

5.1 CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions and Article 14 of the Supplementary Conditions. Applications for Payment will be processed by OWNER as provided in the General Conditions and Supplementary Conditions. Copies of all garbage and recyclable tonnage vouchers are to be submitted with monthly bills along with Certified Payrolls of employees involved with this contract.

ARTICLE 6 – CONSOLIDATION OF WASTE COLLECTION

6.1 The Village of Solvay reserves the right to re-bid for services to be rendered after December 31,2018 of this contract in conjunction with the Town of Geddes and to cancel the balance of this contract after said date should the Village decide to consolidate solid waste collection and disposal services with the Town of Geddes.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

In executing this Agreement, CONTRACTOR makes the following representations:

7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in Article 8) and the other related data identified in the Bidding Documents including "technical data".

7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

7.4 CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.2 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by

CONTRACTOR and safety precautions and programs incident thereto: CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.5 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.

7.6 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.7 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

The Contract Documents which comprise the entire Agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

8.1 Project Manual

8.1.1 This Agreement (pages AG-1 to AG-8, inclusive).

8.1.2 Exhibits to this Agreement as follows:

- a. Exhibit "A"; Performance and Other Bonds.
- b. Exhibit "B"; Certificates of Insurance.
- c. Exhibit "C"; Notice of Award and Notice to Proceed.

8.1.3 Instructions to Bidders and CONTRACTOR's Bid Proposal together with attachments identified at end of Bid Form.

8.1.4 General Conditions as follows:

- a. Standard General Conditions of the Construction Contract, pages 1 to 42, inclusive.

8.1.5 Supplementary Conditions, as follows:

- a. Supplementary Conditions, pages SC-1 to SC-22, inclusive.
- b. Exhibit B - "Prevailing Wage Rate Schedule and Labor Regulations"

8.1.6 Specifications consisting of separate Sections individually identified by number, title and numbered pages, as listed in the Table of Contents thereof.

8.1.7 Addenda numbers ___ to ___, inclusive.

8.2 Contract Drawings

8.2.1 Collection Route Map – see Figure 1.

8.3 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be modified or supplemented as provided in paragraphs 3.5 and 3.6 of the General Conditions.

ARTICLE 9 - MISCELLANEOUS

9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER or CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

SIGNATURES AND ACKNOWLEDGMENTS

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed five copies of this agreement. One counterpart each has been delivered to OWNER, CONTRACTOR, and ENGINEER. All portions of the Contract Documents have been signed, initialed, or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on _____, 2018.

OWNER

CONTRACTOR

Village Board, Village of Solvay

By: _____
Ronald Benedetti, Mayor

By: _____

Attest: _____

Attest: _____

Address for giving notices:

Address for giving notices:

(If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement.)

License No. _____

Agent for process:

(If CONTRACTOR is a corporation, attach evidence of authority to sign.)

* * * * *

(ACKNOWLEDGMENT OF OFFICER OF OWNER)

STATE OF)
) ss:
COUNTY OF)

On this _____ day of the Month _____ in the year of, 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in he/she capacity, and that by he/she signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(SEAL)

Notary Public

EXHIBIT A

PERFORMANCE AND OTHER BONDS

EXHIBIT B

CERTIFICATE OF INSURANCE

PAYMENT BOND

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

CONTRACTOR (*Name and Address*):

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

OWNER (*Name and Address*):

CONTRACT

Effective Date of Agreement:

Amount:

Description (*Name and Location*):

BOND

Bond Number:

Date (*Not earlier than Effective Date of Agreement*):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal (Seal)

Surety's Name and Corporate Seal (Seal)

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
 - 4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2 Claimants who do not have a direct contract with Contractor:
 1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. When a Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at Surety's expense take the following actions:
 - 6.1 Send an answer to that Claimant, with a copy to Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2 Pay or arrange for payment of any undisputed amounts.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.

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

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

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

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

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

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

15. Definitions

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

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

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

FOR INFORMATION ONLY – *(Name, Address, and Telephone)*

Surety Agency or Broker:

Owner’s Representative *(Engineer or other)*:

PERFORMANCE BOND

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

CONTRACTOR (*Name and Address*): SURETY (*Name, and Address of Principal Place of Business*):

OWNER (*Name and Address*):

CONTRACT

Effective Date of Agreement:
Amount:
Description (*Name and Location*):

BOND

Bond Number:
Date (*Not earlier than Effective Date of Agreement*):
Amount:
Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal (Seal)

Surety's Name and Corporate Seal (Seal)

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

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

1. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 2.1.
2. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 2.1 Owner has notified Contractor and Surety, at the addresses described in Paragraph 9 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor, and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
 - 2.2 Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 2.1; and
 - 2.3 Owner has agreed to pay the Balance of the Contract Price to:
 1. Surety in accordance with the terms of the Contract; or
 2. Another contractor selected pursuant to Paragraph 3.3 to perform the Contract.
3. When Owner has satisfied the conditions of Paragraph 2, Surety shall promptly, and at Surety's expense, take one of the following actions:
 - 3.1 Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
 - 3.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 3.3 Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 5 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
 - 3.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
 2. Deny liability in whole or in part and notify Owner citing reasons therefor.
4. If Surety does not proceed as provided in Paragraph 3 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 3.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.
5. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 3.1, 3.2, or 3.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To the limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:

- 5.1 The responsibilities of Contractor for correction of defective Work and completion of the Contract;
- 5.2 Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions of or failure to act of Surety under Paragraph 3; and
- 5.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.

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

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

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

9. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.

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

11. Definitions.

- 11.1 Balance of the Contract Price: The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.
- 11.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 11.3 Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
- 11.4 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – <i>(Name, Address and Telephone)</i> Surety Agency or Broker: Owner's Representative <i>(Engineer or other party)</i> :
--

CERTIFICATES OF INSURANCE

NOTICE OF AWARD

Date: _____ **Re: Owner's Contract No.:** 114.204.015
To: _____ **Contract For:** Collection & Disposal of All
Address: _____ Refuse, Rubbish Garbage & Recyclables

To Whom It May Concern:

You are notified that your Bid dated April 17, 2015, for the above referenced Contract has been considered. You are the apparent successful lowest qualified Bidder and have been awarded a contract for the collection and disposal of all refuse, rubbish, garbage, and recyclables from all residential and commercial properties located within the boundary of the Village of Solvay for three years (6/1/2018 through 5/31/2020) unless earlier terminated pursuant to the Contract Documents. The Contract Price of your contract is \$.

The original and five conformed copies of the Contract Documents will be delivered to you by the engineer and will bear the stamp "Conformed Copy".

You must comply with the following conditions precedent within ten days of the date of receiving the Contract Documents from the Engineer:

1. You must execute and deliver the original and all copies of the executed counterparts of the Contract Documents to the Village Attorney, Kevin M. Gilligan. Costello, Cooney & Fearon, PLLC Bridgewater Place, Suite 300, 500 Plum Street, Syracuse NY 13204.
2. You must deliver the Performance and Payment Bonds identified in the Supplementary Conditions (Paragraph 5.9). All policies must be endorsed to add the Village of Solvay as an additional insured on a primary and non-contributory basis and to give thirty (30) days prior written notice to the Village by certified mail of any cancellation or changes to the policy, except in the case of cancellation for non-payment of premium in which ten (10) days' notice shall be provided. Certified copies of the endorsements must be provided to the Owner.
3. You must deliver with the executed Agreement the required Certificates of Insurance, as noted above, together with the required endorsements and original OCP policy. Insurance requirements are specified in Article 5 of the General Conditions and Article 5 of the Supplementary Conditions.

Failure to comply with these conditions within the time specified will entitle Owner to consider your bid abandoned, to annul this Notice of Award and to declare your Bid Security forfeited.

Within ten days after you comply with the above conditions, the Owner will return to you one of the executed Contract Documents, which will include the fully signed counterpart of the Agreement and such other attachments as may be required from the Owner.

Service shall begin on June 1, 2018.

OWNER: _____

By: _____
(Authorized Signature)

Title: _____

NOTICE TO PROCEED

Dated _____, 2018

TO: _____
(Contractor)

ADDRESS: _____

PROJECT: _____

CONTRACT FOR: _____

You are notified that the Contract Times under the above contract will commence to run on _____. In accordance with Article 3 of the Agreement the dates of Substantial Completion and completion and readiness for final payment are _____, 20____ and _____, 20____, respectively.

Paragraph 2.7 of the General Conditions provide that you must each deliver to the Village (with copies to ENGINEER and other identified additional insured's) certificates of insurance which you are required to purchase and maintain in accordance with the Contract Documents.

Village of Solvay
(Owner)

By: _____
(Authorized Signature)

Mayor
(Title)

(Owner)

By: _____
(Authorized Signature)

(Title)

Copy to Engineer
(Use Certified Mail, Return Receipt Requested)

(Date)

GENERAL CONDITIONS

GENERAL CONDITIONS

**STANDARD
GENERAL CONDITIONS
OF THE
CONSTRUCTION CONTRACT**

Prepared by
Engineers Joint Contract Documents Committee

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

CONSTRUCTION SPECIFICATIONS INSTITUTE

This document has been approved and endorsed by

The Associated General  Contractors of America

These General Conditions have been prepared for use with the Owner-Contractor Agreements (No. 1910-8-A-1 or 1910-8-A-2) (1990 Editions). Their provisions are interrelated and a change in one may necessitate a change in the others. Comments concerning their usage are contained in the Commentary on Agreements for Engineering Services and Contract Documents (No. 1910-9) (1986 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1990 Edition). When bidding is involved, the Standard Form of Instructions to Bidders (No. 1910-12) (1990 Edition) may be used.

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American Consulting Engineers Council
1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers
345 East 47th Street, New York, NY 10017

Construction Specifications Institute
601 Madison St., Alexandria, VA 22314

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GENERAL CONDITIONS

ARTICLE 1—DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

- 1.1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the Bidding Requirements or the Contract Documents.
- 1.2. *Agreement*—The written contract between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.
- * 1.3. *Application for Payment*—The form accepted by ENGINEER which is to be used by CONTRACTOR in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
- 1.4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
- 1.5. *Bid*—The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- 1.6. *Bidding Documents*—The advertisement or invitation to Bid, instructions to bidders, the Bid form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
- 1.7. *Bidding Requirements*—The advertisement or invitation to Bid, instructions to bidders, and the Bid form.
- 1.8. *Bonds*—Performance and Payment bonds and other instruments of security.
- 1.9. *Change Order*—A document recommended by ENGINEER, which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
- 1.10. *Contract Documents*—The Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders and ENGINEER's written interpretations and clarifications issued pursuant to paragraphs 3.5, 3.6.1, and 3.6.3 on or after the Effective Date of the Agreement. Shop Drawing submittals approved pursuant to paragraphs 6.26 and 6.27 and the reports and drawings referred to in paragraphs 4.2.1.1 and 4.2.2.2 are not Contract Documents.
- 1.11. *Contract Price*—The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9.1 in the case of Unit Price Work).
- 1.12. *Contract Times*—The numbers of days or the dates stated in the Agreement: (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with paragraph 14.13.
- 1.13. *CONTRACTOR*—The person, firm or corporation with whom OWNER has entered into the Agreement.
- 1.14. *defective*—An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.8 or 14.10).
- 1.15. *Drawings*—The drawings which show the scope, extent and character of the Work to be furnished and performed by CONTRACTOR and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents. Shop drawings are not Drawings as so defined.
- 1.16. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
- 1.17. *ENGINEER*—The person, firm or corporation named as such in the Agreement.
- * 1.18. *ENGINEER's Consultant*—A person, firm or corporation having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.
- 1.19. *Field Order*—A written order issued by ENGINEER which orders minor changes in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Times.

* SEE SUPPLEMENTARY CONDITIONS

1.20. *General Requirements*—Sections of Division 1 of the Specifications.

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

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

1.23. *Liens*—Liens, charges, security interests or encumbrances upon real property or personal property.

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

1.25. *Notice of Award*—The written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.

1.26. *Notice to Proceed*—A written notice given by OWNER to CONTRACTOR (with a copy to ENGINEER) fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR's obligations under the Contract Documents.

1.27. *OWNER*—The public body or authority, corporation, association, firm or person with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.

1.28. *Partial Utilization*—Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

1.29. *PCBs*—Polychlorinated biphenyls.

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

1.31. *Project*—The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

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

1.33. *Resident Project Representative*—The authorized representative of ENGINEER who may be assigned to the site or any part thereof.

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

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

1.36. *Specifications*—Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

* 1.37. *Subcontractor*—An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work ~~at the site.~~

1.38. *Substantial Completion*—The Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER as evidenced by ENGINEER's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with paragraph 14.13. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

1.39. *Supplementary Conditions*—The part of the Contract Documents which amends or supplements these General Conditions.

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

1.41. *Underground Facilities*—All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

1.42. *Unit Price Work*—Work to be paid for on the basis of unit prices.

* SEE SUPPLEMENTARY CONDITIONS

1.43. *Work*—The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

1.44. *Work Change Directive*—A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.23. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times as provided in paragraph 10.2.

1.45. *Written Amendment*—A written amendment of the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

* ADDITIONAL DEFINITIONS

ARTICLE 2—PRELIMINARY MATTERS

Delivery of Bonds:

2.1. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with paragraph 5.1.

Copies of Documents:

* 2.2. OWNER shall furnish to CONTRACTOR up to ten copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

Commencement of Contract Times; Notice to Proceed:

* 2.3. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective Date of the Agreement. In no event will the

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

Starting the Work:

2.4. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run, but no Work shall be done at the site prior to the date on which the Contract Times commence to run.

Before Starting Construction:

* 2.5. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.

2.6. Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for review:

* 2.6.1. a preliminary progress schedule indicating the times, numbers of days or dates for starting and completing the various stages of the Work, including any milestones specified in the Contract Documents;

* 2.6.2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal;

2.6.3. a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

* 2.7. Before any Work at the site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with paragraphs 5.4, 5.6 and 5.7.

Preconstruction Conference:

* 2.8. Within twenty days after the Contract Times start to run, but before any Work at the site is started, a conference

* SEE SUPPLEMENTARY CONDITIONS

~~attended by CONTRACTOR, ENGINEER and others as appropriate~~ will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.6, procedures for handling Shop Drawings and other submittals, processing Applications for Payment and maintaining required records.

Initially Acceptable Schedules:

* 2.9. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.6. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until the schedules are submitted to and acceptable to ENGINEER as provided below. The progress schedule will be acceptable to ENGINEER as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Times, but such acceptance will neither impose on ENGINEER responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor. CONTRACTOR's schedule of Shop Drawing and Sample submissions will be acceptable to ENGINEER as providing a workable arrangement for reviewing and processing the required submittals. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT,
AMENDING, REUSE

Intent:

3.1. The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

3.2. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifi-

cations and interpretations of the Contract Documents shall be issued by ENGINEER as provided in paragraph 9.4.

3.3. *Reference to Standards and Specifications of Technical Societies; Reporting and Resolving Discrepancies:*

3.3.1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

3.3.2. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in paragraph 6.5, CONTRACTOR shall report it to ENGINEER in writing at once, and, CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as authorized by paragraph 6.23) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.5 or 3.6; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

3.3.3. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 3.5 or 3.6, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:

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

3.3.3.2. the provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to OWNER, ENGINEER or any of ENGINEER's Consultants, agents or employees any duty or authority to supervise or direct the furnishing or

performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of paragraph 9.13 or any other provision of the Contract Documents.

3.4. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved" 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 ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective 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 paragraph 9.13 or any other provision of the Contract Documents.

Amending and Supplementing Contract Documents:

3.5: The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

3.5.1. a formal Written Amendment,

3.5.2. a Change Order (pursuant to paragraph 10.4), or

3.5.3. a Work Change Directive (pursuant to paragraph 10.1).

3.6. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

3.6.1. a Field Order (pursuant to paragraph 9.5),

3.6.2. ENGINEER's approval of a Shop Drawing or Sample (pursuant to paragraphs 6.26 and 6.27), or

3.6.3. ENGINEER's written interpretation or clarification (pursuant to paragraph 9.4).

Reuse of Documents:

3.7. CONTRACTOR, and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER (i) shall not have or acquire any title to or ownership rights in any

of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaptation by ENGINEER.

**ARTICLE 4—AVAILABILITY OF LANDS;
SUBSURFACE AND PHYSICAL
CONDITIONS; REFERENCE POINTS**

Availability of Lands:

~~4.1. OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a correct statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's lien against such lands in accordance with applicable Laws and Regulations. OWNER shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER unless otherwise provided in the Contract Documents. If CONTRACTOR and OWNER are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in OWNER's furnishing these lands, rights-of-way or easements, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.~~

** 4.2. Subsurface and Physical Conditions:*

~~4.2.1. Reports and Drawings. Reference is made to the Supplementary Conditions for identification of:~~

~~4.2.1.1. Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents; and~~

~~4.2.1.2. Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized by ENGINEER in preparing the Contract Documents.~~

* SEE SUPPLEMENTARY CONDITIONS

~~4.2.2. *Limited Reliance by CONTRACTOR Authorized, Technical Data:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:~~

~~4.2.2.1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto, or~~

~~4.2.2.2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or~~

~~4.2.2.3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.~~

~~4.2.3. *Notice of Differing Subsurface or Physical Conditions:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the site that is uncovered or revealed either:~~

~~4.2.3.1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is materially inaccurate, or~~

~~4.2.3.2. is of such a nature as to require a change in the Contract Documents, or~~

~~4.2.3.3. differs materially from that shown or indicated in the Contract Documents, or~~

~~4.2.3.4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then~~

~~CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.23), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.~~

~~4.2.4. *ENGINEER's Review:* ENGINEER will promptly review the pertinent conditions, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.~~

~~4.2.5. *Possible Contract Documents Change:* If ENGINEER concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories in paragraph 4.2.3., a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.~~

~~4.2.6. *Possible Price and Times Adjustments:* An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of such uncovered or revealed condition causes an increase or decrease in CONTRACTOR's cost of, or time required for performance of, the Work; subject, however, to the following:~~

~~4.2.6.1. such condition must meet any one or more of the categories described in paragraphs 4.2.3.1 through 4.2.3.4, inclusive;~~

~~4.2.6.2. a change in the Contract Documents pursuant to paragraph 4.2.5 will not be an automatic authorization of nor a condition precedent to entitlement to any such adjustment;~~

~~4.2.6.3. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.10 and 11.9; and~~

~~4.2.6.4. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Times if;~~

~~4.2.6.4.1. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a bid or becoming bound under a negotiated contract; or~~

~~4.2.6.4.2. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or~~

~~4.2.6.4.3. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.2.3.~~

~~If OWNER and CONTRACTOR are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Price or Contract Times, a claim may be made therefor as provided in Articles 11 and 12. However, OWNER, ENGINEER and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages sustained by CONTRACTOR on or in connection with any other project or anticipated project.~~

~~4.3. *Physical Conditions—Underground Facilities:*~~

~~4.3.1. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on~~

information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

4.3.1.1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

4.3.1.2. The cost of all of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for: (i) reviewing and checking all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with the owners of such Underground Facilities during construction and (iv) the safety and protection of all such Underground Facilities as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work.

4.3.2. *Not Shown or Indicated:* If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.23), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER; ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the Underground Facility. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document such consequences. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or the amount or length of any such adjustment in Contract Price or Contract Times, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. However, OWNER, ENGINEER and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages incurred or sustained by CONTRACTOR on or in connection with any other project or anticipated project.

Reference Points:

4.4. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations

without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

4.5. Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material:

* 4.5.1. OWNER shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. OWNER shall not be responsible for any such materials brought to the site by CONTRACTOR, Subcontractor, Suppliers or anyone else for whom CONTRACTOR is responsible.

4.5.2. CONTRACTOR shall immediately: (i) stop all Work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by paragraph 6.23), and (ii) notify OWNER and ENGINEER (and thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. CONTRACTOR shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR special written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by CONTRACTOR to be resumed, either party may make a claim therefor as provided in Articles 11 and 12.

4.5.3. If after receipt of such special written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order such portion of the Work that is in connection with such hazardous condition or in such affected area to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefor as provided in Articles 11 and 12. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

4.5.4. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's

Consultants and the officers, directors, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from such hazardous condition, provided that: (i) any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this subparagraph 4.5.4 shall obligate OWNER to indemnify any person or entity from and against the consequences of that person's or entity's own negligence.

4.5.5. The provisions of paragraphs 4.2 and 4.3 are not intended to apply to Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site.

ARTICLE 5—BONDS AND INSURANCE

Performance, Payment and Other Bonds:

* 5.1. CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

5.2. If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.1, CONTRACTOR shall within ten days thereafter substitute another Bond and surety, both of which must be acceptable to OWNER.

5.3. Licensed Sureties and Insurers; Certificates of Insurance:

5.3.1. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance

companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.3.2. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain in accordance with paragraph 5.4. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain in accordance with paragraphs 5.6 and 5.7 hereof.

CONTRACTOR's Liability Insurance:

* 5.4. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below 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, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:

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

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

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

5.4.4. claims for damages insured by customary personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;

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

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

* SEE SUPPLEMENTARY CONDITIONS

The policies of insurance so required by this paragraph 5.4 to be purchased and maintained shall:

5.4.7. with respect to insurance required by paragraphs 5.4.3 through 5.4.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers and employees of all such additional insureds;

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

5.4.9. include completed operations insurance;

5.4.10. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.12, 6.16 and 6.31 through 6.33;

5.4.11. contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.3.2 will so provide);

5.4.12. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work in accordance with paragraph 13.12; and

5.4.13. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

OWNER's Liability Insurance:

* 5.5. In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.4. OWNER, at OWNER's option, may purchase and maintain at OWNER's expense OWNER's own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

Property Insurance:

* 5.6. Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insur-

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

5.6.1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

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

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

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

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

5.7. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

5.8. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by OWNER in accordance with paragraphs 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be cancelled or materially changed or renewal refused until at least thirty days' prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.8.

~~5.9. OWNER shall not be responsible for purchasing and maintaining any property insurance to protect the interests of CONTRACTOR, Subcontractors or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount, will be borne by CONTRACTOR, SubContractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.~~

~~5.10. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraphs 5.6 or 5.7, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.~~

~~5.11. Waiver of Rights:~~

~~5.11.1. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraphs 5.6 and 5.7 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.~~

~~5.11.2. In addition, OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them, for:~~

~~5.11.2.1. loss due to business interruption, loss of use or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of or resulting from fire or other peril, whether or not insured by OWNER; and~~

~~5.11.2.2. loss or damage to the completed Project or part thereof caused by, arising out of or resulting from fire or other insured peril covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.10, after substantial completion pursuant to paragraph 14.8 or after final payment pursuant to paragraph 14.13.~~

~~Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in this paragraph 5.11.2 shall contain provisions to the effect that in the event of payment of any such loss, damage or consequential loss the insurers will have no rights of recovery against any of CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them.~~

~~Receipt and Application of Insurance Proceeds~~

~~5.12. Any insured loss under the policies of insurance required by paragraphs 5.6 and 5.7 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.13. OWNER shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.~~

~~5.13. OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.~~

~~Acceptance of Bonds and Insurance; Option to Replace:~~

~~5.14. If either party (OWNER or CONTRACTOR) has any objection to the coverage afforded by or other provisions of the Bonds or Insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within ten days after receipt of the certificates (or other evidence requested) required by paragraph 2.7. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was~~

required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

Partial Utilization—Property Insurance:

~~5.15. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with paragraph 14.10; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be cancelled or permitted to lapse on account of any such partial use or occupancy.~~

ARTICLE 6—CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence:

~~6.1. CONTRACTOR shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.~~

~~6.2. CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications to the superintendent shall be as binding as if given to CONTRACTOR.~~

Labor, Materials and Equipment:

* 6.3. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours and

CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER's written consent given after prior written notice to ENGINEER.

6.4. Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

6.5. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

Progress Schedule:

6.6. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.9 as it may be adjusted from time to time as provided below:

* ~~6.6.1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.9) proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.~~

6.6.2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of paragraph 12.1. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.7. Substitutes and "Or-Equal" Items:

~~6.7.1. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent or "or-equal" item or no substitution is permitted, other items of material or equipment of other Suppliers may be accepted by ENGINEER under the following circumstances:~~

~~6.7.1.1. "Or-Equal": If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for acceptance of proposed substitute items.~~

~~* 6.7.1.2. Substitute Items: If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under subparagraph 6.7.1.1, it will be considered a proposed substitute item. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. The procedure for review by the ENGINEER will include the following as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall first make written application to ENGINEER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified and be suited to the same use as that specified. The application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute.~~

~~* 6.7.1.3. CONTRACTOR's Expense: All data to be provided by CONTRACTOR in support of any proposed "or-equal" or substitute item will be at CONTRACTOR's expense.~~

~~6.7.2. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence or procedure of~~

~~construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.7.1.2.~~

~~6.7.3. Engineer's Evaluation: ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.7.1.2 and 6.7.2. ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized without ENGINEER's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any "or-equal" or substitute. ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitutes proposed or submitted by CONTRACTOR pursuant to paragraphs 6.7.1.2 and 6.7.2 and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER accepts a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute item.~~

Concerning Subcontractors, Suppliers and Others:

~~* 6.8.1. CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and ENGINEER as indicated in paragraph 6.8.2), whether initially or as a substitute, against whom OWNER or ENGINEER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.~~

~~* 6.8.2. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials or equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by OWNER and ENGINEER, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's or ENGINEER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price will be adjusted by the difference in the cost occasioned by such~~

substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

6.9.1. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

6.9.2. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR. CONTRACTOR shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with the ENGINEER through CONTRACTOR.

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

6.11. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.6 or 5.7, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants and all other additional insureds for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

Patent Fees and Royalties:

6.12. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance

of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents.

Permits:

~~* 6.13. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.~~

Laws and Regulations:

6.14.1. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

6.14.2. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.3.2.

Taxes:

* 6.15. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of

the Project which are applicable during the performance of the Work.

Use of Premises:

~~6.16. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.~~

~~6.17. During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the site clean and ready for occupancy by OWNER at Substantial Completion of the Work. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.~~

~~6.18. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.~~

Record Documents:

* 6.19. CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. ~~Upon completion of~~

* SEE SUPPLEMENTARY CONDITIONS

~~the Work, these record documents, Samples and Shop Drawings will be delivered to ENGINEER for OWNER.~~

Safety and Protection:

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

6.20.1. all persons on the Work site or who may be affected by the Work;

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

6.20.3. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

Safety Representative:

6.21. CONTRACTOR shall designate a qualified and experienced safety representative at the site whose duties and

responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

Hazard Communication Programs:

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

Emergencies:

* 6.23. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from OWNER or ENGINEER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action.

6.24. Shop Drawings and Samples:

6.24.1. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see paragraph 2.9). All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show ENGINEER the materials and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.26.

6.24.2. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with said accepted schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended, and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.26. The numbers of each Sample to be submitted will be as specified in the Specifications.

6.25. Submittal Procedures:

6.25.1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

~~6.25.1.1. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto,~~

~~6.25.1.2. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work, and~~

~~6.25.1.2. all information relative to CONTRACTOR's sole responsibilities in respect of means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto.~~

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

~~* 6.25.2. Each submittal will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR'S review and approval of that submittal.~~

~~6.25.3. At the time of each submission, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication, separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.~~

* 6.26. ENGINEER will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by ENGINEER as required by paragraph 2.9. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER, and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.27. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract

~~Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of submission as required by paragraph 6.25.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.25.1.~~

~~* 6.28. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submissions accepted by ENGINEER as required by paragraph 2.9, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.~~

Continuing the Work:

6.29. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.5 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.30. CONTRACTOR's General Warranty and Guarantee:

6.30.1. CONTRACTOR warrants and guarantees to OWNER, ENGINEER and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

6.30.1.1. abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors or Suppliers; or

6.30.1.2. normal wear and tear under normal usage.

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

6.30.2.1. observations by ENGINEER;

6.30.2.3. recommendation of any progress or final payment by ENGINEER;

6.30.2.3. the issuance of a certificate of Substantial Completion or any payment by OWNER to CONTRACTOR under the Contract Documents;

6.30.2.4. use or occupancy of the Work or any part thereof by OWNER;

6.30.2.5. any acceptance by OWNER or any failure to do so;

6.30.2.6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13;

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

6.30.2.8. any correction of defective Work by OWNER.

Indemnification:

6.31. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.

6.32. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.31 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

6.33. The indemnification obligations of CONTRACTOR under paragraph 6.31 shall not extend to the liability of ENGINEER and ENGINEER's Consultants, officers, directors, employees or agents caused by the professional negligence, errors or omissions of any of them.

Survival of Obligations:

6.34. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with

the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

ARTICLE 7—OTHER WORK

Related Work at Site:

* 7.1. OWNER may perform other work related to the Project at the site by OWNER's own forces, or let other direct contracts therefor which shall contain General Conditions similar to these, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then: (i) written notice thereof will be given to CONTRACTOR prior to starting any such other work, and (ii) CONTRACTOR may make a claim therefor as provided in Articles 11 and 12 if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the amount or extent thereof.

7.2. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the additional work with OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

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

* SEE SUPPLEMENTARY CONDITIONS

Coordination:

* 7.4. If OWNER contracts with others for the performance of other work on the Project at the site, the following will be set forth in Supplementary Conditions:

7.4.1. the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;

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

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

Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8—OWNER'S RESPONSIBILITIES

8.1. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.2. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.3. OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.4 and 14.13.

8.4. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and drawings of physical conditions in existing structures at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents.

8.5. OWNER's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 through 5.10.

8.6. OWNER is obligated to execute Change Orders as indicated in paragraph 10.4.

8.7. OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.

8.8. In connection with OWNER's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

~~8.9. The OWNER shall not supervise, direct or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.~~

~~8.10. OWNER'S responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Materials uncovered or revealed at the site is set forth in paragraph 4.5.~~

~~8.11. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.~~

~~ARTICLE 9—ENGINEER'S STATUS DURING CONSTRUCTION~~

~~OWNER's Representative:~~

~~9.1. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and ENGINEER.~~

~~Visits to Site:~~

~~9.2. ENGINEER will make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER will endeavor for the benefit of OWNER to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work. ENGINEER's visits and on-site observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.13, and particularly, but without limitation, during or as a result of ENGINEER's on-site visits or~~

~~observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work.~~

~~Project Representative:~~

~~* 9.3. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more continuous observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.13 and in the Supplementary Conditions. If OWNER designates another representative or agent to represent OWNER at the site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other person will be as provided in the Supplementary Conditions.~~

~~Clarifications and Interpretations:~~

~~9.4. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree to the amount or extent thereof, if any, OWNER or CONTRACTOR may make a written claim therefor as provided in Article 11 or Article 12.~~

~~Authorized Variations in Work:~~

~~9.5. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR who shall perform the Work involved promptly. If OWNER or CONTRACTOR believes that a Field Order justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree as to the amount or extent thereof, OWNER or CONTRACTOR may make a written claim therefor as provided in Article 11 or 12.~~

~~Rejecting Defective Work:~~

~~9.6. ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or~~

that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

Shop Drawings, Change Orders and Payments:

9.7. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraphs 6.24 through 6.28 inclusive.

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

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

Determinations for Unit Prices:

9.10. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding upon OWNER and CONTRACTOR, unless, within ten days after the date of any such decision, either OWNER or CONTRACTOR delivers to the other and to ENGINEER written notice of intention to appeal from ENGINEER's decision and: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in Exhibit GC-A, "Dispute Resolution Agreement," entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to ENGINEER's decision, unless otherwise agreed in writing by OWNER and CONTRACTOR. Such appeal will not be subject to the procedures of paragraph 9.11.

Decisions on Disputes:

* 9.11. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the claimant

to ENGINEER and the other party to the Agreement promptly (but in no event later than ~~thirty~~ days) after the start of the occurrence or event giving rise therein, and written supporting data will be submitted to ENGINEER and the other party within ~~sixty~~ days after the start of such occurrence or event unless ENGINEER allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to ENGINEER and the claimant within thirty days after receipt of the claimant's last submittal (unless ENGINEER allows additional time). ENGINEER will render a formal decision in writing within thirty days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. ENGINEER's written decision on such claim, dispute or other matter will be final and binding upon OWNER and CONTRACTOR unless: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in EXHIBIT GC-A, "Dispute Resolution Agreement," entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other, and to ENGINEER within thirty days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to such claim, dispute or other matter in accordance with applicable Laws and Regulations within sixty days of the date of such decision, unless otherwise agreed in writing by OWNER and CONTRACTOR.

9.12. When functioning as interpreter and judge under paragraphs 9.10 and 9.11, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to paragraphs 9.10 or 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.15) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter pursuant to Article 16.

9.13. Limitations on ENGINEER's Authority and Responsibilities:

9.13.1. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by ENGINEER shall create, impose or give rise to any duty owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them.

~~9.13.2. ENGINEER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.~~

~~9.13.3. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.~~

~~9.13.4. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and other documentation required to be delivered by paragraph 14.12 will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.~~

~~9.13.5. The limitations upon authority and responsibility set forth in this paragraph 9.13 shall also apply to ENGINEER's Consultants, Resident Project Representative and assistants.~~

ARTICLE 10—CHANGES IN THE WORK

10.1. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work. Such additions, deletions or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

10.2. If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of a Work Change Directive, a claim may be made therefor as provided in Article 11 or Article 12.

10.3. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.5 and 3.6 except in the case of an emergency as provided in paragraph 6.23 or in the case of uncovering Work as provided in paragraph 13.9.

10.4. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

10.4.1. changes in the Work which are (i) ordered by OWNER pursuant to paragraph 10.1, (ii) required because of acceptance of defective Work under paragraph 13.13 or correcting defective Work under paragraph 13.14, or (iii) agreed to by the parties;

10.4.2. changes in the Contract Price or Contract Times which are agreed to by the parties; and

10.4.3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 9.11;

provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.

* 10.5. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 11—CHANGE OF CONTRACT PRICE

11.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.

* 11.2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than ~~thirty~~ ^{thirty} days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within ~~thirty~~ ^{thirty} days after the start of such occurrence or event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event. All claims for adjustment in the Contract Price shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will

be valid if not submitted in accordance with this paragraph 11.2.

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

11.3.1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.9.1 through 11.9.3, inclusive);

11.3.2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2);

11.3.3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement of a lump sum is not reached under paragraph 11.3.2, on the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 11.6).

Cost of the Work:

11.4. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5:

11.4.1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen and other personnel employed full-time at the site. Payroll costs for employees not employed full-time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.

11.4.2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the

cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

11.4.3. Payments made by CONTRACTOR to the Subcontractors for Work performed or furnished by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of ENGINEER, which bids if any, will be accepted. If any subcontractor provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in paragraphs 11.4, 11.5, 11.6 and 11.7. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

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

11.4.5. Supplemental costs including the following:

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

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

11.4.5.3. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof—all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

11.4.5.4. Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

11.4.5.5. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

* 11.4.5.6. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER in accordance with paragraph 5.9), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.

11.4.5.7. The cost of utilities, fuel and sanitary facilities at the site.

11.4.5.8. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

11.4.5.9. Cost of premiums for additional bonds and insurance required because of changes in the Work.

11.5. The term Cost of the Work shall not include any of the following:

11.5.1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4—all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

11.5.2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.

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

11.5.4. Cost of premiums for all bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).

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

Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

11.6. The CONTRACTOR's fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

11.6.1. a mutually acceptable fixed fee; or

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

11.6.2.1. for costs incurred under paragraphs 11.4.1 and 11.4.2, the CONTRACTOR's fee shall be fifteen percent;

11.6.2.2. for costs incurred under paragraph 11.4.3, the CONTRACTOR's fee shall be five percent;

11.6.2.3. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraphs 11.6.1, 11.6.2, 11.4.3 and 11.6.2 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of fifteen percent of the costs incurred by such Subcontractor under paragraphs 11.4.1 and 11.4.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

11.6.2.4. no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5 and 11.5;

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

11.6.2.6. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.5, inclusive.

11.7. Whenever the cost of any Work is to be determined pursuant to paragraphs 11.4 and 11.5, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

Cash Allowances:

11.8. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

11.8.1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and

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

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

11.9. Unit Price Work:

11.9.1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER in accordance with paragraph 9.10.

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

* 11.9.3. OWNER or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 11.4f:

11.9.3.1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

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

11.9.3.3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result

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

ARTICLE 12—CHANGE OF CONTRACT TIMES

* 12.1. The Contract Times (or Milestones) may only be changed by a Change Order or a Written Amendment. Any claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly ~~but in no event later than thirty days~~ after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Times (or Milestones) shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree. No claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph 12.1.

12.2. All time limits stated in the Contract Documents are of the essence of the Agreement.

12.3. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefor as provided in paragraph 12.1. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions or acts of God. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.4. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay. In no event shall OWNER be liable to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of CONTRACTOR, or (ii)

* SEE SUPPLEMENTARY CONDITIONS

delays beyond the control of both parties 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 as contemplated by Article 7.

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

~~13.1. *Notice of Defects:* Prompt notice of all defective Work of which OWNER or ENGINEER have actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected or accepted as provided in this Article 13.~~

~~*Access to Work:*~~

~~13.2. OWNER, ENGINEER, ENGINEER's Consultants, other representatives and personnel of OWNER, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's site safety procedures and programs so that they may comply therewith as applicable.~~

~~*Tests and Inspections:*~~

~~13.3. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.~~

~~13.4. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:~~

~~13.4.1. for inspections, tests or approvals covered by paragraph 13.5 below;~~

~~13.4.2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.9 below shall be paid as provided in said paragraph 13.9; and~~

~~13.4.3. as otherwise specifically provided in the Contract Documents.~~

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

approval. CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work.

~~13.6. If any Work (or the work of others) that is to be inspected, tested or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.~~

~~13.7. Uncovering Work as provided in paragraph 13.6 shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.~~

~~*Uncovering Work:*~~

~~13.8. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.~~

~~13.9. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 11. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.~~

~~*OWNER May Stop the Work:*~~

~~13.10. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work~~

shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any surety or other party.

Correction or Removal of Defective Work:

13.11. If required by ENGINEER, CONTRACTOR shall promptly, as directed, either correct all *defective* Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by ENGINEER, remove it from the site and replace it with Work that is not *defective*. CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.12. Correction Period:

~~13.12.1. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Law or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be *defective*, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) correct such *defective* Work; or, if it has been rejected by OWNER, remove it from the site and replace it with Work that is not *defective*, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the *defective* Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.~~

~~* 13.12.2. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.~~

~~* 13.12.3. Where *defective* Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this paragraph 13.12, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.~~

Acceptance of Defective Work:

~~13.13. If, instead of requiring correction or removal and replacement of *defective* Work, OWNER (and, prior to ENGINEER's recommendation of final payment, also ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall~~

~~pay all claims, costs, losses and damages attributable to OWNER's evaluation of and determination to accept such *defective* Work (such costs to be approved by ENGINEER as to reasonableness). If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.~~

OWNER May Correct Defective Work:

13.14. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct *defective* Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.11, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors and ENGINEER and ENGINEER's Consultants access to the site to enable OWNER to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by OWNER in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's *defective* Work. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

ARTICLE 14—PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values:

14.1. The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and

will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

Application for Progress Payment:

* 14.2. At least twenty days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER's interest therein, all of which will be satisfactory to OWNER. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

CONTRACTOR's Warranty of Title:

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

Review of Applications for Progress Payment:

* 14.4. ENGINEER will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. ~~See~~ After presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by OWNER to CONTRACTOR.

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

14.5.1. the Work has progressed to the point indicated,

14.5.2. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10, and to any other qualifications stated in the recommendation), and

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

However, by recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

14.6. ENGINEER's recommendation of any payment, including final payment, shall not mean that ENGINEER is responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of Work, or for any failure of CONTRACTOR to perform or furnish Work in accordance with the Contract Documents.

* 14.7. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.5. ENGINEER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

14.7.1. the Work is *defective*, or completed Work has been damaged requiring correction or replacement,

14.7.2. the Contract Price has been reduced by Written Amendment or Change Order,

14.7.3. OWNER has been required to correct *defective* Work or complete Work in accordance with paragraph 13.14, or

14.7.4. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.4 inclusive.

OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

14.7.5. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work,

14.7.6. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens,

14.7.7. there are other items entitling OWNER to a set-off against the amount recommended, or

14.7.8. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.7.1 through 14.7.3 or paragraphs 15.2.1 through 15.2.4 inclusive;

but OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

Substantial Completion:

* 14.8. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within fourteen days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said fourteen days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform

ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

14.9. OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

Partial Utilization:

14.10. Use by OWNER at OWNER's option of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) OWNER, ENGINEER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

* 14.10.1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

14.10.2. No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

Final Inspection:

* 14.11. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all

* SEE SUPPLEMENTARY CONDITIONS

~~Particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.~~

Final Application for Payment:

* 14.12. After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by paragraph 5.4, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.4.13, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Work. In lieu of such releases or waivers of Liens and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

Final Payment and Acceptance:

* 14.13. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.15. Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. ~~Thirty days~~ after the presentation to OWNER of the Application and accompanying documentation, in appropriate form and substance and with ENGINEER's recommendation and notice of acceptability, the amount recommended by ENGINEER will become due and will be paid by OWNER to

CONTRACTOR.

* 14.14. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. ~~If the remaining balance to be held by OWNER for Work not fully completed or accepted is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.1, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.~~

Waiver of Claims:

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

14.15.1. a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.11, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

14.15.2. a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

ARTICLE 15—SUSPENSION OF WORK AND TERMINATION

OWNER May Suspend Work:

15.1. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 11 and 12.

OWNER May Terminate:

15.2. Upon the occurrence of any one or more of the following events:

* SEE SUPPLEMENTARY CONDITIONS

15.2.1. if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as adjusted from time to time pursuant to paragraph 6.6);

15.2.2. If CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

15.2.2. if CONTRACTOR disregards the authority of ENGINEER; or

15.2.4. if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

OWNER may, after giving CONTRACTOR (and the surety, if any,) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by OWNER arising out of or resulting from completing the Work such excess will be paid to CONTRACTOR. If such claims, costs, losses and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and when so approved by ENGINEER incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

15.3. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.4. Upon seven days' written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Agreement. In such case, CONTRACTOR shall be paid (without duplication of any items):

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

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

15.4.3. for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and

15.4.4. for reasonable expenses directly attributable to termination.

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

CONTRACTOR May Stop Work or Terminate:

* 15.5. If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within thirty days after it is submitted or OWNER fails for ~~thirty~~ days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days' written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Agreement and recover from OWNER payment on the same terms as provided in paragraph 15.4. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within thirty days after it is submitted, or OWNER has failed for ~~thirty~~ days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may upon seven day's written notice to OWNER and ENGINEER stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.5 are not intended to preclude CONTRACTOR from making claim under Articles 11 and 12 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph.

* ARTICLE 16—DISPUTE RESOLUTION

If and to the extent that OWNER and CONTRACTOR have agreed on the method and procedure for resolving disputes between them that may arise under this Agreement, such dispute resolution method and procedure, if any, shall be as set forth in Exhibit GC-A, "Dispute Resolution Agreement," to be attached hereto and made a part hereof. If no such agreement on the method and procedure for resolving such disputes has been reached, and subject to the provisions of paragraphs 9.10, 9.11, and 9.12, OWNER and CONTRACTOR may exercise

such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17—MISCELLANEOUS

Giving Notice:

17.1. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

Computation of Times:

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

17.2.2. A calendar day of twenty-four hours measured from midnight to the next midnight will constitute a day.

Notice of Claims:

17.3. Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or

act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

Cumulative Remedies:

17.4. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.12, 6.16, 6.30, 6.31, 6.32, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to OWNER and ENGINEER thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

Professional Fees and Court Costs Included:

17.5. Whenever reference is made to "claims, costs, losses and damages," it shall include in each case, but not be limited to, all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs.

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SUPPLEMENTARY CONDITIONS

SUPPLEMENTARY CONDITIONS

INTRODUCTORY STATEMENT

Supplementary Conditions: These Supplementary Conditions amend or supplement the Standard General Conditions of the Contract (No. 1910-8, 1990 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

NOTES TO READER

1. Insofar as format and arrangement of material is concerned, these Supplementary Conditions follow the concepts of the "Guide to the Preparation of Supplementary Conditions," (Document EJCDC No. 1910-17, 1990 Edition), prepared by the Engineer's Joint Contract Documents Committee.
2. Supplementary Conditions are arranged in the same order as the paragraphs in the General Conditions, and the paragraphs herein bear comparable numbers to those of the General Conditions, but with the prefix "SC." For brevity, paragraph numbers of the General Conditions when appropriate, are referred to herein with the prefix "GC."
3. The terms used in these Supplementary Conditions which are defined in the General Conditions of the contract (No. 1910-8, 1990 Edition) have the same meanings assigned to them in the General Conditions.
4. Administrative procedures which accompany certain subjects covered under the General Conditions and Supplementary Conditions appear in Division 1 of the Specifications. This would apply, for example, to Change Orders and Shop Drawing Submittals.

ARTICLE 1 - DEFINITIONS

A. Modify existing definitions as follows:

SC-1.3 Application for Payment: Replace the phrase "accepted by the ENGINEER" in paragraph 1.3 of the General Conditions with the phrase "provided by the ENGINEER."

SC-1.18 ENGINEER's Consultants: None employed.

SC-1.35 Add the following to the end of General Condition 1.35:

"Shop Drawings include the following:

1. Preprinted material such as illustrations, standard schedules, performance charts, instructions, brochures, diagrams, manufacturer's descriptive literature, catalog data and other data to illustrate a portion of the Work, but not prepared exclusively for this Contract.
2. Drawings, schedules, diagrams and other data prepared specifically for this Contract, by the Contractor or through the Contractor by way of a subcontractor, manufacturer, supplier, distributor or other lower tier contractor, to illustrate a portion of the Work."

SC-1.37 Subcontractor: Delete the phrase, "at the site" from the entire paragraph.

C. Add the following definitions:

SC-1.46 Bid Item Description - A separate description of each Bid Item listed in the Bid form. Bid Item descriptions are included in Division 1 of the Specifications.

SC-1.47 Work Terminology: The following definitions are intended to supplement paragraph 1.43 of the General Conditions:

1. Furnish or Supply: To supply, deliver, and unload materials and equipment at the project site and inspect for damage.
2. Install: To unpack, place, assemble, erect, apply, finish, cure, protect, and clean, furnished materials and equipment in secured position ready for the use intended.
3. Provide: To furnish or supply, and install.
4. Products: New material, machinery, components, equipment, fixtures, and systems forming the Work. It does not include machinery and equipment used for preparation, fabrication, conveying and erection of the Work. Products may also include existing materials or components, if specifically identified for reuse in the Contract Documents."

SC-1.48 Site: The lands upon which the work is to be performed. The limits of such lands may be indicated elsewhere in the Contract Documents.

SC-1.49 "As Shown": Whenever, in the description of any part of the Work, the expressions AS SHOWN, SHOWN ON THE PLANS, or other similar expressions are used, it shall be understood to mean as shown on the Contract Drawings, unless another meaning is plainly indicated.

ARTICLE 2 - PRELIMINARY MATTERS

Copies of Documents

SC-2.2 Delete paragraph 2.2 of the General Conditions in its entirety and insert the following in its place: "OWNER will furnish copies of Contract Documents to CONTRACTOR as follows:

3 sets of Contract Documents

Additional copies of Contract Documents or a copy of reproducible documents may be purchased at ENGINEER'S normal rates for reproduction.

Commencement of Contract Time; Notice to Proceed

SC-2.3 Amend the last sentence of paragraph 2.3 of the General Conditions by striking the phrase "later than the sixtieth day" and adding the phrase "later than the seventy-fifth day"; and as so amended, paragraph 2.3 remains in effect.

Before Starting Construction

SC-2.5 Add the following sentence at the end of the paragraph: "CONTRACTOR's study and checking of the Contract Documents shall include his/her independent verification that the addenda have been accurately and completely incorporated in the documents prior to relying on those documents. Accordingly, Contractor assumes the full risk of working from addenda-incorporated documents."

SC-2.6.1 Delete paragraph 2.6.1 of the General Conditions in its entirety and insert the following in its place:

"a preliminary progress schedule indicating the times (dates) for starting and completing the various stages of the Work. Schedule shall include any Milestones specified in the Contract Documents, shall consider time required for submission and approval of Shop Drawing and Sample submittals and for manufacturing lead times and product delivery dates, and shall contain at least the level of detail and other characteristics as identified in the Contract Documents."

SC - 2.6.2 Add the following to the end of paragraph 2.6.2 of the General Conditions:

"Schedule shall allow a minimum of ten working days for ENGINEER's review after receipt of each submittal and resubmittal (excluding time for transmittal). In preparing schedule, CONTRACTOR shall discuss individual submittal requirements with ENGINEER and shall increase the minimum time allowance for review of complex or voluminous submittals."

SC-2.7 Amend the first sentence of paragraph 2.7 of the General Conditions by striking out the following words "Before any Work at the site is started...," and adding the words "Before the Effective Date of the Agreement," and as so amended, paragraph 2.7 remains in effect.

Preconstruction Conference

SC-2.8 Amend the first sentence of paragraph 2.8 of the General Conditions by striking out the following words " attended by CONTRACTOR, ENGINEER and others as appropriate," and adding the following sentence at the end of paragraph 2.8 of the General Conditions: "Present at the conference will be OWNER or his representative, ENGINEER, Resident Project Representative, CONTRACTOR and his Superintendent, and other invited parties or government representatives having jurisdiction over or official interest in the project and others as appropriate."

Initially Acceptable Schedules

SC - 2.9 Change the fourth sentence to read:

"The progress schedule will be acceptable to ENGINEER if it contains at least the specified level of work detail and characteristics and provides for an orderly progression of the Work to completion within any specified milestones and Contract times. Such acceptance will not impose on ENGINEER responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefore."

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

(No Amendments to the General Conditions).

ARTICLE 5 - BONDS AND INSURANCE

Performance, Payment and Other Bonds

SC-5.1 Add the following language at the end of paragraph 5.1 of the General Conditions:

"CONTRACTOR and surety shall jointly complete and execute the Performance and Payment Bond forms included at the end of the Agreement."

5.4 CONTRACTOR's LIABILITY INSURANCE

Delete paragraphs 5.4 and 5.5 of the General Conditions in their entirety and insert the following in their place:

Contractor shall purchase and maintain such commercial general liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below 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 Subcontractor, by anyone directly or

indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:

5.4.1 Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts;

5.4.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

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

5.4.4 Claims for damages insured by personal injury liability coverage which are sustained [a] by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or [b] by any person for any other reason;

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

5.4.6 Claims arising out of operation of Laws or Regulations for damages because of bodily injury or death of any person or for damage to property; and

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

The Contractor and all subcontractors will provide a Certificate of Insurance. The minimum limits are listed below. All policies must be endorsed to give thirty (30) days written notice by certified mail of any cancellation or changes to the policy, except in the case of cancellation for non-payment of premium in which ten (10) days' notice shall be provided. **A certified copy of the endorsement must be provided to the Owner.**

5.5 CONTRACTUAL LIABILITY INSURANCE

To the maximum extent permitted by law, CONTRACTOR, together with its successors and assigns, hereby releases, waives, discharges and covenants not to commence any action against OWNER, and its consultants, officers, officials, employees and agents in relation to any and all claims that may arise from, or may be in any way related to, this Agreement. CONTRACTOR also agrees to defend, indemnify and hold harmless OWNER, and its consultants, officers, officials, employees and agents from any loss, damage, claim, liability or expenses including but not limited to reasonable Attorney fees and defense costs arising in relation to this Agreement including those claims for CONTRACTOR'S own negligence and for the negligence of any subcontractor or sub-subcontractor, but excluding those claims that may arise from the negligence of OWNER, and/or its consultants, officers, officials, employees and agents. CONTRACTOR shall require any and all subcontractors to provide defense and indemnification to OWNER as set forth in this provision and CONTRACTOR and subcontractors shall similarly require any and all sub-subcontractors to

provide defense and indemnification to the OWNER as set forth in this provision. This provision applies to the extent permitted by law.

The commercial general liability insurance required by paragraph 5.4 will include contractual liability insurance applicable to Contractor's indemnity obligations under this paragraph.

5.6 OWNER AS ADDITIONAL INSURED

The Owner shall be named by endorsement as additional insured on all policies required by paragraphs 5.4.2 through 5.4.7 and 5.5 on a primary and non-contributory basis. The Owner shall also be listed as a certificate holder on the Workers Compensation and NYS Disability policies as listed in paragraph 5.1. The prime contractor shall also provide copies of insurance certificates from all sub-contractors involved. **Certified copies of the additional insured endorsement shall be provided to the Owner.**

Owner's Protective Liability (OCP) policy shall be issued in the name of the Village of Solvay.

5.7 COVERAGE

The Contractor shall obtain an insurance policy from an A.M. Best rated "secured" New York State licensed insurer naming the Village as an additional insured thereunder by endorsement on an unrestricted primary and non-contributory basis on all lines of coverage, which policy shall include coverage for the negligence of the Village, its officers, officials, employees and agents, and shall have minimum insurance limits set as provided for in the schedule below. The Contractor shall pay any and all applicable premiums and deductibles. The Policy, Endorsement and Certificate of Insurance on the form provided demonstrating such coverage shall be provided to the Village upon the execution of this Agreement and prior to the commencement of any work pursuant to this Agreement, and said coverage shall remain in effect continuously throughout the term of this Agreement. The Village shall be provided with endorsements to all policies required which provide thirty (30) days prior written notice of any change or cancellation of this policy, ten (10) day notice in case of cancellation for nonpayment of premium, and failure to maintain insurance coverage as listed herein shall be material breach of this Agreement and subject the Contractor to liability for damages, indemnification and all other legal remedies available to the Village.

The failure of the Village to object to the content of the Policy, Endorsement or Certificate or the absence of the same shall not be deemed a waiver of any or all rights held by the Village. It is also agreed that the Village's insurer is an intended third party beneficiary of the insurance procurement provisions of this Agreement, and further that any and all insurance maintained by the Village shall be non-contributory and excess.

5.7.1 Worker's Compensation and Disability Benefits as required by all Federal, State, Maritime or other laws, including Employers Liability. Statutory limits required. **Certificates of such coverage shall be submitted to the Village on official State approved forms.**

- | | | |
|-----|---|-----------|
| i. | State: | Statutory |
| ii. | Applicable Federal (eg. Longshoreman's) | Statutory |

iii. Employer's Liability \$100,000

5.7.2 Commercial General Liability, including Premises - Operations Liability, Contractors' Protective Liability, Products and Completed Operations Liability, and Contractual Liability, all on the occurrence basis with Personal Injury Coverage and Broad form Property Damage. The general liability insurance policy shall include coverage for explosion, collapse and underground operations (XCU) hazards. Products and Completed Operations Liability shall be kept in force for at least one (1) year after the date of final completion.

- i. Bodily Injury: \$1,000,000 Each Occurrence
\$2,000,000 Annual Aggregate, Products and Completed Operations
- ii. Property Damage: \$1,000,000 Each Occurrence
\$2,000,000 Annual Aggregate

iii. Property Damage liability insurance will provide Explosion, Collapse and Underground coverages.

iv. Personal Injury, with employment exclusion deleted:

\$1,000,000 Annual Aggregate

5.7.3 Comprehensive Automobile Liability under paragraph 5.4.7:

- i. Bodily Injury: \$1,000,000 Each Person
\$2,000,000 Each Accident
- ii. Property Damage: \$ 500,000 Each Occurrence
- iii. Or if written in Combined Single Limits (CSL) \$1,500,000

5.7.4 Owner's Protective Liability (OCP) naming the Village of Solvay as named insured:

\$1,000,000 Each Occurrence

\$2,000,000 Annual Aggregate

5.7.5 Excess or Umbrella Coverage (Following Form) \$3,000,000

5.8 CERTIFICATE OF INSURANCE

The successful Proposer and all subcontractors will provide a Certificate of Insurance on the attached form, which must be used. All policies must be endorsed to give (30) days written notice of any cancellation or changes to the policy as provided in Section 5.7, except in the case of cancellation for non-payment of premium in which case ten (10) days notice shall be provided. **Endorsements naming the Owner as additional insured and the required cancellation/charge**

provision in accordance with paragraph 5.7 shall be provided to Owner upon submission of signed contract to the Village of Solvay by the Contractor for final execution. No work may begin until this document has been provided to and accepted by the Village.

The Contractor and all subcontractors will provide a Certificate of Insurance.

5.9 BONDS

The successful Bidder shall, at the time of execution of the Contract, furnish Performance and Labor and Material Payment Bonds in the amount of 50% of the greatest annual Contract amount. The Bonds shall be in a form approved by the Village Attorney. The Bonds shall cover all of the obligations that the Contractor assumes in the Contract.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.3 Payment of Minimum Wage Rates

Add the following subparagraph to paragraph 6.3 of the General Conditions:

"SC-6.3.1 The CONTRACTOR and every subcontractor shall pay employees no less than the wage rates established for each trade or occupation listed in the Prevailing Wage Rate Schedule issued by the New York State Industrial Commissioner, or if the OWNER be a City, by the Comptroller or other analogous officer of such City.

Minimum wages required to be paid shall include supplements for hospital, surgical, medical or other benefits as determined by the State Labor Law. If for any reason at any time the State of New York or the proper City Office, shall in any way supplement, change or amend such Prevailing Wage Rate Schedule, then the CONTRACTOR, Subcontractor or other person about or upon such public work shall follow such Schedule as supplemented, changed or amended. In no case shall the CONTRACTOR be entitled to any additional compensation or extras because of any supplement, change, redetermination or amendment of the Prevailing Wage Rate Schedule."

Coverage for explosion, collapse and underground hazards is included under the property damage liability.

The above described policies have been endorsed as necessary to provide the limits of liability indicated.

Automobile liability coverage applies to owned, non-owned, and hired automobiles.

The General Liability and Umbrella policies have been endorsed to include the Village of Solvay as an additional insured, on an unrestricted primary and non-contributory basis.

Name of Insurance Agency

Phone Number

Address of Insurance Agency

Date

Signature of Authorized Representative

Printed Name of Authorized

Progress Schedule

SC-6.6.1 Delete paragraph 6.6.1 of the General Conditions in its entirety and insert the following in its place:

"CONTRACTOR shall submit to ENGINEER for acceptance proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments shall conform generally to the progress schedule then in effect and additionally shall comply with any provisions of the General Requirements applicable thereto. ENGINEER's acceptance will not impose on ENGINEER responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefore. ENGINEER's review to determine acceptability will be limited to future activities only. By accepting the revised schedule, ENGINEER does not indicate acceptance of any historic information shown thereon."

Taxes

Add the following subparagraph to GC-6.15:

SC-6.15.1 "The OWNER is exempt from the payment of Sales and Compensating Use Taxes of the State of New York and of cities and counties on all materials, equipment and supplies to be sold to the OWNER pursuant to this Contract. Also exempt from such taxes are purchases by the CONTRACTOR and his subcontractors of materials, equipment and supplies to be sold to the OWNER pursuant to his Contract, including tangible personal property to be incorporated in any structure, building or other real property forming part of the Project."

6.19 Record Documents

SC-6.19 Delete the last sentence of General Condition 6.19 and replace with the following:
"Prior to CONTRACTOR notifying ENGINEER that the entire Work is substantially complete, CONTRACTOR shall deliver to ENGINEER for OWNER one copy of current record documents and required operation and maintenance data. Upon final completion, CONTRACTOR shall submit a separate updated set of final record documents and the remaining sets of updated operation and maintenance data, as well as Samples and Shop Drawings."

Emergencies

SC-6.23 Add the following language at the end of paragraph 6.23 of the General Conditions:

"CONTRACTOR shall designate one person to respond to emergencies and act on the CONTRACTOR's behalf during off-work hours at the project site. The person's name, address, telephone and 24 hour pager number shall be provided to the OWNER. The designated person shall be on call during off-work hours. Response time shall not exceed one hour after notification is given by OWNER or ENGINEER that an emergency exists at the project site."

ARTICLE 11 - CHANGE OF CONTRACT PRICE

SC-11.2 Notice of Claim and Supporting Data

Amended paragraph 11.2 of the General Conditions, as follows:

Change the phrase in brackets, which begins on the fifth line, to read: "(but in no event later than ten days)."

Change the first part of the third sentence, which begins on the seventh line, to read: "Notice of the amount of the claim with supporting data shall be delivered within forty-five days after the start of the occurrence...etc."

SC-11.3 through SC-11.7 Cost of Work and CONTRACTOR's Fee

Delete all of paragraphs 11.3 through 11.7 of the General Conditions and substitute in their place the following:

11.3 The value of any Work covered by a Change Order or any claim for an increase or decrease in the Contract Price shall be determined by one of the following methods:

1. By such applicable unit prices, if any, as are set forth in the Contract; or
2. If no such unit prices are so set forth, then by unit prices or by a lump sum mutually agreed upon by the OWNER and the CONTRACTOR; such unit or lump sum being arrived at by estimates of reasonable value prepared in general conformance with outline set forth in paragraph 3 below or
3. Where there are no applicable unit prices and agreed lump sum prices cannot be readily established or substantiated, the CONTRACTOR shall be paid the actual and reasonable cost of:
 - a. Necessary materials (including transportation to the site). Material used, if acquired by direct purchase, must be covered by receipted bills or acceptable invoices. All prices on used material incorporated in either temporary or permanent work shall be billed at a fair value, less than the original cost when new. A reasonable salvage credit shall be given for all salvageable material recovered. Salvage value of substantial material recovered must be determined jointly by the CONTRACTOR and the ENGINEER; plus
 - b. Necessary direct labor charges. Each class of labor shall be billed separately at actual payroll rates. Average rates based on different classes of labor, will not be accepted; plus

- c. Payments required to be made to labor organizations under existing labor agreements; plus
- d. Equipment and plant rentals, other than small tools; plus
- e. Compensation for profit and overhead as prescribed in paragraph 11.4.

In calculating the cost of equipment and plant rentals, the base hourly rates shall be the daily rate as listed in the current Rental Rates for Construction Equipment prepared by Associated Equipment Distributors divided by eight (8); thereafter

The first 20 hours will be paid at 90% of the above base hourly rate; for 21 to 40 hours, the rate will be 80% of the above base hourly rate; and

For over 40 hours, the rate will be 45% of the above base hourly rate.

The number of hours to be paid for shall be the number of hours that the equipment or plant is actually used in performing the work of the Change Order.

Equipment to be used by the CONTRACTOR shall be specifically described and be of suitable size and suitable capacity required for the work to be performed. In the event the CONTRACTOR elects to use equipment of a higher rental value than that suitable for the work, payment will be made at the rate applicable to the suitable equipment. The equipment actually used and the suitable equipment paid for will be recorded as part of the record for the work performed. The ENGINEER will determine the suitability of the equipment. If there is a differential in the rate of pay of the operator of oversize or higher rate equipment, the rate paid for the operator will likewise be that for the suitable equipment.

In the event that a rate is not established in the Associated Equipment Distributors Rental Rates for a particular piece of equipment or plant, the OWNER shall establish a rate for that piece of equipment or plant that is consistent with its cost and use.

It is mutually understood that the base daily rates include all costs incidental to equipment and plant rentals including cost of moving to and from the site.

11.4 If methods 2 or 3 are used, the CONTRACTOR may add twenty percent (20%) to the total cost of material, equipment, plant rentals and direct labor, as his only compensation for profit and overhead, except that the 20% shall not be applied to the premium portion of overtime pay.

If any of the work is performed by a subcontractor, the CONTRACTOR shall be paid the actual and reasonable cost of such subcontracted work computed as outlined above or on such other basis as might be approved by the OWNER, plus an additional allowance of five percent (5%) to materials and direct labor to cover the CONTRACTOR's profit, superintendence, administration, insurance and other overhead. The cost of the premium portion of overtime pay shall be excluded when computing the above described charges for profit and overhead.

11.5 Overhead may be defined to include the following items:

1. Premium on bond;
2. Premium on insurance required by the State, Workmen's Compensation Insurance, public liability and property damage insurance, unemployment insurance, Federal old-age benefits, other payroll taxes and such reasonable charges that are paid by the CONTRACTOR pursuant to written agreement with an employee;
3. All salary and expenses of executive officers, supervising officers or supervising employees;
4. All clerical or stenographic employees;
5. All charges for minor equipment, such as hand tools, small hand held power tools, including shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, wrenches, etc., and other miscellaneous supplies and services including: ladders, scaffolds, safety equipment, reusable forms, administrative or personal vehicles or equipment; and
6. All drafting room accessories such as paper, tracing cloth, blue printing, etc.

11.6 Regardless of the method of payment (1, 2 or 3), the CONTRACTOR will be required to submit evidence satisfactory to the OWNER to substantiate each and every item that constitutes his proposal of the value of the change.

The OWNER will determine by which of the methods, 1, 2 or 3, the value of the change shall be computed.

The provisions hereof shall not affect the power of the CONTRACTOR to act in case of emergency as provided elsewhere in the General Conditions.

11.7 In computing the value of a Change Order (under methods 2 or 3), which involves additions and deductions of work:

1. If the cost of the added work exceeds the cost of the omitted work, CONTRACTOR's overhead and profit shall be computed on the amount by which the added work exceeds the omitted work.
2. If the cost of the omitted work exceeds the cost of the added work, the CONTRACTOR will be allowed to retain the overhead and profit on the amount by which the omitted work exceeds the added work.

SC-11.9.2 Unit Price Item Descriptions

Add the following language to paragraph 11.9.2 of the General Conditions:

"Each Unit Price Item has a Unit Price Bid Item Description Page which lists the work included under that item and certain other parameters, the details of which appear in the General Requirements if unit price work is utilized on the project. Discrepancies or omissions in Unit Price Item Descriptions shall not be construed as relieving the CONTRACTOR of the responsibility of performing the entire work included in his Contract as shown on the Contract Drawings and described in the Specifications at the bid unit prices, without increases. If it is found that some aspect of the work required under this Contract was not listed in any of the Unit Price Item Descriptions, the ENGINEER shall determine under which of the existing unit price items the work shall be paid."

Application of Adjusted Unit Prices

Add the following new paragraph to the General Conditions:

"SC-11.9.4 In determining the amount of any increase or decrease in an item of Unit Price Work, the adjusted unit price shall be applied as follows:

1. Quantity Overruns: The adjusted unit price shall be applied only to the difference between the total quantity of completed work and the calculated bid quantity at the variation limit.
2. Quantity Underruns: The difference between the adjusted unit price and the original bid unit price shall be applied to the total quantity of work completed."

ARTICLE 12 - CHANGE OF CONTRACT TIMES

SC-12.1 Notice of Claim and Supporting Data

Amend paragraph 12.1 of the General Conditions, as follows: Replace the crossed out phrase in the parenthesis, which begins on the fifth line with: "(but in no event later than ~~ten~~ days)."

Change the first part of the third sentence, which begins on the ninth line, to read: "Notice of the extent of the claim with supporting data shall be delivered within forty-five days after such occurrence... etc."

Review of Applications for Progress Payment

SC-14.4 Delete the phrase "Ten days," which begins the third sentence of paragraph 14.4 of the General Conditions and substitute in its place the phrase "forty-five days."

SC-14.7 Add the following language in front of the first sentence of General Condition paragraph 14.7:

"ENGINEER will refuse to recommend any payment, regardless of amount otherwise due, unless any updated progress schedule required by the Contract Documents has been submitted by CONTRACTOR and found acceptable to ENGINEER."

Add the following language to the subparagraphs of paragraph 14.7 of the General Conditions, as follows:

SC-14.7.4 "Add the following language to the end of subparagraph 14.7.4: "or Contractor has failed to submit certifications, affidavits, schedules, or other written information when and as required in the Contract Documents, or CONTRACTOR has failed to submit shop drawings in accordance with the shop drawing schedule."

Add the following new subparagraph immediately after subparagraph 14.7.8 of the General Conditions:

"SC-14.7.9. Liability for liquidated or other damages contained or referenced herein has been incurred by the CONTRACTOR".

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

SC-15.5 CONTRACTOR May Stop Work or Terminate

Amend paragraph 15.5 of the General Conditions, as follows:

- a. Change the phrase "or OWNER fails for thirty days to pay CONTRACTOR any sum finally determined to be due," which begins on the fifth line of GC-15.5, to read: "or OWNER fails for sixty days to pay CONTRACTOR any sum finally determined to be due."
- b. Change the phrase "or OWNER has failed for thirty days to pay CONTRACTOR any sum finally determined to be due," which begins on the fifteenth line of GC-15.5, to read: "or OWNER has failed for sixty days to pay CONTRACTOR any sums finally determined to be due."

ARTICLE 16 - DISPUTE RESOLUTION

Add the following statement to the introductory paragraph under Article 16 of the General Conditions:

"No agreement has been reached between OWNER and CONTRACTOR on the method and procedure for resolving disputes between them."

ARTICLE 17 - MISCELLANEOUS

(No Amendments to the General Conditions).

EXHIBITS

* * * * *

Insert Wage Rates here, if applicable.

* * * * *



Andrew M. Cuomo, Governor

Roberta Reardon, Commissioner

Solvay
Mark Malley, Project Engineer
449 Col. Eileen Collins Blvd.
Syracuse NY 13212

Schedule Year 2017 through 2018
Date Requested 03/12/2018
PRC# 2018900291

Location Village of Solvay
Project ID# 114203015
Occupation Type(s) Trash and Refuse Removal

PREVAILING WAGE SCHEDULE FOR ARTICLE 9 PUBLIC WORK PROJECT

Attached is the current schedule(s) of the prevailing wage rates and prevailing hourly supplements for the project referenced above. A unique Prevailing Wage Case Number (PRC#) has been assigned to the schedule(s) for your project.

If work on the contract continues beyond the expiration date set forth in the Wage Schedule, new rates and expiration dates will be made available online as part of the original PRC Prevailing Wage Schedule determination automatically, without further filings or requests from the Public Agency.

It is the responsibility of the contracting agency or its agent to annex and make part, the attached schedule, to the specifications for this project, when it is advertised for bids and /or to forward said schedules to the successful bidder(s), immediately upon receipt, in order to insure the proper payment of wages.

Please refer to the "General Provisions of Laws Covering Workers on Article 9 Public Work Building Service Contracts" provided with this schedule, for the specific details relating to other responsibilities of the Department of Jurisdiction.

Upon completion or cancellation of this project, enter the required information and mail **OR** fax this form to the office shown at the bottom of this notice, **OR** fill out the electronic version via the NYSDOL website.

NOTICE OF COMPLETION / CANCELLATION OF PROJECT

Date Completed: _____ Date Cancelled: _____

Name & Title of Representative: _____

Phone: (518) 457-5589 Fax: (518) 485-1870
W. Averell Harriman State Office Campus, Bldg. 12, Room 130, Albany, NY 12240

General Provisions of Laws Covering Workers on Article 9 Public Work Building Service Contracts

Introduction

The Labor Law requires public work contractors and subcontractors to pay a service employee under a contract for building service work for a public agency, a wage of not less than the prevailing wage and supplements (fringe benefits) in the locality for the craft, trade, or occupation of the service employee. Such a public work building service contract must be in excess of one thousand five hundred dollars (\$1,500.00).

Building service employee includes, but is not limited, to, watchman, guard, doorman, building cleaner, porter, handyman, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, window cleaner, and occupations relating to the collection of garbage or refuse, and to the transportation of office furniture and equipment, and to the transportation and delivery of fossil fuel but does not include clerical, sales, professional, technician and related occupations.

Building service employee also does not include any employee to whom the provisions of Article 8 are applicable.

Responsibilities of the Public Agency

A Public Agency means the state, any of its political subdivisions, a public benefit corporation, a public authority or commission or special purpose district board appointed pursuant to law, and a board of education.

The Public Agency responsible for preparing the specifications for a building service contract must file a statement identifying the types of employees and work to be performed with the New York State Commissioner of Labor, or other fiscal officer¹. A separate filing is required for every building service contract. Only one filing is required for each contract, regardless of the duration of the contract. To file with the Commissioner of Labor, the Public Agency MUST submit a Request for Wage and Supplement Information" form (PW 39) to the Bureau of Public Work, either online, by fax, or by mail.

In response to each filing, the Bureau of Public Work will assign a Prevailing Rate Case (PRC) number to each building service contract, and will issue a Prevailing Wage Schedule setting forth the wage rates required to be paid for work performed and the expiration date of those rates. If work on the contract continues beyond the expiration date set forth in the Wage Schedule, new rates and expiration dates will be made available online as part of the original PRC Prevailing Wage Schedule determination automatically, without further filings or requests from the Public Agency.

The Commissioner of Labor makes an annual determination of the prevailing rates. This determination is in effect from July 1st through June 30th of the following year.

The Public Agency must include in the specifications for each building service contract the PRC number assigned to such contract and stipulation obligating the contractor to pay not less than the wage rates set forth in the Prevailing Wage Schedule issued under that PRC number.

Upon the awarding of the contract, the law requires that the Public Agency furnish the following information to the Bureau of Public Work: the name and address of the contractor, the date the contract was let and the approximate dollar value of the contract. To facilitate compliance with this provision of the Labor Law, a copy of the Bureau's "Notice of Contract Award" form (PW 16.9) is provided with the original Prevailing Rate Schedule. The Public Agency is required to notify the Bureau of the completion or cancellation of any public work building service contract. The Bureau's PW 200.9 form is provided for this purpose.

Hours

A building service employee, employed by a contractor, shall work up to eight (8) hours in any one day and up to forty (40) hours in any workweek for the appropriate posted prevailing wage rate. A building service employee who works more than eight (8) hours in any one day or more than forty (40) hours in any workweek shall be paid wages for such overtime at a rate not less than one-and-one-half (1.5) times his prevailing basic cash hourly rate.

Wages and Supplements

The wages and supplements to be paid and/or provided to a building service employee, employed on a public work contract shall be not less than those listed in the Prevailing Rate Schedule provided with the awarded contract. In no event shall the basic hourly cash rate of pay be less than the statutory minimum wage or in a city with a local law requiring a higher minimum wage on city contract work, less than the minimum wage specified in such local law.

If a prime contractor on a public work contract has not been provided with a Prevailing Rate Schedule, the contractor must notify the Public Agency who in turn must request an original Prevailing Rate Schedule from the Bureau of Public Work.

¹ The New York State Commissioner of Labor is the fiscal officer on all building service contracts except for those performed by or on behalf of a city, in which case the fiscal officer is the comptroller or other analogous officer of the city.

Requests may be submitted by: mail to NYSDOL, Bureau of Public Work, State Office Bldg. Campus, Bldg. 12, Rm. 130, Albany, NY 12240; Fax to Bureau of Public Work (518) 485-1870; or electronically at the NYSDOL website www.labor.state.ny.us.

Upon receiving the original schedule, the Public Agency is REQUIRED to provide complete copies to all prime contractors who in turn MUST, by law, provide copies of all applicable county schedules to each subcontractor and obtain from each subcontractor, an affidavit certifying such schedules were received.

Payrolls and Payroll Records

Every contractor and subcontractor MUST keep original payrolls or transcripts subscribed and affirmed as true under penalty of perjury. Payrolls must be maintained for at least three (3) years from the project's date of completion. At a minimum, payrolls must show the following information for each person employed on a public work project: Name; Social Security number; the craft, trade or occupation in which the worker was employed; Hourly wage rate(s) paid; Supplements paid or provided; and Daily and weekly number of hours worked in each craft, trade or occupation.

In addition, the Commissioner of Labor may require contractors to furnish, with ten (10) days of a request, payroll records sworn to as their validity and accuracy for public work and private work. Payroll records include, but are not limited to time cards, work description sheets, proof that supplements were provided, cancelled payroll checks and payrolls. Failure to provide the requested information within the allotted ten (10) days will result in the withholding of up to 25% of the contract, not to exceed \$100,000.00. The records required to be maintained shall be kept on the site of the work during all of the time that work under the contract is being performed.

All contractors or their subcontractors shall provide to their subcontractors a copy of the Prevailing Rate Schedule specified in the public work contract as well as any subsequently issued schedules. A failure to provide these schedules by a contractor or subcontractor is a violation of Article 9, Section 237 of the Labor Law. The prime contractor is responsible for any underpayments of prevailing wages or supplements by any subcontractor.

All subcontractors engaged by a public work project contractor or its subcontractor, upon receipt of the original schedule and any subsequently issued schedules shall provide to such contractor a verified statement attesting that the subcontractor has received the Prevailing Rate Schedule and will pay or provide the applicable rates of wages and supplements specified therein. (See NYS Labor Law, Article 9, Section 237).

Withholding of Payments

When a complaint is filed with the Commissioner of Labor alleging the failure of a contractor or subcontractor to pay or provide the prevailing wages or supplements, or when the Commissioner of Labor believes that unpaid wages or supplements may be due, payments on the public work contract shall be withheld from the prime contractor in a sufficient amount to satisfy the alleged unpaid wages and supplements, including interest and civil penalty, pending a final determination.

When the Bureau of Public Work finds that a contractor or subcontractor on a public work contract failed to pay or provide the requisite prevailing wages or supplements, the Bureau is authorized by Sections 235.2 of the Labor Law to so notify the financial officer of the Public Agency that awarded the public work contract. Such officer MUST then withhold or cause to be withheld from any payment due the prime contractor on account of such contract the amount indicated by the Bureau as sufficient to satisfy the unpaid wages and supplements, including interest and any civil penalty that may be assessed by the Commissioner of Labor. The withholding continues until there is a final determination of the underpayment by the Commissioner of Labor or by the court in the event a legal proceeding is instituted for review of the determination of the Commissioner of Labor.

The Public Agency shall comply with this order of the Commissioner of Labor or of the court with respect to the release of the funds so withheld.

Summary of Notice Posting Requirements

The current Prevailing Rate Schedule must be posted in a prominent and accessible place on the site of the public work contract.

Apprentices

Employees cannot be paid apprentice rates unless they are individually registered in a program registered with the NYS Commissioner of Labor. The allowable ratio of apprentices to journeyworkers in any craft classification can be no greater than the statewide building trade ratios promulgated by the Department of Labor and included with the Prevailing Rate Schedule. An employee listed on a payroll as an apprentice who is not registered as above or is performing work outside the classification of work for which the apprentice is indentured, must be paid the prevailing journeyworker's wage rate for the classification of work the employee is actually performing.

NYSDOL Labor Law, Article 9, Section 231-7a, require that only apprentices individually registered with the NYS Department of Labor may be paid apprenticeship rates on a public work project. No other Federal or State Agency or office registers apprentices in New York State.

Persons wishing to verify the apprentice registration of any person must do so in writing by mail, to the NYSDOL Office of Employability Development / Apprenticeship Training, State Office Bldg. Campus, Bldg. 12, Albany, NY 12240 or by Fax to NYSDOL Apprenticeship Training (518) 457-7154. All requests for verification must include the name and social security number of the person for whom the information is requested

The only conclusive proof of individual apprentice registration is written verification from the NYSDOL Apprenticeship Training Albany Central office. Neither Federal nor State Apprenticeship Training offices outside of Albany can provide conclusive registration information.

It should be noted that the existence of a registered apprenticeship program is not conclusive proof that any person is registered in that program. Furthermore, the existence or possession of wallet cards, identification cards, or copies of state forms is not conclusive proof of the registration of any person as an apprentice.

Interest and Penalties

In the event that an underpayment of wages and/or supplements is found:

- Interest shall be assessed at the rate then in effect as prescribed by the Superintendent of Banks pursuant to section 14-a of the Banking Law, per annum from the date of underpayment to the date restitution is made.
- A Civil Penalty may also be assessed, not to exceed 25% of the total of wages, supplements, and interest due.

Debarment

Any contractor or subcontractor and/or its successor shall be ineligible to submit a bid on or be awarded any public work contract or subcontract with any state, municipal corporation or public body for a period of five (5) years when:

- Two (2) willful determinations have been rendered against that contractor or subcontractor and/or its successor within any consecutive six (6) year period.
- There is any willful determination that involves the falsification of payroll records or the kickback of wages or supplements.

Criminal Sanctions

Willful violations of the Prevailing Wage Law (Article 9 of the Labor Law) constitute a misdemeanor punishable by fine or imprisonment, or both.

Discrimination

No employee or applicant for employment may be discriminated against on account of age, race, creed, color, national origin, sex, disability or marital status.

No contractor, subcontractor nor any person acting on its behalf, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates (NYS Labor Law, Article 9, Section 239-1).

No contractor, subcontractor, nor any person acting on its behalf, shall in any manner, discriminate against or intimidate any employee on account of race, creed, color, disability, sex, or national origin (NYS Labor Law, Article 9, Section 239-2).

The Human Rights Law also prohibits discrimination in employment because of age, marital status, or religion.

There may be deducted from the amount payable to the contractor under the contract a penalty of \$50.00 for each calendar day during which such person was discriminated against or intimidated in violation of the provision of the contract (NYS Labor Law, Article 9, Section 239-3).

The contract may be cancelled or terminated by the State or municipality. All monies due or to become due thereunder may be forfeited for a second or any subsequent violation of the terms or conditions of the anti-discrimination sections of the contract (NYS Labor Law, Article 9, Section 239-4).

Every employer subject to the New York State Human Rights Law must conspicuously post at its offices, places of employment, or employment training centers notices furnished by the State Division of Human Rights.

Workers' Compensation

In accordance with Section 142 of the State Finance Law, the contractor shall maintain coverage during the life of the contract for the benefit of such employees as required by the provisions of the New York State Workers' Compensation Law.

A contractor who is awarded a public work contract must provide proof of workers' compensation coverage prior to being allowed to begin work.

The insurance policy must be issued by a company authorized to provide workers' compensation coverage in New York State. Proof of coverage must be on form C-105.2 (Certificate of Workers' Compensation Insurance) and must name this agency as a certificate holder.

If New York State coverage is added to an existing out-of-state policy, it can only be added to a policy from a company authorized to write workers' compensation coverage in this state. The coverage must be listed under item 3A of the information page.

The contractor must maintain proof that subcontractors doing work covered under this contract secured and maintained a workers' compensation policy for all employees working in New York State.

Every employer providing worker's compensation insurance and disability benefits must post notices of such coverage in the format prescribed by the Workers' Compensation Board in a conspicuous place on the jobsite.

Unemployment Insurance

Employers liable for contributions under the Unemployment Insurance Law must conspicuously post on the jobsite notices furnished by the New York State Department of Labor.



Andrew M. Cuomo, Governor

Roberta Reardon, Commissioner

Solvay
Mark Malley, Project Engineer
449 Col. Eileen Collins Blvd.
Syracuse NY 13212

Schedule Year 2017 through 2018
Date Requested 03/12/2018
PRC# 2018900291

Location Village of Solvay
Project ID# 114203015
Occupation Type(s) Trash and Refuse Removal

Notice of Contract Award

New York State Labor Law, Article 9, Section 231.5 requires that certain information regarding the awarding of public work contracts, be furnished to the Commissioner of Labor. One "Notice of Contract Award" (PW 16.9, which may be photocopied), MUST be completed for EACH prime contractor on the above referenced project.

Upon notifying the successful bidder(s) of this building service contract, enter the required information and mail **OR** fax this form to the office shown at the bottom of this notice, **OR** fill out the electronic version via the NYSDOL website.

Contractor Information

All information must be supplied

Federal Employer Identification Number: _____		
Name: _____		
Address: _____ _____		
City: _____	State: _____	Zip: _____
Amount of Contract: \$ _____	Occupation(s): _____	
Approximate Starting Date: _____ / _____ / _____	_____	
Approximate Completion Date: _____ / _____ / _____	_____	

Phone: (518) 457-5589 Fax: (518) 485-1870
W. Averell Harriman State Office Campus, Bldg. 12, Room 130, Albany, NY 12240



New York State Department of Labor
Bureau of Public Work
SOBC – Bldg. 12 – Rm. 130
Albany, NY 12240
www.labor.ny.gov

IMPORTANT NOTICE

Regarding Article 9 Building Service Contract Schedules

Contracts with PRC#s assigned on or after 8/1/2010:

- Building Service rates (Article 9) will be determined annually on July 1. They are in effect through June 30 of the following year. Employers must pay the newly determined rates each year.
- Any corrections or updates to the annual determination will be posted to the [DOL website](#) on the first day of each month. Employers are responsible for checking for updates each month and paying these updated rates retroactive to July 1st.
- The DOL web site has a [page](#) where employers can enter their specific PRC number to find the correct wage rates for their contracts.

Contracts with PRC#s assigned PRIOR to 8/1/2010:

- The rates in contracts with PRC#s assigned prior to 8/1/2010 will remain effective and extensions to these contracts WILL NOT require a new schedule.

This is a change to our prior notice.

Article 9 wage schedule information is now available [online](#).

Introduction to the Prevailing Rate Schedule

Introduction

The Labor Law requires public work contractors and subcontractors to pay a service employee under a contract for building service work for a public agency, a wage of not less than the prevailing wage and supplements (fringe benefits) in the locality for the craft, trade, or occupation of the service employee. Such a public work building service contract must be in excess of one thousand five hundred dollars (\$1,500).

Requesting a Wage Schedule

For every building service contract, the public agency must file a statement identifying the types of employees and work to be performed by submitting a Request for Wage and Supplement Information form (PW 39) to the Bureau of Public Work, either online, by fax, or by mail. The Commissioner of Labor makes an annual determination of the prevailing rates. This determination is in effect from July 1st through June 30th of the following year.

The Public Agency must include the specifications for each building service contract the PRC number assigned to such contract and stipulation obligating the contractor to pay not less than the wage rates set forth in the Prevailing Wage Schedule issued under that PRC number.

Hours

A building service employee, employed by a contractor, shall work up to eight (8) hours in any one day and up to forty (40) hours in any workweek for the appropriate posted prevailing wage rates. A building service employee who works more than eight (8) hours in any one day or more than forty (40) hours in any workweek shall be paid wages for such overtime at a rate not less than one-and-one-half (1.5) times the prevailing basic cash hourly rate.

Wages and Supplements

The wages and supplements to be paid and/or provided to a building service employee, employed on a public work contract shall be not less than those listed in the Prevailing Rate Schedule.

A supplemental benefit of 'paid time off' shall be provided as paid leave, or converted to an hourly value paid to the employee. If 'paid time off' is converted to an hourly monetary value, such an amount is to be paid in addition to any other hourly supplements required by this schedule.

The hourly value for 'paid time off' would be calculated as follows: hourly wage rate X 8 hours per day X total number of paid days off divided by 2080 hours. For example: \$16.00 per hour wage rate X 8 hours per day = \$128.00; \$128.00 X 5 paid days off = \$640.00; \$640.00 divided by 2080 hours = \$0.31 per hour. The \$0.31 per hour amount would be in addition to any other required supplemental monetary amount paid.

All 'paid time off' provided to part-time employees, shall be prorated (divided, distributed, or assessed proportionately) based on fulltime equivalent hours.

The amount of 'paid time off' for part-time employees, would be calculated as follows: number of part-time weekly hours divided by 40 fulltime weekly hours = percentage of 'paid time off' for part-time employee. For example: a fulltime employee works 40 hours per week and a part-time employee works 30 hours per week (30 hours divided by 40 hours = .75); If a fulltime employee is provided 5 paid vacation days (5 X .75 = 3.75), a part-time employee would be provided 3.75 paid vacation days.

Payrolls and Payroll Records

Every contractor and subcontractor MUST keep original payrolls or transcripts subscribed and affirmed as true under penalty of perjury. Payrolls must be maintained for at least three (3) years from the projects date of completion.

At a minimum, payrolls must show the following information for each person employed on a public work project: name; social security number; the craft, trade or occupation in which the worker was employed; hourly wage rate(s) paid; supplements paid or provided; and daily and weekly number or hours worked in each craft, trade or occupation.

NOTE: For more detailed information regarding Article 9 prevailing wage contracts, please refer to "General Provisions of Laws Covering Workers on Article 9 Public Work Building Service Contracts".

If you have any questions concerning the attached schedule or would like additional information, please write to:

New York State Department of Labor
Bureau of Public Work
State Office Campus, Bldg. 12
Albany, NY 12240

OR

Contact the nearest BUREAU of PUBLIC WORK District Office

District Office Locations:

Telephone #

FAX #

Bureau of Public Work - Albany	518-457-2744	518-485-0240
Bureau of Public Work - Binghamton	607-721-8005	607-721-8004
Bureau of Public Work - Buffalo	716-847-7159	716-847-7650
Bureau of Public Work - Garden City	516-228-3915	516-794-3518
Bureau of Public Work - Newburgh	845-568-5287	845-568-5332
Bureau of Public Work - New York City	212-932-2419	212-775-3579
Bureau of Public Work - Patchogue	631-687-4882	631-687-4902
Bureau of Public Work - Rochester	585-258-4505	585-258-4708
Bureau of Public Work - Syracuse	315-428-4056	315-428-4671
Bureau of Public Work - Utica	315-793-2314	315-793-2514
Bureau of Public Work - White Plains	914-997-9507	914-997-9523
Bureau of Public Work - Central Office	518-457-5589	518-485-1870

Onondaga County Article 9

Trash and Refuse Removal 03/01/2018

JOB DESCRIPTION Trash and Refuse Removal **DISTRICT** 10

ENTIRE COUNTIES
 Cayuga, Cortland, Madison, Onondaga, Oswego

WAGES
 For use with Transfer Station Operation.

Per hour:	07/01/2017
Indus. Truck Driver/Tractor Operator	\$ 17.70
Laborer/ non-construction	\$ 15.46
Conveyor operators and tenders	\$ 18.80
Weighers/Measurers	\$ 14.94

IMPORTANT INFORMATION:
 Article 9 §230.6. "Prevailing wage" means the wage determined by the fiscal officer to be prevailing for the various classes of building service employees in the locality. In no event shall the basic hourly cash rate of pay be less than the statutory minimum wage established by article nineteen of this chapter, or, in a city with a local law requiring a higher minimum wage on city contract work, less than the minimum wage specified in such local law.

SUPPLEMENTAL BENEFITS
 Per hour worked: \$1.75

OVERTIME PAY
 See (B, B2) on OVERTIME PAGE

HOLIDAY
 Paid: See (1) on HOLIDAY PAGE

10-NYS/R&S - Trans.Station.Ops

Trash and Refuse Removal 03/01/2018

JOB DESCRIPTION Trash and Refuse Removal **DISTRICT** 10

ENTIRE COUNTIES
 Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Cortland, Erie, Franklin, Genesee, Jefferson, Lewis, Livingston, Madison, Monroe, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Schuylers, Seneca, St. Lawrence, Steuben, Tioga, Tompkins, Wayne, Wyoming, Yates

WAGES

Per Hour:	07/01/2017	05/01/2018
Trash, Recycling, Roll-Off and Brush Drivers	\$ 15.25	\$ 15.50
Thrower Helper	\$ 11.25	\$ 11.50

IMPORTANT INFORMATION:
 Article 9 §230.6. "Prevailing wage" means the wage determined by the fiscal officer to be prevailing for the various classes of building service employees in the locality. In no event shall the basic hourly cash rate of pay be less than the statutory minimum wage established by article nineteen of this chapter, or, in a city with a local law requiring a higher minimum wage on city contract work, less than the minimum wage specified in such local law.

SUPPLEMENTAL BENEFITS

	07/01/2017	05/01/2018
	\$ 7.13*	\$ TBD*

* Applies the 1st of the month after 30 days of service.

Vacation pay:

After one year of service: 5 days per year
After four years of service: 10 days per year
After nine years of service: 15 days per year

4 Personal days after 90 days of service.

Paid time off for part-time employees shall be prorated. (See "Introduction to the Prevailing Rate Schedule" page 10, 'Wage and Supplements' heading, for a detailed explanation.)

OVERTIME PAY

See (B, B2, K) on OVERTIME PAGE

HOLIDAY

Paid: See (5, 6) on HOLIDAY PAGE

Overtime: See (5, 6) on HOLIDAY PAGE

To be eligible for holiday pay an employee must complete 6 months continuous service, have worked the regularly scheduled day prior to the holiday as well as the first regularly scheduled day after the holiday.

Employees who are scheduled to work on a holiday must work that holiday or forfeit holiday pay.

If a holiday falls on an unscheduled workday (Sat/Sun) no holiday pay will be issued.

10-317

Overtime Codes

Following is an explanation of the code(s) listed in the OVERTIME section of each classification contained in the attached schedule. Additional requirements may also be listed in the HOLIDAY section.

NOTE: Supplemental Benefits are 'Per hour worked' (for each hour worked) unless otherwise noted

- (AA) Time and one half of the hourly rate after 7 and one half hours per day
- (A) Time and one half of the hourly rate after 7 hours per day
- (B) Time and one half of the hourly rate after 8 hours per day
- (B1) Time and one half of the hourly rate for the 9th & 10th hours week days and the 1st 8 hours on Saturday.
Double the hourly rate for all additional hours
- (B2) Time and one half of the hourly rate after 40 hours per week
- (C) Double the hourly rate after 7 hours per day
- (C1) Double the hourly rate after 7 and one half hours per day
- (D) Double the hourly rate after 8 hours per day
- (D1) Double the hourly rate after 9 hours per day
- (E) Time and one half of the hourly rate on Saturday
- (E1) Time and one half 1st 4 hours on Saturday; Double the hourly rate all additional Saturday hours
- (E2) Saturday may be used as a make-up day at straight time when a day is lost during that week due to inclement weather
- (E3) Between November 1st and March 3rd Saturday may be used as a make-up day at straight time when a day is lost during that week due to inclement weather, provided a given employee has worked between 16 and 32 hours that week
- (E4) Saturday and Sunday may be used as a make-up day at straight time when a day is lost during that week due to inclement weather
- (E5) Double time after 8 hours on Saturdays
- (F) Time and one half of the hourly rate on Saturday and Sunday
- (G) Time and one half of the hourly rate on Saturday and Holidays
- (H) Time and one half of the hourly rate on Saturday, Sunday, and Holidays
- (I) Time and one half of the hourly rate on Sunday
- (J) Time and one half of the hourly rate on Sunday and Holidays
- (K) Time and one half of the hourly rate on Holidays
- (L) Double the hourly rate on Saturday
- (M) Double the hourly rate on Saturday and Sunday
- (N) Double the hourly rate on Saturday and Holidays
- (O) Double the hourly rate on Saturday, Sunday, and Holidays
- (P) Double the hourly rate on Sunday
- (Q) Double the hourly rate on Sunday and Holidays
- (R) Double the hourly rate on Holidays
- (S) Two and one half times the hourly rate for Holidays, if worked

- (S1) Two and one half times the hourly rate the first 8 hours on Sunday or Holidays One and one half times the hourly rate all additional hours.
- (T) Triple the hourly rate for Holidays, if worked
- (U) Four times the hourly rate for Holidays, if worked
- (V) Including benefits at SAME PREMIUM as shown for overtime
- (W) Time and one half for benefits on all overtime hours.

Holiday Codes

PAID Holidays:

Paid Holidays are days for which an eligible employee receives a regular day's pay, but is not required to perform work. If an employee works on a day listed as a paid holiday, this remuneration is in addition to payment of the required prevailing rate for the work actually performed.

OVERTIME Holiday Pay:

Overtime holiday pay is the premium pay that is required for work performed on specified holidays. It is only required where the employee actually performs work on such holidays. The applicable holidays are listed under HOLIDAYS: OVERTIME. The required rate of pay for these covered holidays can be found in the OVERTIME PAY section listings for each classification.

Following is an explanation of the code(s) listed in the HOLIDAY section of each classification contained in the attached schedule. The Holidays as listed below are to be paid at the wage rates at which the employee is normally classified.

- (1) None
- (2) Labor Day
- (3) Memorial Day and Labor Day
- (4) Memorial Day and July 4th
- (5) Memorial Day, July 4th, and Labor Day
- (6) New Year's, Thanksgiving, and Christmas
- (7) Lincoln's Birthday, Washington's Birthday, and Veterans Day
- (8) Good Friday
- (9) Lincoln's Birthday
- (10) Washington's Birthday
- (11) Columbus Day
- (12) Election Day
- (13) Presidential Election Day
- (14) 1/2 Day on Presidential Election Day
- (15) Veterans Day
- (16) Day after Thanksgiving
- (17) July 4th
- (18) 1/2 Day before Christmas
- (19) 1/2 Day before New Years
- (20) Thanksgiving
- (21) New Year's Day
- (22) Christmas
- (23) Day before Christmas
- (24) Day before New Year's
- (25) Presidents' Day
- (26) Martin Luther King, Jr. Day
- (27) Memorial Day



**New York State Department of Labor - Bureau of Public Work
State Office Building Campus
Building 12 - Room 130
Albany, New York 12240**

REQUEST FOR WAGE AND SUPPLEMENT INFORMATION

As Required by Articles 8 and 9 of the NYS Labor Law

Fax (518) 485-1870 or mail this form for new schedules or for determination for additional occupations.

This Form Must Be Typed

Submitted By:

(Check Only One)

Contracting Agency

Architect or Engineering Firm

Public Work District Office

Date:

A. Public Work Contract to be let by: (Enter Data Pertaining to Contracting/Public Agency)

1. Name and complete address (Check if new or change)

Telephone: ()

Fax: ()

E-Mail:

2. NY State Units (see Item 5)

01 DOT

02 OGS

03 Dormitory Authority

04 State University
Construction Fund

05 Mental Hygiene
Facilities Corp.

06 OTHER N.Y. STATE UNIT

07 City

08 Local School District

09 Special Local District, i.e.,
Fire, Sewer, Water District

10 Village

11 Town

12 County

13 Other Non-N.Y. State
(Describe)

3. SEND REPLY TO check if new or change)
Name and complete address:

Telephone:()

Fax: ()

E-Mail:

4. SERVICE REQUIRED. Check appropriate box and provide project information.

New Schedule of Wages and Supplements.

APPROXIMATE BID DATE :

Additional Occupation and/or Redetermination

PRC NUMBER ISSUED PREVIOUSLY FOR
THIS PROJECT :

OFFICE USE ONLY

B. PROJECT PARTICULARS

5. Project Title _____

Description of Work _____

Contract Identification Number _____

Note: For NYS units, the OSC Contract No. _____

6. Location of Project:
Location on Site _____

Route No/Street Address _____

Village or City _____

Town _____

County _____

7. Nature of Project - Check One:

1. New Building

2. Addition to Existing Structure

3. Heavy and Highway Construction (New and Repair)

4. New Sewer or Waterline

5. Other New Construction (Explain)

6. Other Reconstruction, Maintenance, Repair or Alteration

7. Demolition

8. Building Service Contract

8. OCCUPATION FOR PROJECT :

Construction (Building, Heavy
Highway/Sewer/Water)

Tunnel

Residential

Landscape Maintenance

Elevator maintenance

Exterminators, Fumigators

Fire Safety Director, NYC Only

Guards, Watchmen

Janitors, Porters, Cleaners,
Elevator Operators

Moving furniture and
equipment

Trash and refuse removal

Window cleaners

Other (Describe)

9. Has this project been reviewed for compliance with the Wicks Law involving separate bidding?

YES NO

10. Name and Title of Requester

Signature



NEW YORK STATE DEPARTMENT OF LABOR
Bureau of Public Work - Debarment List

**LIST OF EMPLOYERS INELIGIBLE TO BID ON OR BE
AWARDED ANY PUBLIC WORK CONTRACT**

Under Article 8 and Article 9 of the NYS Labor Law, a contractor, sub-contractor and/or its successor shall be debarred and ineligible to submit a bid on or be awarded any public work or public building service contract/sub-contract with the state, any municipal corporation or public body for a period of five (5) years from the date of debarment when:

- Two (2) final determinations have been rendered within any consecutive six-year (6) period determining that such contractor, sub-contractor and/or its successor has WILLFULLY failed to pay the prevailing wage and/or supplements
- One (1) final determination involves falsification of payroll records or the kickback of wages and/or supplements

NOTE: The agency issuing the determination and providing the information, is denoted under the heading 'Fiscal Officer'. DOL = NYS Dept. of Labor; NYC = New York City Comptroller's Office; AG = NYS Attorney General's Office; DA = County District Attorney's Office.

A list of those barred from bidding, or being awarded, any public work contract or subcontract with the State, under section 141-b of the Workers' Compensation Law, may be obtained at the following link, on the NYS DOL Website:

<https://dbr.labor.state.ny.us/EDList/searchPage.do>

Article 9

AGENCY	Fiscal Officer	FEIN	EMPLOYER NAME	EMPLOYER DBA NAME	ADDRESS	DEBARMENT START DATE	DEBARMENT END DATE
DOL	DOL	*****5530	CFM SERVICE CORPORATION INC		P O BOX 548 225 MONTAUK HWY/SUITE 219MORICHES NY 11955	11/28/2012	04/15/2021
DOL	DOL		JOSEPH KLEINPETER	CFM SERVICE CORPORATIO N INC	P O BOX 548 225 MONTAUK HWY/SUITE 219MORICHES NY 11955	11/28/2012	04/15/2021
DOL	DOL	*****0744	NCLN20 INC		3494 HALL LANE P O BOX 69LAFAYETTE CA 94549	05/23/2013	05/23/2018
DOL	NYC		ROBERT SARDINA		C/O TRAFFIC MOVING SYSTEM 66 ALEXANDER STREET YONKERS NY 10701	03/31/2015	03/31/2020
DOL	DOL		SIHAYA JONES		C/O NCLN20 INC 3404 HALL LANELAFAYETTE CA 94549	05/23/2013	05/23/2018
DOL	DOL		STEPHEN JONES		C/O NCLN10 INC 3404 HALL LANELAFAYETTE CA 94549	05/23/2013	05/23/2018
DOL	NYC	*****2049	TRAFFIC MOVING SYSTEMS INC		66 ALEXANDER STREET YONKERS NY 10701	03/31/2015	03/31/2020

SECTION 01026

LUMP SUM ITEMS (BID ITEM DESCRIPTIONS)

PART 1 GENERAL

1.1 SECTION INCLUDES

- A. Price make-up.
- B. Elements of Bid Item description page.
- C. List of Lump Sum Items.
- D. Bid Item Description – attached page(s).

1.2 RELATED SECTIONS

- A. Bid Form – Schedule of Lump Sum Items.
- B. Section 01010 – SUMMARY OF WORK AND CONTRACT REQUIREMENTS

1.3 PRICE MAKE-UP

- A. Lump sum prices bid by Contractor are deemed to be full compensation for all related labor, products, tools, equipment, plant, transportation, testing, inspection, services, incidentals, administrative procedures, applicable taxes, permit fees, overhead, profit, and other miscellaneous expenses.

1.4 ELEMENTS OF BID ITEM DESCRIPTION PAGE

- A. Identification of lump sum item, as set forth in the Bid Form
- B. Brief statement of work involved in the item.
- C. Listing of components of work which make-up the item, including reference to the Section(s) covering each component.
- D. Cross-reference to associated work not included in the item.

1.5 LIST OF LUMP SUM ITEMS

<u>Bid Item No. and Title</u>	<u>Bid Item Description Number</u>
1. Refuse, Rubbish, Garbage and Recyclables	BI-1

1.6 BID ITEM DESCRIPTIONS

- A. Bid Item Description pages identified above are attached at the end of this Section.

PART 2 PRODUCTS

Not used.

PART 3 EXECUTIONS

Not used.

END OF SECTION

BID ITEM 1

**COLLECTION AND DISPOSAL OF ALL
REFUSE, RUBBISH, GARBAGE, AND RECYCLABLES**

Work Included

- All labor, equipment and materials necessary for and incidental to the collection and disposal of all refuse, rubbish, garbage and recyclables from all Single, Two, Three, Multi-Family homes, Commercial Properties and trash receptacles located in Village Parks within any or all of the Village of Solvay.
- Performance of all operation with the conditions set forth in the Contract Documents.
- The Disposal for all solid waste and recyclables collected shall be the responsibility of the Contractor. All solid waste collected by the Contractor shall be transported to the Onondaga County Resource Recovery Agency (OCRRA) Waste to Energy Plant on Rock Cut Road in the Town of Onondaga, New York. All recyclables shall be transported to an OCRRA approved materials recycling facility. All credit due for disposal of recyclables collected under this Contract shall accrue to the Contractor.

Method of Payment

Payment for all work under this Contract will be made on a lump sum basis, on an equal monthly basis, at the end of each month.

**ONONDAGA COUNTY PARTICIPATING MUNICIPALITY SOLID WASTE
DELIVERY AGREEMENT**

This AGREEMENT entered into this 27th day of JANUARY, 2015, by
and between:

The Onondaga County Resource Recovery Agency, a public benefit corporation created under the laws of the State of New York, having an office and place of business at 100 Elwood Davis Road, North Syracuse, New York, 13212, (hereinafter referred to as “OCRRA”) and the Village of Solvay, a municipal corporation located in Onondaga County, having an office and place of business at 1100 Woods Road, Solvay, New York, 13209, (hereinafter referred to as the “MUNICIPALITY”):

WITNESSETH:

WHEREAS, by Resolution 28-1978, the Onondaga County Legislature declared that Solid Waste disposal is a County-wide problem; and

WHEREAS, it is mutually understood that for the benefit of all the Participating Municipalities in Onondaga County, it is necessary that Participating Municipalities in the County enter into legally enforceable commitments to deliver all of the Solid Waste produced within their Participating Municipality to the County Solid Waste Management System (hereinafter referred to as the “OCRRA System”); and

WHEREAS, the MUNICIPALITY and OCRRA had previously entered into a similar twenty-five (25) year Delivery Agreement, as had the other thirty-two (32) Participating Municipalities and those prior Delivery Agreements recently expired; and

WHEREAS, the commitment of the member MUNICIPALITY herein to participate in the OCRRA System will ensure that all of the residents, businesses and public facilities in the

MUNICIPALITY will have a secure, reliable, and environmentally responsible Solid Waste disposal facility and solid waste management system for at least a twenty (20) year period into the future; and

WHEREAS, the **MUNICIPALITY**'s commitment herein will further ensure that **OCRRA**'s recycling and composting facilities and programs will continue to be funded and function for the foreseeable future; and

WHEREAS, this **AGREEMENT** evidences the **MUNICIPALITY**'s continuing commitment to environmentally responsible and reliable Solid Waste management for the **MUNICIPALITY**'s residents and businesses; and

WHEREAS, in furtherance of that commitment, the **MUNICIPALITY** adopted an Intrastate Waste Site designation ordinance on February 27, 2001 that designated the **OCRRA** System for the disposal of all Solid Waste originating or generated in the **MUNICIPALITY** and bound for ultimate disposal in New York State; and

WHEREAS, the **MUNICIPALITY** seeks assurance that **OCRRA** will, during the term of this **AGREEMENT**, accept all of the **MUNICIPALITY**'s Solid Waste into the **OCRRA** System; and

WHEREAS, **OCRRA** intends to fulfill all of its obligations under this **AGREEMENT**;
and

WHEREAS, the Parties to this **AGREEMENT** have agreed to act in good faith and to take all necessary and appropriate actions, in cooperation with one another, to effect the purposes of this **AGREEMENT**; and

WHEREAS, the Parties to this **AGREEMENT** are entering into this **AGREEMENT** pursuant to their respective lawful authorities;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein set forth, and of the undertakings of each party to the other, the Parties to this **AGREEMENT** do hereby promise and agree as follows:

ARTICLE I
DEFINITIONS

- 1.1. “Agency” or “**OCRRA**” shall mean the Onondaga County Resource Recovery Agency.
- 1.2. “Agency Solid Waste Disposal Fee” shall mean the fee established by **OCRRA** as the cost to dispose of one ton of Solid Waste in the **OCRRA** System and includes all costs incurred by the Agency in connection with the establishment, operation and maintenance of the **OCRRA** System.
- 1.3. “Bonds” shall mean the bonds issued by the Onondaga County Resource Recovery Agency to finance the construction and maintenance of the **OCRRA** System.
- 1.4. “Counterpart Agreement” shall mean each agreement, entitled “Solid Waste Agreement”, similar in form and substance to this **AGREEMENT**, executed by each Participating Municipality in Onondaga County participating in the **OCRRA** System.
- 1.5. “County” shall mean the County of Onondaga, New York.
- 1.6. “Designated Person” shall mean a Person designated by the **MUNICIPALITY** to ensure the **MUNICIPALITY**’s compliance with this **AGREEMENT**.
- 1.7. “Execution Date” shall mean the date this **AGREEMENT** is entered into by **OCRRA** and the **MUNICIPALITY**.
- 1.8. “Hauler” shall mean any Person engaged in the collection and/or transportation of Solid Waste in the Participating Municipalities of Onondaga County.

1.9. "Hazardous Waste" shall mean waste which, by reason of its quantity, composition or characteristics is a toxic substance or hazardous waste [as defined in the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but not limited to, amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and related regulations, in the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related regulations, or in any future additional or substitute federal, state or local laws and regulations pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes]; any source, special nuclear or by-product material within the meaning of the Atomic Energy Act of 1954, as amended, and related regulations. If any governmental agency or unit having appropriate jurisdiction shall determine that substances which are not, as of the contract date, considered harmful, toxic, or dangerous, are in fact harmful to health, then any such substances or materials shall thereafter constitute Hazardous Waste for purposes of this **AGREEMENT**.

1.10. "Municipal Hauler" shall mean the Participating Municipality itself as a municipal handler of Solid Waste, as well as a Hauler employed or under contract by a municipality or a district within the municipality operating as part of a municipally owned and operated Solid Waste collection system.

1.11. "OCRRA Contracted Haulers" shall mean those haulers which have signed a hauler agreement with the Onondaga County Resource Recovery Agency.

1.12. "Participating Municipalities" shall mean all municipalities that have signed and entered into Counterpart Solid Waste Delivery Agreements.

1.13. "Person" shall mean any individual, corporation, partnership, trust, governmental agency or any other entity, or any group of such persons.

1.14. “Service Agreement” shall mean the Second Amended Solid Waste Disposal Service Agreement between **OCRRA** and Covanta Onondaga LP, the operator of the Onondaga Waste-to-Energy Facility, as amended on November 12, 2014, which will be in effect for a twenty (20) year period beginning on May 10, 2015.

1.15. “Solid Waste” shall mean residential, governmental, commercial and/or industrial refuse including yard waste but shall not include human wastes; rendering wastes; demolition wastes; residue from incinerators or other destructive systems for processing waste, other than now existing individual building incinerators, residue from which is presently collected as part of normal refuse collection practices; junked automobiles or pathological, toxic, explosive, radioactive material or other Hazardous Wastes which, under existing or future federal, state or local laws, require special handling in their collection or disposal.

1.16. “Street” shall mean any type of public way accessible to vehicular traffic including, without limitation, lanes, roads, avenues, streets and highways.

1.17. “System” or “OCRRA System” shall mean **OCRRA**’s Solid Waste management and disposal system and every aspect thereof including, but not limited to, the Onondaga Waste-to-Energy Facility, and any transfer stations or landfills acquired, constructed or operated or to be acquired, constructed or operated by **OCRRA** or any agent, designee or contractor of **OCRRA** in connection with the Onondaga County Solid Waste Management Plan (“SWMP”) as well as OCRRA composting facilities at Amboy and Jamesville.

1.18. “Waste-to-Energy Facility” or “Facility” shall mean the Onondaga Waste-to-Energy Facility located on Rock Cut Road in the Town of Onondaga, Onondaga County.

ARTICLE II
OCRRA UNDERTAKINGS

2.1. Operation of the OCRRA System. **OCRRA** hereby agrees to provide for the operation of the OCRRA System including the Onondaga Waste-to-Energy Facility at the Rock Cut Road site in the Town of Onondaga, its transfer stations at Ley Creek and Rock Cut Road, when needed, for OCRRA System operations, as well as, its Agency compost facilities and any other equipment or facilities which **OCRRA** deems necessary or desirable for a twenty (20) year period beginning May 10, 2015. **OCRRA** also agrees to maintain its successful recycling program, which will continue procedures designed to maximize recycling alternatives in Onondaga County.

2.2. Commitment to Accept Solid Waste. **OCRRA** agrees to accept all of the Solid Waste generated in the **MUNICIPALITY** and delivered by the **MUNICIPALITY** itself, Municipal Haulers, or OCRRA Contracted Haulers, as well as, residents and businesses within the Participating Municipality. Pursuant to Section 3.1. of this **AGREEMENT**, all accepted Solid Waste will be disposed of by the OCRRA System for the term of this **AGREEMENT**.

2.3. Recycling Program. In order to conserve natural resources, and consistent with our Participating Municipalities and the County's desire to reduce unnecessary landfilling, **OCRRA** will continue its award winning recycling program. The recycling program requires mandatory curbside recycling in the **MUNICIPALITY** in which the **MUNICIPALITY** must participate and fully support.

2.4. Compost Facilities. **OCRRA** presently operates compost facilities at Jamesville and Amboy on land leased from Onondaga County. When those facilities are open for

business, Participating Municipalities and its residents, businesses, as well as, **OCRRA** permitted waste haulers operating within the **MUNICIPALITY**, will be able to utilize them and obtain mulch and compost therefrom at **OCRRA** established rates.

ARTICLE III

OBLIGATIONS OF THE MUNICIPALITY

3.1. Commitment to Deliver Solid Waste. Beginning on the Execution Date, and for the term of this **AGREEMENT**, the **MUNICIPALITY** agrees to deliver or cause to be delivered into the **OCRRA** System all of the Solid Waste collected within such **MUNICIPALITY**, whether such Solid Waste is collected by the **MUNICIPALITY** itself as part of a general municipal Solid Waste collection service, or is collected by private Haulers operating within the Participating Municipality including, but not limited to, private haulers hired by the **MUNICIPALITY** or private haulers serving a Solid Waste district located within the Participating Municipality.

3.2. Source Separation. The **MUNICIPALITY** agrees to actively participate in **OCRRA**'s mandatory curbside recycling program, and to foster both public and private efforts in this regard.

3.3. On February 27, 2001, the **MUNICIPALITY** adopted an Intrastate Waste Site Designation Ordinance (or Law) (hereinafter referred to as "Ordinance or Law") in which it designated that all Solid Waste generated within the boundaries of the **MUNICIPALITY** and bound for ultimate disposal in New York State must, by that Ordinance or Law, be disposed of at the designated waste site, namely at the Onondaga Waste-to-Energy Facility on Rock Cut Road or to other transfer or processing facilities maintained by **OCRRA**. The **MUNICIPALITY** hereby represents that Ordinance or Law has not been rescinded or

amended in any way, to date, and that such Ordinance or Law will continue to remain in full effect and be enforceable, without any further amendments or contingencies, for the term of this Solid Waste Delivery **AGREEMENT**.

3.4. The **MUNICIPALITY** further recognizes that the County of Onondaga adopted Local Law No. 5 of 2003 (as amended by Local Law No. 3 of 2012), a County-wide “Flow Control” law, directing that all Solid Waste originating in Onondaga County be disposed of at the municipally owned (i.e., **OCRRA** owned) Onondaga Waste-to-Energy Facility on Rock Cut Road in the Town of Onondaga or at any other designated **OCRRA** System Facility. The **MUNICIPALITY** commits and agrees to comply fully with Onondaga County Local Law No. 5 of 2003, as amended, and in any **MUNICIPALITY** procurement for Solid Waste pick-up and/or disposal services within the **MUNICIPALITY**, including such services for any Solid Waste districts within the **MUNICIPALITY**, that the **MUNICIPALITY** will, in its Request for Proposals or Bids for such services, and in its contract award thereafter, require that all such Solid Waste be delivered to the Onondaga Waste-to-Energy Facility or to any other designated **OCRRA** disposal Facility during the term of this **AGREEMENT**. The **MUNICIPALITY** further agrees not to commence, pursue or participate in any action, legal or otherwise, that challenges the validity or constitutionality of said Local Law No. 5 of 2003, as amended.

3.5. The **MUNICIPALITY** recognizes **OCRRA** has, or in the future will have, entered into Hauler contracts with all Solid Waste Haulers operating in Onondaga County. In fact, the **MUNICIPALITY** itself may have entered into such a Hauler contract or, in the future may decide to engage in municipal collection and thus enter into such a Hauler contract with **OCRRA**. The **MUNICIPALITY** agrees that if it now engages in municipal collection, or in the future engages in any municipal collection during the term of this

AGREEMENT, that it will enter into a Hauler contract with **OCRRA** that will, among other things, require that all Solid Waste from the **MUNICIPALITY** be delivered to the Onondaga Waste-to-Energy Facility or to another designated **OCRRA** System Facility. The **MUNICIPALITY** further agrees not to interfere with any Hauler contracts **OCRRA** may have with any private Haulers operating within the **MUNICIPALITY**'s boundaries and, when requested by **OCRRA**, will assist **OCRRA** in every way possible in enforcing such Hauler contracts.

3.6. The **MUNICIPALITY** agrees to appoint a Designated Person, who is to monitor and ensure compliance with this **AGREEMENT** in the **MUNICIPALITY**.

ARTICLE IV FINANCIAL MATTERS

4.1. Fee Structure. **OCRRA** will bill each Hauler who delivers Solid Waste originating from or generated in the **MUNICIPALITY** into the **OCRRA** System. The amount due from each Hauler will be determined by multiplying the then applicable Agency Solid Waste Disposal Fee by the actual number of tons delivered by the Hauler. The Agency will send a monthly accounting to each Hauler and all amounts listed thereon will be due and payable in accordance with **OCRRA**'s billing policy.

ARTICLE V FURTHER ASSURANCES

5.1. Additional Actions. **OCRRA** and the **MUNICIPALITY** shall, in good faith, during the term of this **AGREEMENT**, take all such actions as may be necessary or appropriate to carry out the purposes of this **AGREEMENT** including, without limitation, the enactment of legislation, resolutions and other official actions.

5.2. Assistance with Permits and Approvals. **OCRRA** and the **MUNICIPALITY** shall use their mutual best, good faith efforts to obtain further agreements, approvals, licenses, permits, legislation, authorizations and the like, as may be necessary or appropriate in connection with the future design, financing, construction and operation of the OCRRA System or as may be necessary or appropriate to carry out the purposes of this **AGREEMENT**.

ARTICLE VI
MISCELLANEOUS

6.1. Effect of Breach. Each party specifically recognizes that the other is entitled to bring immediate suit for temporary as well as permanent injunctive relief, mandamus, or specific performance or to exercise other legal or equitable remedies to enforce the obligations and covenants of each party hereto. It being recognized, however, that the successful operation of the OCRRA System – and therefore the ability of Participating Municipalities within Onondaga County to safely, lawfully and economically dispose of their Solid Waste – depends on all Participating Municipalities fully living up to the terms and conditions of these Solid Waste Delivery Agreements. **OCRRA** and the **MUNICIPALITY** each agree to fulfill their obligations and duties under this **AGREEMENT** in good faith while any such suits or remedies are pursued unless and until the final judgment of a court of competent jurisdiction properly relieves either party of any portion of their obligations hereunder. To further ensure the successful operation of the OCRRA System, it is also agreed that all Participating Municipalities shall be deemed third-party beneficiaries of all Counterpart Agreements entered into by all of the other Participating Municipalities.

6.2. Term of Agreement. This **AGREEMENT** shall be in full force and effect and be legally binding upon **OCRRA** and the **MUNICIPALITY** from the Execution Date and

delivery hereof. This **AGREEMENT** shall remain in full force and effect until twenty (20) years from May 10, 2015.

6.3. Termination of Agreement. Neither **OCRRA** nor the **MUNICIPALITY** shall have the right to terminate this **AGREEMENT** for so long as the Service Agreement or any contractual or bonding obligations of **OCRRA**, under the Service Agreement, shall remain outstanding for any reason whatsoever. Upon the satisfaction and discharge of all **OCRRA**'s contractual obligations under the Service Agreement and all of **OCRRA**'s existing bonding obligations, **OCRRA** and the **MUNICIPALITY** may terminate this **AGREEMENT** by mutual consent.

6.4. Assignability. **OCRRA** may assign or pledge this **AGREEMENT** in relation to the financing and operation of the **OCRRA** System; but no other assignment of this **AGREEMENT** shall be authorized or permitted by either Party to this **AGREEMENT**.

6.5. Waiver Not to be Construed. No waiver by **OCRRA** or the **MUNICIPALITY** of any term or condition of this **AGREEMENT** shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any pledge be deemed to constitute a waiver of any subsequent pledge, whether of the same or of a different section, subsection, paragraph, clause, phrase, word or other provision of this **AGREEMENT** required of it under this **AGREEMENT** or by law. The failure of either party to insist in any one or more instances upon strict performance of any of the terms, covenants, agreements or conditions in this **AGREEMENT** shall not be considered to be a waiver or relinquishment of such term, covenant, agreement or condition; but the same shall continue in full force and effect.

6.6. Amendments. This **AGREEMENT**, being for the benefit of all the Participating Municipalities, may not be substantially altered, changed or amended before or after execution without the concurrence of all other Participating Municipalities and any such

amendment shall be only by written agreement, duly authorized and executed. This writing represents the entire **AGREEMENT** between the Parties and any modification or amendment shall be in writing and duly executed by the Parties to this **AGREEMENT**.

6.7. Severability. If any provision, paragraph, sentence, clause or word of this **AGREEMENT** shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such shall not affect the remainder of this **AGREEMENT** and shall be construed and enforced, consistent with its expressed purposes, as if such invalid or unenforceable provision, paragraph, sentence, clause or word had not been contained herein.

6.8. Duplicate Originals. This **AGREEMENT** may be executed in two or more counterparts, any of which shall be regarded for all purposes as duplicate originals.

IN WITNESS WHEREOF, the Parties hereto have duly executed this **AGREEMENT** the day and year first above mentioned.

Onondaga County Resource Recovery Agency

Village of Solvay

By: *Mark A. Donnelly*
Mark A. Donnelly, Executive Director

By: *Ronald Benedetti*
Ronald Benedetti, Mayor

Date: 1/28/15

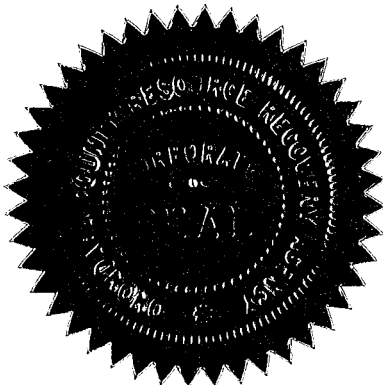
Date: 1-27-15

Witness: *William J. ...*

Witness: *Kevin M. Gilligan*

Seal: APPROVED AS TO LEGAL FORM
MS 11/19/14
Initials Date

Seal:



AGREEMENT FOR USE OF
OCRRA SOLID WASTE MANAGEMENT SYSTEM

This one (1) year HAULER-OCRRA AGREEMENT dated as of JANUARY 27, 20 15 between the Onondaga County Resource Recovery Agency ("OCRRA" or "AGENCY"), a public benefit corporation duly organized and existing under the laws of the State of New York and having its principal offices at 100 Elwood Davis Road, North Syracuse, New York, 13212, and the Village of Solway, ("HAULER") having its principal offices at 1100 Woods Road, Solway, N.Y. 13209;

WITNESSETH:

WHEREAS, the AGENCY has implemented an integrated system for the management of Solid Waste generated within Onondaga County known as the Onondaga County Solid Waste Management System; and

WHEREAS, the AGENCY has made available for use by Agency Permitted Solid Waste Haulers, such as HAULER herein, its Onondaga County Solid Waste Management System Facilities, including its Waste-to-Energy Facility ("WTE Facility"), Construction Debris Processing Facility, Yard Waste Compost Sites and Transfer Facilities; and

WHEREAS, the AGENCY and the Onondaga County Solid Waste Management System have been established to meet the State and County Solid Waste Management Plans and operate to meet the goals and standards set forth in those plans; and

WHEREAS, the AGENCY and the Onondaga County Solid Waste Management System meet the disposal priorities set forth in Environmental Conservation Law §27-0106; and

WHEREAS, the Onondaga County Solid Waste Management System provides substantial and unique benefits to Agency Permitted Solid Waste Haulers, including disposal of various categories of Solid Waste collected from Waste Generators, subsidization for recycling activities conducted by HAULERS, incentives for waste reduction, Household Hazardous Waste disposal, recycling education, Yard and Garden and Food Waste Composting Facilities, a Construction/Demolition Debris Processing Facility and other benefits, all in a manner that protects public health and promotes sound environmental protection; and

WHEREAS, the AGENCY is an integral part of efforts by Onondaga County and local Municipalities to meet federal and state environmental standards as well as an integral component in local municipal efforts to prevent harm to the environment and reduce potential exposure to CERCLA liability and other costly consequences which can arise from improper waste disposal practices; and

WHEREAS, the AGENCY has also made available for use by Agency Permitted Haulers, a Material Recovery Facility ("MRF") which, under separate contract with AGENCY, has agreed to accept County Designated Curbside Recyclables (See Attachment 9 for County Source Separation Law incorporated herein by reference) from such Agency Permitted Haulers at

no charge to the Agency Permitted Haulers, provided that the County Designated Curbside Recyclables originated in Onondaga County and the said **HAULER** has committed to bring the Solid Waste it collects, which was generated in the Participating Municipalities in Onondaga County (see Attachment 6), to Onondaga County Solid Waste Management System Facilities; and

WHEREAS, the **HAULER** desires guaranteed disposal capacity for only Acceptable Solid Waste as defined in this Agreement at the Onondaga County Solid Waste Management System Facilities and access to and the use of an Agency-contracted MRF and is willing to abide by the Agency Operating By-Laws (See Attachment 4 incorporated herein by reference) for use of the Onondaga County Solid Waste Management System Facilities and to commit to bring all of the Acceptable Solid Waste it collects in the Participating Municipalities of Onondaga County to the Onondaga County Solid Waste Management System Facilities; and

WHEREAS, the parties desire to set forth their respective rights and obligations regarding the use of Onondaga County Solid Waste Management System Facilities in this Agreement;

NOW THEREFORE, in accordance with the mutual considerations set forth above and herein, the parties hereto agree as follows:

1. This Agreement is made pursuant to Public Authorities Law Sections 2045-e(8) and 2045-e(9).
2. Terms used herein have the meaning set forth in Attachment 1 titled "Definitions" which is incorporated herein by reference.
3. The **AGENCY** agrees to provide, operate and make available for use by **HAULER** the "Onondaga County Solid Waste Management System Facilities" described in Attachment 2 which attachment is incorporated herein by reference.
4. The **AGENCY** agrees to make reduction, re-use and recycling a top management priority and to continue to recover all items which can reasonably and feasibly be recycled. (See Attachment 3 for a list of County Designated Recyclables which attachment is incorporated herein by reference).
- 5a. During the term of this Agreement, **HAULER** agrees to bring or cause to be brought to the Agency Facilities listed in Attachment 2 all Acceptable Solid Waste generated or originating in the thirty-three (33) Participating Municipalities of Onondaga County (See Attachment 6 incorporated herein by reference) which is collected or transported by **HAULER**, and to pay **AGENCY** the then current Tipping Fee set forth in paragraph 7 below for disposal of such Acceptable Solid Waste. This delivery obligation does not cover Recyclables, Construction Debris, Demolition Debris, White Goods, Unacceptable System Wastes, tires, treated wood and Food Waste where the latter is recycled through a permitted Food Waste composting facility.

- 5b. During the term of this Agreement, **HAULER** agrees that it will bring or cause to be brought all Food Waste generated or originating in the thirty-three (33) Participating Municipalities of Onondaga County which is collected or transported by **HAULER** either to the Agency Amboy Food Waste composting facility or, in the alternative, to an Agency-approved Food Waste composting facility.
6. The **AGENCY** agrees to accept, at the Onondaga County Solid Waste Management System Facilities listed in Attachment 2, all Acceptable Solid Waste delivered to it by **HAULER**. **AGENCY** shall have the right to reject non-complying Solid Waste materials delivered by **HAULER**, but such rejection will not relieve **HAULER** of its obligation under paragraph 5 for all other complying Acceptable Solid Waste. **HAULER** shall remove and dispose of properly any non-complying materials rejected by **AGENCY**, in the first instance at other Agency facilities able to accept same, or pay for such removal and disposal elsewhere.
7. During the term of this Agreement, the **AGENCY** agrees that the Acceptable Waste Tipping fee for each ton of Acceptable Waste delivered to Agency Facilities shall be as follows:

Calendar Year: 2015

Tipping Fee: eighty dollars (\$80.00) per ton*

*Includes four dollars (\$4.00) per ton security prepayment which will be credited back to **HAULER** provided **HAULER** remains in "Good Standing" by keeping current on its payments to the **AGENCY**. "Small users" will pay eighty-four dollars (\$84.00) per ton but will not receive a security prepayment credit given to **HAULERS** with self-unloading vehicles. Notwithstanding the criteria set forth in Attachment 7, for purposes of this provision the **HAULER** shall be deemed in "Good Standing" if the **HAULER** is current on its payment of the Tipping Fees specified in this Section to the **AGENCY** and is bringing all Acceptable Waste to Agency Facilities as required hereunder.

The above rates shall apply for any **HAULER** signing this Agreement on or before January 1, 2015. For any **HAULER** who is not operating in Onondaga County as of January 1, 2015 but who begins operations in Onondaga County on or after that date, the new **HAULER** may access the above rates by signing this Agreement within thirty (30) days after beginning operations in Onondaga County. Otherwise, the new **HAULER**, and any other **HAULERS** other than "small users", signing this Agreement after December 31, 2014 will pay no less than eighty-four dollars (\$84.00) per ton for an Acceptable Waste tipping fee throughout the balance of this Agreement.

The **AGENCY** warrants and represents that the tipping fees, terms and benefits offered or granted to **HAULER** herein are equal to or better than those being offered or granted by the **AGENCY** to any other **HAULER** and/or user of the Onondaga

County Solid Waste Management System, including any municipal **HAULER**, during the period constituting the term of this contract. The **AGENCY** further warrants and represents that the tipping fee charged by the **AGENCY** for Acceptable Waste delivered during the year 2015 by a **HAULER** who has not signed a one year (2015) Agreement for Use of OCRRA Solid Waste Management System or an Agency Small User (those **HAULERS** not having self-unloading vehicles) Agreement and obtained an annual Agency Hauler Permit shall be no less than ninety-nine dollars (\$99.00) per ton of Acceptable Waste. Fees for construction and demolition debris, yard waste, white goods, tires and other materials for 2015 have been separately established annually by the Agency Board of Directors.

8. In further consideration of the service provided by **AGENCY**, **HAULER** agrees to pay the Tipping Fee in accordance with the Operating By-Laws of the **AGENCY**. These Operating By-Laws have been established pursuant to New York Public Authorities Law Section 2045-e(9) and are attached hereto and incorporated herein by reference as Attachment 4.
9. The **AGENCY** will make every effort to maintain its Solid Waste Management System Facilities at their current locations in Onondaga County and will continue to make those facilities available for disposal of all Acceptable Solid Waste generated by **HAULER's** customers and conveyed to Onondaga County Solid Waste Management System Facilities by **HAULER**.
10. The **AGENCY** and **HAULER** shall work together to maintain a current level of services provided by the **AGENCY** and by **HAULER** to the present and future customers of **HAULER**.
11. **HAULER** shall maintain, in Good Standing (See Attachment 7), the current Agency Hauler Permit issued by the **AGENCY**.
12. The **AGENCY** and **HAULER** shall cooperate in the implementation of the respective requirements under this Agreement.
13. The term of this Agreement shall be for one (1) year commencing on January 1, 2015 and shall terminate on December 31, 2015.
14. **HAULER** agrees it will comply, at its own expense, with the provisions of all applicable federal, state and municipal requirements including the Onondaga County Solid Waste Management Plan and with all applicable federal, state and local laws, rules and regulations.
15. Any purported delegation of duties or obligations or assignment of rights without the prior express written consent of the **AGENCY** is void. **HAULER** shall not subcontract any part of the work without the prior written consent of the **AGENCY** except to an Agency Permitted Hauler that has signed an Agreement for use of Agency Solid Waste Management System. All subcontracts shall provide that subcontractors are subject to all of the terms and conditions set forth in this

Agreement. All work performed by a subcontractor of **HAULER** shall be deemed work performed by **HAULER**. This Agreement and the payments to be made hereunder shall not be assigned or transferred by either party without the express written consent of the other party.

16. All notices of any nature, except a Notice of Violation referred to in this Agreement, shall be in writing and sent by certified mail, postage pre-paid, to the respective addresses set forth below or to such other addresses as respective parties hereto may designate in writing:

To AGENCY:
Executive Director
Onondaga County Resource
Recovery Agency
100 Elwood Davis Road
North Syracuse, NY 13212-4312

Copy to:
Agency Counsel
Onondaga County Resource
Recovery Agency
100 Elwood Davis Road
North Syracuse, NY 13212-4312

To HAULER:
Village Clerk
Village of Solway
1100 Woods Road
Solway, N.Y. 13209

Copy to (if required):
Kevin M. Gilligan, Esq.
Castello, Cooney & Fearon, PLLC
500 Plum Street, Suite 300
Syracuse, N.Y. 13204

17. This Agreement and its nine attachments (all incorporated herein by reference) constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be changed or modified except by an instrument in writing signed by a duly authorized representative of both parties.
18. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.
19. **AGENCY** has notified **HAULER** and **HAULER** acknowledges that the **AGENCY** has or will enter into contracts with thirty-three (33) of thirty-five (35) Municipalities in Onondaga County (See Attachment 6). Those contracts provide that each Participating Municipality will "deliver or cause to be delivered" Solid Waste (as the term "Solid Waste" is defined in those municipal contracts) generated from each such Municipality to the **AGENCY's** System. The **AGENCY** represents that the contracts are authorized by Title 13-B of the New York Public Authorities Law pursuant to the local police powers granted by the State to local municipalities under the New York Constitution and applicable New York law relative to managing the public health, safety and environmental aspects of solid waste. The **AGENCY** further represents that the local Participating Municipalities have exercised their police powers by designating by local law or ordinance that Solid Waste from their Municipality will be disposed of only at the Onondaga County Solid Waste Management System. This Hauler Agreement will not modify these Delivery Agreements or local laws or ordinances with the municipalities in any way.

20. Stipulated Contractual Damage Payments, as provided in Attachment 5 (incorporated by reference herein), will be assessed against **HAULER** for a violation of the **AGENCY** Rules (Operating By-Laws) found in Attachment 4, also incorporated herein by reference, or any of the Agreement terms herein. Such damage payments will be added to **HAULER**'s monthly bill for tipping fee services for that month and shall be paid with that monthly bill. **HAULER** may dispute that it owes the Stipulated Contractual Damage Payments and if disputed successfully, the **AGENCY** will reimburse that amount upon completion of the Dispute Resolution Procedures found in Attachment 8. The failure of the **AGENCY** to assess a damage payment against **HAULER** in a particular circumstance where the **AGENCY** could assess such payment shall not constitute any waiver, release, condonation, acceptance, or agreement with respect to such act of **HAULER** or with respect to any other **HAULER** or any future act.
21. **HAULER** waives any right or recourse **HAULER** may have in law or in equity with respect to any issue arising out of an asserted violation of this Agreement including the Agency Rules (Operating By-Laws) found in Attachment 4, also incorporated herein by reference, as well as any payment imposed for violations hereunder that **HAULER** believes was incorrectly calculated or assessed. **HAULER** agrees to be limited solely to the Dispute Resolution Procedures provided herein (See Attachment 8 incorporated herein by reference) and agrees to be bound by any decision resulting therefrom, provided, however that in no instance shall the **AGENCY** enforce any such stipulated payment (See Attachment 5) which would prohibit **HAULER**'s use of Agency Facilities listed in Attachment 2 or Agency Contracted MRF's until and unless there shall have first been a due process review of the circumstances of such violation by the Executive Director of the **AGENCY** or the Executive Director's designee.
22. **HAULER** shall at all times defend, indemnify and save harmless the **AGENCY** and its officers, agents and employees on account of and from any and all damages, including but not limited to claims, damages, losses, judgments, worker's compensation payments, litigation expenses and counsel fees arising out of injuries to the person (including death) or damage to property sustained by (a) **HAULER**, its officers, agents, and employees (b) the **AGENCY**, their respective officers, agents and employees or (c) any other person, to the extent that **HAULER**'s negligent act, omission or neglect at any Agency Facility (See Attachment 2 incorporated herein by reference) or Agency Contracted MRF was the proximate cause of the damages. The existence of insurance shall in no way limit the scope of this indemnification. **HAULER** further undertakes to reimburse the **AGENCY** for damage to property of the **AGENCY** caused in part or in whole because of **HAULER**'s negligent act, omission or neglect at any Agency Facility (See Attachment 2). The **AGENCY**, for its part, shall reciprocate and remain responsible for the acts of its own officers, agents and employees for any injuries or damages sustained as a result of their negligent acts or omissions.

23. During the entire term of this Agreement, the **AGENCY** agrees not to engage directly in the collection or hauling of Solid Waste from generators in Onondaga County or elsewhere or to seek authority under its enabling legislation to engage in the collection or hauling of Acceptable Waste, (except for hauling ash, Unacceptable Waste at the WTE Facility, Unacceptable System Waste and intra-facility transportation of any waste including residue and by-pass). For its part and in return for this promise, **HAULER** agrees during the entire term of this Agreement not to design a plan for, conduct SEQR review for or apply for a permit to the NYS DEC to construct or operate a transfer station under 6 NYCRR 360 Part 11 or Part 16 that would handle Acceptable Waste from Onondaga County. **HAULER** further agrees during the term of this Agreement not to contract for the construction of, construct, operate, patronize, or make arrangements to utilize or assist others in any way in any of the foregoing activities, a privately owned transfer station, as that term is defined in 6 NYCRR Part 360-1.2 (172), for the transfer or transport of Acceptable Waste originating in Onondaga County. The provisions of this section shall not apply to construction and demolition debris. **AGENCY** and **HAULER** agree that any violation of this provision will cause the other irreparable harm and that the injured party may apply to the NYS Supreme Court for an immediate temporary restraining order and be also entitled to both a preliminary and a permanent injunction.
24. The **AGENCY** also agrees during the term of this Agreement not to provide, directly or indirectly, any assistance including financial or monetary assistance or monies, to any municipality in Onondaga County to support the creation of a municipal solid waste district or to actively promote solid waste districts to any such municipality. However, if there is a legal challenge to the creation of a solid waste district by a municipality and that legal challenge includes a challenge to the right of that municipality to direct Acceptable Waste as defined in this Agreement to the Onondaga County Solid Waste Management System, then the **AGENCY** may support that litigation to the limited extent of supporting a determination that the involved municipality may direct that its Acceptable Waste be delivered to the System. Also, the **AGENCY** may respond to any inquiry independently made by a municipality on how a district should be structured to comply with that municipality's commitment to bring all Acceptable Waste to the Onondaga County Solid Waste Management System. Also, under circumstances where a municipality is independently creating a solid waste district and makes inquiry to the **AGENCY** for assistance, the **AGENCY** may respond only to the extent of advising the municipality as to compliance with the municipality's commitment to bring all Acceptable Waste to the Onondaga County Solid Waste Management System.
25. This Agreement and all of its terms and conditions shall bind and inure to the benefit of the administrators, successors, purchasers, grantees and assigns of the respective parties hereto.
26. The waiver by the **AGENCY** of a breach of any term, Rule, Operating By-Law, covenant, agreement or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, Rule, Operating By-Law, covenant, agreement or condition contained in this Agreement, nor shall any

custom or practice which may be established between the **AGENCY** and **HAULER** in the administration of the terms and Rules (See Attachment 4) of this Agreement be construed to in any way lessen the right of the **AGENCY** to insist on the performance by **HAULER** in strict accordance with the terms and Rules of this Agreement.

27. The parties hereby agree that any action, suit or proceeding arising out of this Agreement or any transaction contemplated hereby shall be heard only in State Supreme Court for Onondaga County, New York and neither party shall object to the institution or maintenance of any such action, suit or proceedings, after completion first of Dispute Resolution Procedures (See Attachment 8), in such court based on improper venue, forum non conveniens, or any other ground relating to the appropriate forum for such action, suit or proceeding.
28. If any provision of this Agreement shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Agreement and all other provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed effective as of the day and year first above written.

HAULER: Village of Solvay

By: Ronald B. Medda
Title: Mayer

Date: January 27, 2015

ONONDAGA COUNTY
RESOURCE RECOVERY AGENCY

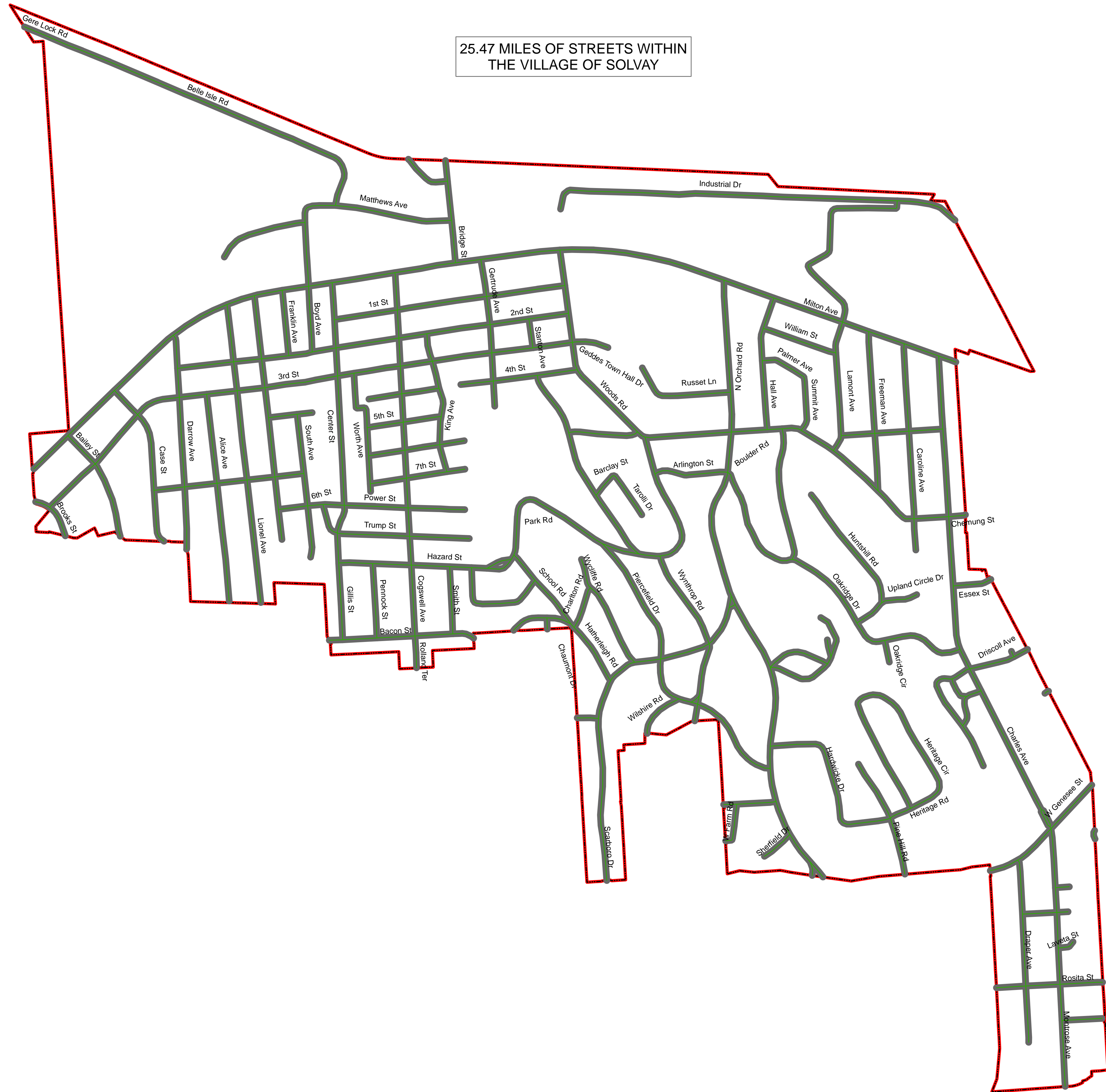
By: Mark A. Donnelly
Mark A. Donnelly, Executive Director

Date: 1/30/15

APPROVED AS
TO LEGAL FORM
WJB 1/30/15
Initials Date

ROUTE MAP VILLAGE OF SOLVAY FIGURE 1

STREET NAME	STREET IN MILES
1st St	0.39
6th St	0.41
2nd St	0.67
3rd St	0.97
4th St	0.39
5th St	0.13
7th St	0.16
Abell Ave	0.41
Alice Ave	0.35
Arlington St	0.13
Bacon St	0.25
Bailey St	0.20
Barclay St	0.63
Belle Isle Rd	0.62
Boulder Rd	0.43
Boyd Ave	0.24
Bridge St	0.17
Brooks St	0.08
Caroline Ave	0.35
Charlton Rd	0.07
Case St	0.28
Center St	0.38
Charles Ave	0.87
Chemung St	0.30
Chaumont Dr	0.05
Cogswell Ave	0.61
Conklin St	0.17
Crestview Ter	0.01
Darrow Ave	0.36
Draper Ave	0.31
Driscoll Ave	0.10
Essex St	0.06
Franklin Ave	0.11
Freeman Ave	0.27
Geddes Town Hall Dr	0.13
Gere Lock Rd	0.03
Gertrude Ave	0.25
Gillis St	0.23
Hall Ave	0.23
Hamilton St	0.08
Hardwicke Dr	0.30
Hatherleigh Dr	0.02
Hatherleigh Rd	0.22
Hazard St	0.60
Heritage Cir	0.49
Heritage Rd	0.04
Huntshill Rd	0.28
Industrial Dr	0.70
Kenmore St	0.07
King Ave	0.24
Lamont Ave	0.22
Laveta St	0.03
Lionel Ave	0.51
Mathews Ave	0.25
Milton Ave	1.70
Montrose Ave	0.44
Myrtle St	0.01
N Orchard Rd	1.06
Oakridge Cir	0.04
Oakridge Dr	0.36
Palmer Ave	0.06
Park Rd	0.31
Pennock St	0.13
Pierced d	0.51
Pine Hill Rd	0.21
Power St	0.32
Rolland Ter	0.03
Rosita St	0.17
Russet Ln	0.10
Scarboro Dr	0.62
School Rd	0.15
Sherf d	0.06
Smith St	0.11
South Ave	0.24
Stanton Ave	0.16
Summit Ave	0.12
Tarolli Dr	0.13
Trump St	0.28
Upland Circle Dr	0.06
W Genesee St	0.23
W Farm Rd	0.07
William St	0.13
Wilshire Rd	0.08
Woods Rd	0.94
Worth Ave	0.22
Wycliffe Rd	0.20
Wynthrop Rd	0.39



Legend

- Street
- Village Boundary

