


MEMORANDUM

TO: Town Council

FROM: David E. Cox, Town Manager 

DATE: September 23, 2021

SUBJECT: Agenda Information – 9/28/2021

The following is additional or summary information regarding matters on the upcoming Town Council Agenda. The numbering below follows the agenda and some routine or self-explanatory items are not discussed in this memo. As you review your packet materials, please do not hesitate to contact the appropriate staff member or me prior to the Council meeting with any questions or concerns. Often, these conversations can help staff and me be prepared for the Council meeting and be ready to facilitate a more productive and efficient meeting for everyone.

6 Resolutions/Ordinances/Policies/Proclamations

6a The Council will present and adopt a proclamation honoring Paul's and Sandy's Too on its 50th Anniversary. The proclamation will be presented to the East Hampton business during a recognition and celebration event on Thursday, October 7 at the East High Street/Rt 66 location.

6b Review and consideration of an ordinance to clarify the term limits for Board of Finance – The Council is asked to give final review to this proposed ordinance amending an existing provision of the Town Code that establishes a term limit for the Board of Finance. Currently, the language indicates that a member may not “serve more than two consecutive terms.” This language becomes ambiguous when a member is appointed to serve a partial term and is then elected to a new term. Although an interpretation was made that offered some clarity, the Council is considering an ordinance that would clearly establish that a person may not be elected to more than two terms, which would allow a person to be appointed to fill a vacancy and, regardless of the length of vacancy filled, not limit their ability to be elected to subsequent terms. The proposed language mirrors the language used in establishing the term limits for the Board of Education. A public hearing on this ordinance is being held immediately prior to this meeting to receive comments on the proposed change.

Recommendation: Adopt the ordinance.

6c Review and possible setting of a public hearing regarding establishing a moratorium on certain activities related to Adult-Use Cannabis – The Council is asked to consider a draft ordinance that would establish a one year moratorium on the cannabis-related commercial activities recently authorized in State Law. In consultation with the Planning and Zoning Commission during a joint session of the two bodies on Tuesday, September 21, it was determined that the Council would consider a temporary moratorium to allow the time for consideration of the new regulations, review of various approaches to local regulation and receipt of public input. The moratorium will temporarily prohibit the various classes

of cannabis-related growing, processing and sales activities from taking place in East Hampton until a final decision is reached. Enacting the moratorium sends a clear message to the State, who will issue the licenses for these activities, that no such licenses should be issued for East Hampton. In addition, the proposed ordinance temporarily enacts language clearly indicating that smoking, use or possession of cannabis or cannabis-related products is prohibited on Town-owned or controlled properties including parks. A public hearing on the proposed ordinance would need to be scheduled prior to adoption. Further, it is anticipated that feedback from the Town Attorney will be available prior to the meeting on September 28.

Recommendation: Set a public hearing to consider the proposed ordinance.

8 Continued Business

8b Consideration of updated Job Descriptions – Council is asked to consider four Job Descriptions that relate to positions in Facilities Maintenance and the fleet maintenance area of Public Works. The descriptions were first discussed at the September 14 Council meeting and minor modifications have been made to the Mechanic's Aide, Mechanic and Chief Mechanic descriptions related to certifications and training based on comments received after the first meeting. As a reminder, the description for Crew Leader Building Maintenance makes this description more specific to the building maintenance function in order for this position to be better utilized in the Facilities division. Previously, the Town had a generic Crew Leader description that was mostly focused on Public Works activities. The other descriptions involve various mechanic positions in Public Works including Mechanic's Aide, Mechanic and Chief Mechanic. These have all been modified to include a duty to maintain and advance skills through appropriate training. It is anticipated that only two of the mechanic type positions will be occupied at a given time.

Recommended Action: Approve the Job Descriptions.

9 New Business

9a FY 2021 End of Year Transfer for Capital Reserve Fund – The Council is asked to consider the recommendation from the Board of Finance to make official changes to the Fiscal Year 2021 budget to allocate unanticipated revenues to the purpose of transferring \$400,000 to the Capital Reserve Fund. As the Council will recall, the FY 2022 Budget (current year) included a \$400,000 gap in the funding for the Capital Reserve Fund, which was done anticipating the availability these funds from the previous fiscal year.

Recommended Action: Approve the Additional Appropriation and Transfer.

9b Review and consideration of a motion to approve an RFP for Sears Park Boat Launch Replacement – The Council is asked to consider and approve a Request for Proposals document for the planned replacement of the Sears Park Boat Launch. Recreation Director Hall will present information

on this project to replace and extend the existing launch at Sears Park to address current deficiencies, which is funded through the Capital Improvement Program/Capital Reserve Fund and boat launch fees. Based on an approval by the Council at this meeting, it is anticipated that this work would take place in November.

Recommended Action: Approve the RFP for publication.

9c Review and consideration of a motion to approve an RFP for redevelopment of the Summit Thread Site - The Council is asked to review and consider approval of a Request for Proposals (RFP) to seek one or more developer partners to coordinate with the Town to redevelop the Town-owned properties at 1 and 13 Watrous Street and the property at 13 Summit Street. The RFP seeks to engage developers who will present concepts for the redevelopment and reuse of the sites and will work with the Town to cause the clean up of known and unknown environmental problems on the sites. Under the proposed RFP, an initial selection committee consisting of a member of the Town Council and certain other Boards and Commission as well as staff would make a recommendation to the Council for selection of partners. Ultimately, it is anticipated that all or most of the site would be transferred to new private ownership after the final development approval process is completed.

Recommended Action: Approve the RFP for publication.

The remainder of the items are of a routine nature, in the sole purview of the Council or are announcements. Please contact me or the appropriate staff member with questions or concerns.

Town of East Hampton
Town Council Regular Meeting
Tuesday, September 14, 2021
Town Hall Council Chambers and Zoom

MINUTES

Present: Chairman Pete Brown, Vice Chairman Dean Markham, Council Members Tim Feegel, Derek Johnson (via Zoom), Barbara Moore, Mark Philhower and Kevin Reich and Town Manager David Cox

Call to Order & Pledge of Allegiance

Chairman Brown called the meeting to order at 6:30 p.m. in the Town Hall Council Chambers and via Zoom.

Following the Pledge of Allegiance, the Council asked for a moment of silence in honor of 9/11.

Adoption of Agenda

A motion was made by Ms. Moore, seconded by Mr. Reich, to adopt the agenda as presented. Voted (7-0)

Approval of Minutes

A motion was made by Mr. Reich, seconded by Mr. Johnson, to approve the minutes of the Town Council Regular Meeting of August 10, 2021 as written. Voted (7-0)

Public Remarks

Karen R. Johansmeyer, 16 Penny Corner Road, Portland, thanked the Council for having a moment of silence for 9/11.

Presentations

Board of Education Update on Start of 2021-2022 School Year

Superintendent of Schools Paul Smith provided an overview of the documents provided to the Town Council. The documents will be included with the minutes filed in the Town Clerk's Office. He noted that athletics will have a full slate of games. Some restrictions were pulled back on band and chorus. They are trying to create as normal a school year as possible. There is no remote learning. About 38 students are being home schooled. There are no bus driver shortages at this point.

Clean Energy Task Force Presentation on Electric Car Show

Russ Kaplan and Paul Wisniewski of the Clean Energy Task Force were present to provide information on the East Hampton/Portland Electric Car Show being held on Saturday, September 25th from 12pm to 3pm at the East Hampton High School. They have 7 dealerships, 15 vehicle owners and 2 renewable energy vendors attending. This show coincides with the National Drive Electric Campaign. Mr. Kaplan thanked Dave Cox and his staff, Katrina Aligata, Parks & Rec staff, the High School principal and Andy Bauer from the Portland Clean Energy Task for all their help with the show.

Presentation on Long Range Road Maintenance Planning

Public Works Director Matt Walsh presented information on the Pavement Management Program that is being used to assist in the long-range road maintenance planning. The full documents will be included with the minutes filed in the Town Clerk's Office.

Presentation on Police Camera Purchases

Police Chief Dennis Woessner presented information on the evaluation of the body worn and in car cameras for the Police Department. The full document will be included with the minutes filed in the Town Clerk's Office. The Chief has chosen the company AXON to supply the cameras for a 5-year contract price of \$146,446.73. AXON is covered under a Sourcewell cooperative purchasing bid program. There is a 30% reimbursement available for the first-year costs.

Bids & Contracts

None

Resolution/ Ordinances/ Policies/ Proclamation

Review & Set Public Hearing for an Ordinance Amending Article III of Chapter 130 of the Code of the Town of East Hampton Regarding Board of Finance Term Limits

Mr. Cox noted that it was recently found that an individual who currently serves on the Board of Finance was planning to run for another term. It was determined that this person had been appointed to serve more than half of a vacant term and then was elected to a term of their own. The Code indicates the limitation to serve no more than two terms. The Town Attorney interpretation indicated this person should not be permitted to be a candidate. He felt the language is ambiguous and should be clarified. When the Board of Finance ordinance added language for term limits, language was added regarding the Board of Education indicating no member shall be ELECTED to no more than two consecutive terms. The Council discussed options for the ordinance and determined that the wording and term limits for both boards should be the same. A Public Hearing could be held, and the Council could vote on clarifying the language.

A motion was made by Ms. Moore, seconded by Mr. Johnson, to set a Public Hearing on Tuesday, September 28, 2021 at 6:15pm to hear comments on Ordinance option B. Voted (7-0)

Continued Business

Sub-Committee Reports & Updates

American Rescue Plan Sub-Committee held their first meeting. The Police and Ambulance staff provided information on their requests.

New Business

- a. Request for Support of Open Space and Watershed Land Acquisition (OSWA) Grant Application from the Middlesex Land Trust

Tom Heidel, 39 Middle Haddam Road, representing the Middlesex Land Trust, noted that they are seeking a letter of support from the Town Council to support the Land Trust's efforts to receive a grant through the Open Space and Watershed Land Acquisition program to purchase property on the northwest side of East Hampton adjacent to State-owned lands.

A motion was made by Mr. Johnson, seconded by Mr. Reich, to provide a letter of support to the Middlesex Land Trust in support of the grant. Voted (7-0)

- b. Review & Possible Approval of Board of Education Capital Transfer for Middle School Emergency Lighting & Lighted Exit Signs

A motion was made by Ms. Moore, seconded by Mr. Johnson, to approve the capital transfer from HVAC project 93228 to School Lighting 93070. Voted (7-0)

- c. Review & Possible Approval of Engineering Firm for Water System Evaluation & Design

Mr. Cox provided an overview of the proposals that were received through the RFQ. Through interviews and investigation of references, the sub-committee recommends Environmental Partners of Middletown.

A motion was made by Mr. Johnson, seconded by Mr. Reich, to contract with Environmental Partners of Middletown and authorize the subcommittee to develop a final scope of services and attempt to negotiate an appropriate fee for the first phase of work. Voted (7-0)

- d. Review & Possible Approval of Police Department General Order

- 1) General Order 3.1 Use of Force
- 2) General Order 3.2 Conducted Electrical Weapon
- 3) General Order 3.3 Use of Chemical Agents
- 4) General Order 3.4 Impact Weapons
- 5) General Order 3.5 Reporting & Investigating Force
- 6) General Order 5.23 Use of Body Worn and Dashboard Cameras

Police Chief Dennis Woessner provided an overview of the General Orders listed and answered questions regarding the Use of Force order.

A motion was made by Mr. Philhower, seconded by Mr. Reich, to approve General Orders 3.1, 3.2, 3.3, 3.4, 3.5 and 5.23 as listed above. Voted (7-0)

- e. Review & Possible Approval of Public Works Job Descriptions

- 1) Crew Leader Building Maintenance
- 2) Chief Mechanic
- 3) Mechanic/Maintainer III
- 4) Mechanic's Aide/Maintainer II

Mr. Cox provided an overview of the job descriptions presented.

A motion was made by Ms. Moore, seconded by Mr. Johnson, to table this item until the next meeting. Voted (4-3) Ms. Moore, Mr. Reich, Mr. Johnson and Mr. Philhower in favor; Mr. Brown, Mr. Markham and Mr. Feegel against.

Town Manager Report

Mr. Cox provided an overview of his written report which will be included with the minutes filed in the Town Clerk's Office. He also reported that the Town Council and Planning & Zoning will hold a workshop on marijuana regulations on Tuesday, September 21, 2021 at 6:30pm.

The Board of Education recognized Chief Woessner and the Police Department as Friends of Education at their meeting on September 13.

Jeff Jylkka and the Finance Department were again issued a Certificate of Achievement for Financial Reporting for FY 2020 by the GFOA.

Questions were asked of the Chief about the Narcan reporting statistics that were included in the Town Manager's Report.

Appointments

A motion was made by Ms. Moore, seconded by Mr. Philhower to make the following appointments and reappointments:

Reappointment:

- Mark Barmasse, Mike Filanda and John Suprono - Water & Sewer Commission.

Appointment

- Patricia Calderone – Commission on Aging
- Darin Aloia – Clean Energy Task Force
- Jaime Krasnitski – Library Advisory Board
- Darlene Raffanello – Brownfields Redevelopment Agency
- Cheryl Lobo – Conservation-Lake Commission

Voted (7-0)

Tax Refunds

A motion was made by Mr. Markham, seconded by Mr. Reich, to approve tax refunds in the amount of \$13,665.57. Voted (7-0)

Public Remarks

None

Communications, Correspondence & Announcement

August 2021 Board and Commission Summary

Council members received the August 2021 Board and Commission Summary.

Adjournment

A motion was made by Mr. Markham, seconded by Ms. Moore, to adjourn the meeting at 8:55pm.

Voted (7-0)

Respectfully Submitted,

Cathy Sirois
Recording Clerk



PAUL'S & SANDY'S TOO 50TH ANNIVERSARY

WHEREAS, Paul Peszynski started selling fruits and vegetables when he was 16 years old in an old painted chicken coop, and years later in 1970 opened Paul's Home Supply in a brand-new building next door to the farm stand; and

WHEREAS, in 1988 as the business was growing to include flowers along with the seasonal produce and hardware, the name was legally changed to Paul's & Sandy's Too and a new sign made for the store, recognizing Paul's wife Sandy; and

WHEREAS, in 1990 what began as two pumpkin-head people has grown into a complete village and forest known as Pumpkintown U.S.A; and

WHEREAS, over the past 50 years, the business has grown into one of Connecticut's largest garden centers, run by Paul's children, Dan, Jill and Karen, and has contributed to many local organizations as well as founding and donating over \$500,000 to the Sandy Peszynski Breast Cancer Foundation,

NOW, THEREFORE, WE THE EAST HAMPTON TOWN COUNCIL, on behalf of the citizens of East Hampton, do hereby congratulate the Peszynski family on more than 50 years in business, recognize them for their contribution to the community of East Hampton and wish them continued success in the future.

EAST HAMPTON TOWN COUNCIL

James Brown, Chairman

Dean Markham, Vice Chairman

Timothy Feegel

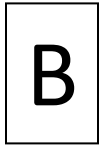
Derek Johnson

Barbara Moore

Mark Philhower

Kevin Reich

Dated this 28th day of September 2021



Town of East Hampton
Middlesex County, Connecticut

DRAFT – September 13, 2021

Ordinance No. 2021.02

An Ordinance Amending Article III of Chapter 130 of the Code of the Town of East Hampton Regarding Board of Finance Term Limits

WHEREAS, the Code of the Town of East Hampton provides for term limits for certain bodies of the Town including the Board of Finance, which is limited to service of two consecutive terms, and;

WHEREAS, the term limit for the Board of Finance is ambiguous as it relates to whether a person who was appointed to serve a portion of a vacant term and was then elected to a term is allowed under the Code to consecutively be elected an additional term, and;

WHEREAS, the Town Council desires to remove ambiguity by amending the Code to provide as follows.

NOW, THEREFORE, pursuant to Section 2.4 of the Town of East Hampton Charter, the Town Council of the Town of East Hampton does hereby ordain as follows:

Section 1: Section 130-7 of the Code of the Town of East Hampton regarding Implementation of four-year terms and term limits is hereby deleted in its entirety and replaced with the following:

§ 130-7 Implementation of four-year terms; term limits.

Commencing with the Town election in November 1989, one member shall be elected to a four-year term. All other members elected and serving as of November 1989, shall continue in office until their terms expire so that three members shall be elected to four-year terms in November 1991, and four members shall be elected to four-year terms in November 1993. No member shall be elected to more than two consecutive terms.

Section 2: This ordinance is effective immediately upon its adoption and publication in accordance with Connecticut Statutes.

Approved this ____ day of _____, 2021.

TOWN COUNCIL

ATTEST

James Brown, Chairperson

Kelly Bilodeau, Town Clerk

Town of East Hampton
Middlesex County, Connecticut

DRAFT – September 23, 2021

Ordinance No. 2021.03

**An Ordinance Amending the Code of the Town of East Hampton Regarding
Establishing a Moratorium on Certain Activities Related to Adult-Use
Cannabis**

WHEREAS, the Connecticut General Assembly passed legislation that legalizes adult use of cannabis in the State of Connecticut, which legislation was approved as Senate Bill No. 1201, June Special Session, Public Act No. 21-1, An Act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis (hereinafter “the Act”), and;

WHEREAS, the Act contains provisions allowing municipalities to prohibit or place reasonable restrictions on cannabis establishments and activities, and;

WHEREAS, the Town Council, in consultation with the East Hampton Planning and Zoning Commission, determines that careful and planful consideration of appropriate prohibitions or regulations related to Adult-Use Cannabis will require more time than is available under the Act before State of Connecticut licenses or permits could be issued for the various retail, growing and processing activities addressed in the Act, and;

WHEREAS, the Town Council determines that a moratorium on certain activities is appropriate to provide time for the community to review the issues and consider appropriate prohibitions or regulations.

NOW, THEREFORE, pursuant to Section 2.4 of the Town of East Hampton Charter, the Town Council of the Town of East Hampton does hereby ordain as follows:

Section 1: Chapter 185 of the Code of the Town of East Hampton regarding Cannabis, Adult-Use is hereby established as follows:

Chapter 185

Cannabis, Adult-Use

§ 185-1 Moratorium Established.

For the purpose of providing sufficient time for review and consideration of appropriate prohibitions or regulations related to Cannabis Establishments as that term is used and defined in Connecticut Public Act No. 21-1, An Act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis, a moratorium is hereby established and all said Cannabis Establishments shall be prohibited. During said moratorium, the Town will not accept or consider applications or requests related to establishing a Cannabis Establishment. Said moratorium shall expire on October 1, 2022 if not repealed or extended prior to that date.

§ 185-2 Use of Cannabis or Cannabis Products Prohibited.

For the term of the moratorium established under section 185-1 of this Chapter, the smoking, use, consumption or possession of Cannabis or Cannabis Products, as those terms are used and defined in Connecticut Public Act No. 21-1, An Act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis, is expressly prohibited on Town owned or Town controlled property including, but not limited to, buildings, grounds, parks, vehicles, and equipment.

Section 2: This ordinance is effective immediately upon its adoption and publication in accordance with Connecticut Statutes.

Approved this ____ day of _____, 2021.

TOWN COUNCIL

ATTEST

James Brown, Chairperson

Kelly Bilodeau, Town Clerk



Crew Leader Building Maintenance

The Crew Leader for Building Maintenance is the lead employee responsible for assisting in the coordination of day-to-day operations and maintenance of the physical assets and infrastructure of Town properties under the direction of the Facilities Director or the Facilities Director's designee.

General Description

As directed by the Facilities Director or the designee, assists in the planning, assigning, coordination, scheduling, as well as participates in activities of work crews engaged in building and facilities operation and maintenance, construction, and repair projects daily. Assists with oversight of and coordination with contractors engaged in building maintenance activities. Does related work as required by the Facilities Director and/or designee, including the duties of the Building Maintenance Worker.

Supervision Received

Reports directly to the Facilities Director and/or designee. Exercises some independence of action over work methods, ensuring that work is accomplished in conformance with required standards.

Supervision Exercised

Supervision and oversight of the Building Maintenance Worker(s) as directed by the Facilities Director or designee.

Essential Duties and Responsibilities

- Assists the Facilities Director, or designee, in assigning and directing building maintenance crews in the performance of jobs within facilities/building maintenance and repair, preventative maintenance, cleaning and custodial tasks, event preparation, construction, snow removal, etc.
- Assists in performing work in progress. Checks for acceptable work standards as directed by the Facilities Director or designee, and participates in the activities related to building operation and maintenance, construction, and repair either as part of a crew or individually, including Building Maintenance Worker duties and responsibilities,
- Evaluates and prioritizes daily routine and emergency maintenance needs.
- Makes or facilitates timely repairs to the facilities as needed.
- Keeps job progress reports and work record details as directed.
- Ensures that proper safety precautions are observed.
- Performs semi-skilled work tasks at Town facilities including carpentry, plumbing, electrical and HVAC work that does not require professional intervention.

- Performs equipment repair and maintenance.
- Operates all equipment necessary to complete assigned tasks.
- Participates in stand-by status during inclement weather, natural disasters or at other times as directed by the Facilities Director or designee and responds when requested during these events or during building emergencies.
- At the direction of the Facilities Director, oversees maintenance and repair work done by outside agencies, tradesmen, and other Town departments.
- Moves and sets up furniture, prepares meeting rooms for meetings.
- Responsible for oversight and maintaining of Safety Data Sheets (SDS), as required by OSHA.
- May be assigned by the Facilities Director to assist Public Works crews with other snow and ice control activities as necessary.

Nonessential Duties

Other duties as assigned.

Knowledges, Skills and Abilities

- Good working knowledge of the modern principles, practices, methods, materials, equipment, and techniques used in operation, maintenance and repair of buildings and building components, construction activities, and heavy cleaning.
- Respond to unplanned facility emergencies
- Knowledge of or ability to learn and use maintenance and building management computer software,
- Considerable knowledge of work hazards and applicable safety precautions associated with assigned area of work.
- Advanced skill in the operation of equipment, tools, and instruments used for assigned work areas.
- Ability to assign and supervise the work of others, provide instruction, lead a crew, and inspire confidence.
- Ability to understand, follow and communicate oral and written directions.
- Thoroughness and dependability.
- Sufficient strength, stamina, and ability to perform duties effectively.
- Ability to produce and maintain job reports on work being performed by facilities/building maintenance crews.
- Ability to assist in scheduling crews and plans for the effective use of equipment.
- Ability to establish and maintain effective working relationships with supervisors, co-workers, and the public.

Acceptable Experience, Education, and Training

Possession of a standard high school diploma, or equivalent and a minimum of three (3) years' experience working as a Building Maintenance Worker, or in a related field. Experience in, or some knowledge of, laws and regulations related to supervision is desirable. Formal vocational school or other training in building and facilities maintenance desirable.

Special Requirements

Must possess and maintain a valid Connecticut driver's license with clean driving record. A commercial driver's license with airbrake endorsement is preferred.

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is required to use hands to finger, handle, feel or operate objects, tools, or controls, and reach with hands and arms. The employee is regularly required to stand and walk and occasionally do so on uneven ground and through wooded and bushy areas. The employee is regularly required to sit; climb or balance; stoop; kneel, crouch or crawl, twist, and smell. Must be able to speak and hear clearly. Understand, interpret, and carry out and communicate instructions and directives. Possess the manual dexterity and mechanical aptitude required to use hand and power tools and equipment. Have significant stamina and be in good health and physical condition. Must have willingness and ability to perform strenuous physical labor and lift and/or carry objects more than twenty-five (25) pounds. Specific vision abilities required by the job include close vision, distance vision, the ability to adjust focus and possess the visual acuity to operate equipment and motor vehicles, perform trade tasks, inspect the work of others and review work for accuracy, neatness, and thoroughness.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is subject to inside and outside environmental conditions, extremes in temperature and hazards associated with equipment, operation, moving mechanical parts, fumes or airborne particles, gases, oils, etc. Must take protective measures when on sites. Must be able to endure extended work periods during ice, snowstorms, etc., with periodic rest breaks. Routine driving.

General Guidelines

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change. This is a non-exempt, union position.



Chief Mechanic

The Chief Mechanic oversees and performs skilled work in the maintenance and repair of a wide variety of complex automotive equipment along with operation of trucks and equipment; does related work as required.

General Description and Distinguishing Features of the Class

Employees in this class generally oversee and perform mechanical repair and maintenance of automobiles, trucks, tractors, bulldozers, graders, rollers and other standard and specialized automotive equipment. This work is completed with minimal direct supervision and employees in this class often oversee the work of other employees operating as mechanics or aides.

Supervision Received

Reports directly to the Director of Public Works or designee. Receives minimal instruction and exercises independent judgement and independence of action over work methods, ensuring that work is accomplished in conformance with required standards.

Supervision Exercised

Supervision and oversight of the Mechanic(s) and Mechanic's Aide(s).

Essential Duties and Responsibilities

- Oversees, supervises and administers the vehicle and equipment maintenance activities of the Public Works Department and other departments as assigned.
- Procures replacement parts and supplies necessary for the maintenance of vehicles and equipment.
- Assists Public Works Director with the development of specifications for new and replacement vehicles and equipment.
- Inspects as necessary the work of employees assigned to perform vehicle and equipment maintenance duties.
- Performs general overhaul and repair work on light and heavy trucks, police vehicles, gasoline and diesel motors, tractors, bulldozers, graders and other Town equipment.
- Inspects, adjusts, replaces necessary units and related parts including valves, pistons and main bearings and assembles cooling, fuel and exhaust systems.
- Repairs or rebuilds hydraulic cylinders, transmissions, cylinder blocks, etc., using welding equipment, lathe, drill press, saws and cutting tools.
- Repairs and overhauls brakes, ignition systems, transmissions, differentials, and rear axle assemblies.
- Uses modern diagnostic tools and testing equipment to identify vehicle issues.
- Participate in appropriate training to maintain certifications achieved and advance related skills.
- Responds to emergency road calls from disabled Town equipment and makes adjustments / repairs or has the vehicle towed to the maintenance garage.
- Ensures the observance of standard safety practices.
- Performs duties of Maintainer I, II or III as needed.

September 14~~28~~, 2021

Nonessential Duties

Other duties as assigned.

Knowledges, Skills and Abilities

- High level knowledge of standard practices and equipment of the automotive mechanic trade
- High level knowledge of principles of operation of gasoline and/or diesel engines and of mechanical repair on heavy trucks, fire-fighting and construction equipment
- High level knowledge of the occupational hazards and safety precautions of the trade
- Ability to read and understand published instructions, service manuals, and wiring diagrams.
- Ability to adapt available tools and repair parts to specific repair problems
- High level skill in the use and care of hand and machine tools employed in motor vehicle repair
- Advanced skill in diagnosing and repairing defects in automotive and heavy equipment.
- Mechanical aptitude
- Ability to operate plow truck and/or light equipment.

Acceptable Experience, Education, and Training

Extensive mechanical ability and training including completion of formal training, completion of standard high school or vocational school course; or any equivalent combination of experience and training which provides the required knowledge, skills and abilities. ASE certification desired.

Special Requirements

Must maintain possession of a valid CDL with airbrake endorsement issued by the State of Connecticut.

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is required to use hands to finger, handle, feel or operate objects, tools, or controls, and reach with hands and arms. The employee is regularly required to stand and walk and occasionally do so on uneven ground. The employee is regularly required to sit; climb or balance; stoop; kneel, crouch or crawl, twist, and smell. Must be able to speak and hear clearly. Understand, interpret, and carry out and communicate instructions and directives. Possess the manual dexterity and mechanical aptitude required to use hand and power tools and equipment. Have stamina and be in good health and physical condition. Must have willingness and ability to perform physical labor and lift and/or carry objects more than twenty-five (25) pounds. Specific vision abilities required by the job include close vision, distance

September 14~~28~~, 2021

vision, the ability to adjust focus and possess the visual acuity to operate computers and testing equipment, other equipment and motor vehicles, perform trade tasks, and review work for accuracy, neatness, and thoroughness.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is generally subject to inside environmental conditions, with limited outside work and extremes in temperature. Duties will routinely be performed with hazards associated with equipment, operation, moving mechanical parts, fumes or airborne particles, gases, oils, etc. Must take protective measures. Must be able to endure extended work periods during ice, snowstorms, etc., with periodic rest breaks. Ability to drive and operate vehicles, trucks and equipment in all weather and conditions.

General Guidelines

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change. This is a non-exempt, union position.



Mechanic / Maintainer III

A Mechanic/Maintainer performs skilled work in the maintenance and repair of a wide variety of complex automotive equipment along with operation of trucks and equipment; does related work as required.

General Description and Distinguishing Features of the Class

Employees in this class generally perform mechanical repair and maintenance of automobiles, trucks, tractors, bulldozers, graders, rollers and other standard and specialized automotive equipment. This work is often completed with minimal direct supervision or assistance. Employees also required to perform work of Maintainer I or II as needed.

Supervision Received

Reports directly to the Chief Mechanic and/or Foreman under the direction of the Director of Public Works or designee. Receives general instruction and exercises general independence of action over work methods, ensuring that work is accomplished in conformance with required standards.

Essential Duties and Responsibilities

- Performs general overhaul and repair work on light and heavy trucks, police vehicles, gasoline and diesel motors, tractors, bulldozers, graders and other Town equipment.
- Inspects, adjusts, replaces necessary units and related parts including valves, pistons and main bearings and assembles cooling, fuel and exhaust systems.
- Repairs or rebuilds hydraulic cylinders, transmissions, cylinder blocks, etc., using welding equipment, lathe, drill press, saws and cutting tools.
- Repairs and overhauls brakes, ignition systems, transmissions, differentials, and rear axle assemblies.
- Uses modern diagnostic tools and testing equipment to identify vehicle issues.
- Participate in appropriate training to maintain certifications achieved and advance related skills.
- Responds to emergency road calls from disabled Town equipment and makes adjustments / repairs or has the vehicle towed to the maintenance garage.
- Ensures the observance of standard safety practices.
- Performs duties of Maintainer I, II or III as needed.

Nonessential Duties

Other duties as assigned.

Knowledges, Skills and Abilities

- Strong knowledge of standard practices and equipment of the automotive mechanic trade
- Strong knowledge of principles of operation of gasoline and/or diesel engines and of mechanical repair on heavy trucks, fire-fighting and construction equipment
- Strong knowledge of the occupational hazards and safety precautions of the trade

September 28, 2021

- Ability to read and understand published instructions, service manuals, and wiring diagrams.
- Ability to adapt available tools and repair parts to specific repair problems
- High level skill in the use and care of hand and machine tools employed in motor vehicle repair
- High level skill in diagnosing and repairing defects in automotive and heavy equipment.
- Mechanical aptitude
- Ability to operate plow truck and/or light equipment.

Acceptable Experience, Education, and Training

Mechanical ability, completion of a standard grade school course, preferably completion of standard high school or vocational school course; or any equivalent combination of experience and training which provides the required knowledge, skills and abilities. ASE certification preferred.

Special Requirements

Must maintain possession of a valid CDL with airbrake endorsement issued by the State of Connecticut.

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is required to use hands to finger, handle, feel or operate objects, tools, or controls, and reach with hands and arms. The employee is regularly required to stand and walk and occasionally do so on uneven ground. The employee is regularly required to sit; climb or balance; stoop; kneel, crouch or crawl, twist, and smell. Must be able to speak and hear clearly. Understand, interpret, and carry out and communicate instructions and directives. Possess the manual dexterity and mechanical aptitude required to use hand and power tools and equipment. Have stamina and be in good health and physical condition. Must have willingness and ability to perform physical labor and lift and/or carry objects more than twenty-five (25) pounds. Specific vision abilities required by the job include close vision, distance vision, the ability to adjust focus and possess the visual acuity to operate computers and testing equipment, other equipment and motor vehicles, perform trade tasks, and review work for accuracy, neatness, and thoroughness.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

September 28, 2021

While performing the duties of this job, the employee is generally subject to inside environmental conditions, with limited outside work and extremes in temperature. Duties will routinely be performed with hazards associated with equipment, operation, moving mechanical parts, fumes or airborne particles, gases, oils, etc. Must take protective measures. Must be able to endure extended work periods during ice, snowstorms, etc., with periodic rest breaks. Ability to drive and operate vehicles, trucks and equipment in all weather and conditions.

General Guidelines

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change. This is a non-exempt, union position.

September 28, 2021



Mechanic's Aide/Maintainer II

A Mechanic's Aide/Maintainer performs semi-skilled work in the maintenance and repair of a wide variety of complex automotive equipment along with operation of trucks and equipment; does related work as required.

General Description and Distinguishing Features of the Class

Employees in this class generally assist in mechanical repair and maintenance of automobiles, trucks, tractors, bulldozers, graders, rollers and other standard and specialized automotive equipment. Employees also required to perform work of Maintainer I or II as needed.

Supervision Received

Reports directly to the Chief Mechanic and/or Foreman under the direction of the Director of Public Works or designee. Receives instruction on work tasks but exercises some independence of action over work methods, ensuring that work is accomplished in conformance with required standards. Work may be inspected frequently by supervisory staff or designee.

Essential Duties and Responsibilities

- Performs services related to general maintenance, overhaul and repair work on light and heavy trucks, police vehicles, gasoline and diesel motors, tractors, bulldozers, graders and other Town equipment under direction.
- Assists in the inspection, adjustment, and replacement of necessary units and related parts including valves, pistons and main bearings and assemblies cooling, fuel and exhaust systems under direction.
- Repairs or rebuilds hydraulic cylinders, transmission housings, cylinder blocks, etc., using welding equipment, lathe, drill press, saws and cutting tools.
- Performs services related to repairing and overhauling brakes, ignition systems, transmissions, differentials, and rear axle assemblies as directed.
- Uses modern diagnostic tools and testing equipment to assist in the identification of vehicle issues as directed.
- Participate in appropriate training to advance related skills.
- Responds to emergency road calls from disabled Town equipment and makes minor adjustments or has the vehicle towed to the maintenance garage under direction.
- Ensures the observance of standard safety practices.
- Performs duties of Maintainer I or II as needed.

Nonessential Duties

Other duties as assigned.

Knowledges, Skills and Abilities

- Knowledge of standard practices and equipment of the automotive mechanic trade
- Knowledge of principles of operation of gasoline and/or diesel engines and of mechanical repair on heavy trucks, fire-fighting and construction equipment
- Knowledge of the occupational hazards and safety precautions of the trade

September ~~14~~²⁸, 2021

- Ability to read and understand published instructions and maintenance manuals
- Ability to adapt available tools and repair parts to specific repair problems
- Skill in the use and care of hand and machine tools employed in motor repair and adjustment work
- Skill in repairing defects in automotive equipment
- Mechanical aptitude
- Ability to operate plow truck and/or light equipment.

Acceptable Experience, Education, and Training

Mechanical ability, completion of a standard grade school course, preferably completion of standard high school or vocational school course; or any equivalent combination of experience and training which provides the required knowledge, skills and abilities.

Special Requirements

Must maintain possession of a valid CDL with airbrake endorsement issued by the State of Connecticut.

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is required to use hands to finger, handle, feel or operate objects, tools, or controls, and reach with hands and arms. The employee is regularly required to stand and walk and occasionally do so on uneven ground. The employee is regularly required to sit; climb or balance; stoop; kneel, crouch or crawl, twist, and smell. Must be able to speak and hear clearly. Understand, interpret, and carry out and communicate instructions and directives. Possess the manual dexterity and mechanical aptitude required to use hand and power tools and equipment. Have stamina and be in good health and physical condition. Must have willingness and ability to perform physical labor and lift and/or carry objects more than twenty-five (25) pounds. Specific vision abilities required by the job include close vision, distance vision, the ability to adjust focus and possess the visual acuity to operate computers and testing equipment, other equipment and motor vehicles, perform trade tasks, and review work for accuracy, neatness, and thoroughness.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is generally subject to inside environmental conditions, with limited outside work and extremes in temperature.

September 14, 2021

Duties will routinely be performed with hazards associated with equipment, operation, moving mechanical parts, fumes or airborne particles, gases, oils, etc. Must take protective measures. Must be able to endure extended work periods during ice, snowstorms, etc., with periodic rest breaks. Ability to drive and operate vehicles, trucks and equipment in all weather and conditions.

General Guidelines

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change. This is a non-exempt, union position.

September 14, 2021

Town of East Hampton
Additional Appropriation / Transfer Request Form
Fiscal Year 2020-2021

Fund: General Fund

Department: Capital/Transfers Out

Additional Appropriation ☒
Transfer ☐

The following additional appropriation / transfer is recommended for board approval.

<u>Estimated Revenue</u>		
Town Clerk – Conveyance Tax	01070000-4730	\$ 150,000
Town Clerk – Fees	01070000-4604	70,000
Building Department – Building Permits	01410000-4236	180,000
		\$400,000

<u>Appropriation</u>		
Transfer to Capital Reserve Fund	01810000-5924	\$ 400,000

Explanation

The FY 2022 adopted Town budget included a \$400,000 shortfall in funding to the capital plan. The plan was to monitor the operating results for FY 2021 and transfer available funds to cover the shortfall. See attached for additional operating information.

Source of Funds

Funding is from unanticipated revenue in the Town Clerk and Building Department.

Recommended motion:

Resolved, that the Board of Finance recommends to the Town Council the above additional appropriation.

<u>Approved</u>	<u>Yes</u>	<u>No</u>	<u>Date</u>
Board of Finance	✓ (5-0)		9-20-2021
Town Council			

M: Dr. Brown
S: Bob

	Fiscal Year 2021			Fiscal Year 2021 (If funding plan below is approved)		
	Revised Budget	Estimated Actuals	Difference	Revised Budget	Estimated Actuals	Comment
Revenues	\$ 46,719,165	\$ 47,514,802	\$ 795,637	\$ 47,119,165	\$ 47,514,802	- The budget increases by \$400K
Expenditures *	\$ 47,457,165	\$ 47,263,363	\$ 193,802	\$ 47,857,165	\$ 47,663,363	- The budget increases by \$400K
Use of Fund Balance	\$ (738,000)	\$ 251,439	\$ 989,439	\$ (738,000)	\$ (148,561)	Town uses \$589,439 less of fund balance

* - Assumes the Board of Education has no unexpended funds.

Funding Plan

FY 2021 unanticipated revenue		Account #
Town Clerk	\$ 150,000	01070000-4730 (Conveyance Tax)
Town Clerk	70,000	01070000-4604 (Town Clerk Fees)
Building Department	180,000	01410000-4236 (Building Permits)
TOTAL	\$ 400,000	- Additional appropriation from unanticipated revenue to the Capital Reserve fund

CONTRACT DOCUMENTS
FOR
SEARS PARK
BOAT LAUNCH REPLACEMENT
EAST HAMPTON, CONNECTICUT

September 21, 2021

Prepared For:

TOWN OF EAST HAMPTON
1 COMMUNITY DRIVE
EAST HAMPTON, CT 06424

Barton
&Loguidice

41 Sequin Drive
Glastonbury, CT 06033
T: 860.633.8770
F: 860.633.5971

TABLE OF CONTENTS

SECTION	TAB
INVITATION TO BID	A
INSTRUCTIONS TO BIDDERS.....	B
FORMS	C
Bid Proposal Form	
Noncollusion Affidavit	
Bid Bond	
Agreement	
Construction Performance Bond	
Construction Payment Bond	
GENERAL CONDITIONS.....	D
SUPPLEMENTAL CONDITIONS.....	E
SPECIAL PROVISIONS.....	F
PLANS.....	G
Sheet 1 of 2: Boat Launch Replacement Plan	
Sheet 2 of 2: Boat Launch Replacement Details	

Barton and Loguidice, LLC.

Sears Park – Boat Launch Replacement
East Hampton, CT

TAB A

Invitation to Bid

**INVITATION TO BID
SEARS PARK SITE IMPROVEMENTS – PHASE II**

The Town of East Hampton, Connecticut is soliciting sealed bids for completing the Sears Park – Boat Launch Replacement.

This project encompasses the removal and installation of a concrete boat ramp located in the Town of East Hampton's Sears Park on Lake Pocotopaug. The work described above includes furnishing, installing and incorporating all materials and equipment into the project as well as performing or providing all labor, supervision, equipment and services unless otherwise noted within the bid documents.

A mandatory pre-bid walk through will be held at 9:00 AM on Monday, October 4, 2021 at the site located at 68 North Main Street, East Hampton, CT.

Sealed bids will be received by David Cox, Town Manager, East Hampton Town Hall, 1 Community Drive, East Hampton, Connecticut, 06424, until 12:00 PM on Friday October 22, 2021 at which time they will be publicly opened and read aloud. Bids received after the Bid Opening date and/or time will be returned unopened.

Bid Documents are available from Advanced Reprographics, 50 Corporate Avenue, Plainville CT 06062, (860) 410-1020. The Bid Documents may be viewed and/or obtained by going to the Advanced Reprographics website WWW.ADVANCEDREPRO.NET, prospective bidders should access the "PLANROOM" on the website and go to the "PUBLIC JOBS" area, no 'Log-In' information is necessary. Bidders are responsible for printing and shipping costs or pick up at the Advanced Reprographics office. Bid Documents may also be ordered by calling the phone number listed above. Bidders are responsible for obtaining all addendums posted on the Advanced Reprographics website.

A satisfactory Bid Bond or Certified Check, in an amount equal to ten percent (10%) of the base bid, shall be submitted with each bid. The Bid Bond shall be made payable to Town of East Hampton and shall be properly executed by the Bidder and acceptable sureties. All bonds must be from sureties registered in the State of Connecticut.

No Bidder may withdraw his Bid for a period of sixty (60) days after the date of Bid opening.

The Town of East Hampton reserves the right to accept or reject any or all options, bids or proposals; to waive any technicality in any bid or part thereof, and to accept any bid deemed to be in the best interest of the Town of East Hampton.

The Town of East Hampton is an Affirmative Action/Equal Opportunity Employer. Minority/Women's Business Enterprises are encouraged to apply

David Cox, Town Manager

TAB B

Instructions to Bidders

INSTRUCTION TO BIDDERS

1. PROJECT DESCRIPTION:

This project encompasses the removal and installation of a concrete boat ramp located in the Town of East Hampton's Sears Park on Lake Pocotopaug. The work described above includes furnishing, installing and incorporating all materials and equipment into the project as well as performing or providing all labor, supervision, equipment and services unless otherwise noted within the bid documents.

2. GENERAL:

Sealed Bids will be received at the office of the Town Manager of the Town of East Hampton located at the East Hampton Town Hall, 1 Community Drive, East Hampton, CT 06424, until 12:00 p.m. prevailing time on October 22, 2021, at which time the bids will be opened publicly and read aloud. Bids received after the Bid Opening date and/or time will be returned unopened.

3. CONTRACT DOCUMENTS:

These Contract Documents include a complete set of Bidding Forms which are not to be detached from the Contract Documents, filled out or executed. For the convenience of the Bidders, separate copies of Bid Forms are furnished for that purpose. Division II Construction Details and Division III Materials Section in the State of Connecticut Department of Transportation (CTDOT) Standard Specifications for Roads, Bridges and Incidental Construction, Form 818, dated 2020 through Supplemental Specifications dated January 2021, which are incorporated herein and are referred to herein after at "Form 818," which is part of the contract, may be purchased from the CTDOT Manager of Contracts, P.O. Box 317546, 2800 Berlin Turnpike in Newington, CT 06131-7546.

4. BIDS:

Bid Documents shall be enclosed in a sealed envelope addressed to the Office of the Town Manager, 1 Community Drive, East Hampton, CT 06424 and clearly marked **"SEALED BID – SEARS PARK – BOAT LAUNCH REPLACEMENT"** along with the name of Bidder, date and time of Bid Opening in order to guard against premature opening of the Bid.

All Bids must be submitted on forms supplied by the Owner and shall be subject to all requirements of the Contract Documents, including "Instructions to Bidders." All Bids must be regular in every respect; no interlineations, ditto marks, excisions or special conditions shall be made or included in the Bid Form by the Bidders.

The Owner may consider as irregular any Bid on which there are any omissions, alterations of form, additions not called for, conditional or alternate Bids, or irregularities of any kind and, at its option, may reject same. The blank spaces in the proposal must be filled in correctly where indicated for each and every item for which a quantity is given typed or printed in ink. If any price is omitted, the Bid may be rejected. The Bidder shall sign his

proposal correctly. If the proposal is made by an individual, his name and post office address must be shown. If made by a firm, partnership, or by a corporation, the proposal must be signed by an official of the firm, partnership, or corporation authorized to sign contracts, and also must show the post office address of the firm, partnership or corporation.

A Non-Collusion Affidavit shall be completed and returned with the submitted Bid. More than one proposal from an individual, a firm or partnership, a corporation or association under the same or different names will not be considered. Reasonable ground for believing that any Bidder is interested in more than one proposal for the work contemplated will cause the rejection of all proposals in which such Bidder is interested. Proposals in which the prices are obviously unbalanced may be rejected.

5. ADDENDA & INTERPRETATIONS:

Any request from a prospective Bidder for interpretation of meaning of Contract Drawings, Specifications or other Contract Documents shall be made in writing to the office of Barton and Loguidice, LLC. 41 Sequin Dr. Glastonbury, CT 06033 and to be given consideration must be received at least seven (7) days prior to date fixed for opening of proposals. Interpretations will be made in the form of written Addenda to Contract Documents, which Addenda shall become a part of the Contract. Such requests may be sent via facsimile (fax) to Barton and Loguidice, LLC. (860) 633-8770 or e-mail kgrindle@bartonandloguidice.com. Not later than three (3) days prior to date fixed for opening of proposals, Addenda will be mailed or delivered to all parties recorded as having obtained Contract Documents. It is the responsibility of the bidder to verify that all Addenda have been received and incorporated into the submitted bid. Failure of any Bidder to receive any such Addenda shall not relieve Bidder from any obligations under his proposal as submitted. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6. SITE CONDITIONS:

All information on the Drawings or in the contract Documents relating to subsurface conditions, utilities, and other structures is from best sources available at present to the Owner. All such information and drawings of existing construction are furnished only for the information and convenience of Bidders.

At the date fixed for opening of Bids, it will be presumed that each Bidder has made an examination of location and site of work to be done under Contract; has satisfied himself as to actual conditions, requirements and quantities of work; has considered federal, state and local laws and regulations that may affect cost, progress, performance or furnishing the Work; and has read and become thoroughly familiar with Contract Documents including Contract Drawings, Specifications, Addenda, and documents referenced therein.

The Owner and the Engineer assume no responsibility whatsoever with respect to ascertaining for the Contractor any facts concerning physical characteristics at the site of the project.

7. BIDDER'S QUALIFICATIONS:

The Owner shall make such investigation as deemed necessary to determine the ability of the Bidder to discharge the Contract. After Bid opening, Bidder shall be prepared to furnish the Owner with all written evidence as may be required for this purpose (e.g., financial data, previous experience, and present commitments) within five (5) days after Owner requests such evidence. Each Bid must contain evidence of Bidder's qualification to do business in the State of Connecticut or covenant to obtain such qualification prior to award of the contract.

Bids received from Bidders who have previously failed to complete contracts within the time required, or who have previously performed similar work in an unsatisfactory manner, may be rejected. A Bid may be rejected if the Bidder cannot show that he has the necessary capital and experience, and owns, controls, or can procure the necessary plan to commence and complete the work at the rate or time specified, and that he is not already obligated for the performance of other work which would delay the commencement, prosecution, or completion of the work.

8. MODIFICATION:

Any Bidder may modify his Bid at any time prior to the scheduled closing time for receipt of Bids, by submitting an appropriate document duly executed in a manner that Bid must be executed and delivered to the place where Bids are to be submitted. After opening of Bids, no Bidder may withdraw his proposal for a period of sixty (60) days. Owner may, in its sole discretion, release any Bid prior to that date.

9. REJECTION OF BIDS:

The Owner also reserves the right to reject any or all Bids, for any reason it deems advisable, and to award Contract or Contracts to any of the Bidders, regardless of amount of Bid. If the Contract is awarded, it will be awarded to the lowest responsible and eligible Bidder (or Bidders) possessing skill, ability and integrity necessary for faithful performance of work.

10. TIME OF COMPLETION & LIQUIDATED DAMAGES:

The Bidder must agree to fully complete all work within the number of consecutive calendar days of the issuance of the Notice to Proceed set forth in the Agreement. The Bidder must agree also to pay as liquidated damages the sum set forth in the Agreement for each consecutive calendar day thereafter.

11. AWARD OF CONTRACTS:

If the Contract is awarded, Owner will give successful Bidder a Notice of Award within nine (9) days after the day of Bid opening. The successful Bidder shall then execute and deliver to the Owner, within eleven (11) days after notification of the award, three (3) executed Agreements, Final Certificate of Insurance, Performance Bond, Payment Bond, Contractors Minority Business Enterprise Utilization Form and Schedule of Values on forms provided by

the Owner. If the successful Bidder fails to comply with the requirements of these documents within eleven (11) days of receiving said Notice, that Bidder shall forfeit Bid Security and, at the option of the Owner, the Award may become null and void. The Owner may then proceed to Award the Contract to another of the Bidders.

12. BID SECURITY:

Each Bid must be accompanied by a surety bond, certified or bank check, or a letter of credit, in the amount of 5% of the total of the Bid with the forms supplied by the Owner. Bid security of the successful Bidder will be retained until such Bidder has executed the Agreement, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the seventh day after the Effective Date of the Agreement or the sixty-first day after Bid opening, whereupon the Bid security furnished by such Bidders will be returned. Bid security with Bids which are not competitive will be returned within seven (7) days of Bid opening.

13. SCHEDULE OF VALUES:

The apparent successful Bidder must submit, prior to the execution of an Agreement, a preliminary schedule of values for all of the Work. The preliminary schedule of values must be submitted after Bidding by the apparent low Bidder, and the schedule of values must be deemed acceptable by the Engineer, before the Agreement is executed.

14. SECURITY FOR FAITHFUL PERFORMANCE:

In addition to the Agreement, the successful Bidder shall also provide, within the time stipulated, a Construction Performance Bond by a company satisfactory to the Owner in an amount equal to One Hundred Percent (100%) of Estimated Total Contract Price recorded in the Proposal section of the Contract as executed, and a Construction Payment Bond in like amount will be required from the successful Bidder for faithful performance of the Contract.

TAB C

Forms

Bid Proposal Form
Non-Collusion Affidavit of Bidder
Bid Bond
Agreement
Construction Performance Bond
Construction Payment Bond

BID PROPOSAL FORM

BID PROPOSAL

PROJECT IDENTIFICATION:

Sears Park - Boat Launch Replacement

THIS BID IS SUBMITTED TO:

Office of the Town Manager
East Hampton Town Hall
1 Community Drive
East Hampton, Connecticut 06424
Attention: David Cox, Town Manager

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 Bid Price and within the Bid Times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

Bidder accepts all terms and conditions of the 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 sixty (60) 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 ten (10) days after the date of Owner's Notice of Award.

In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that:

1. Bidder has examined and carefully studied the Bidding Documents and the following Addenda receipt all of which is hereby acknowledged (List Addenda by Addendum Number and Date):

2. 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.
3. Bidder 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.
4. Bidder has carefully studied all reports and 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. 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 Utilities 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, 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 related thereto. Bidder does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of the Bid for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents.

5. 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.
6. 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.
7. 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 this Bid is submitted.
8. 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.
9. Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

CONTRACT LUMP SUM – ENTIRE PROJECT

Bidder will complete the Work in accordance with the Contract Documents for the following price:

_____ Dollars
(in words)

\$ _____
(in numbers)

UNIT ADJUSTMENTS

Owner may order additions, deletions or revisions to the Work. If such increases or decreases to the Work occur, the prices shown below (for items complete, in-place and ready for service) will be used to adjust the Contract Price by Change Order:

ITEM	UNIT FOR ADJUSTMENT	ADJUSTMENT PRICE PER UNIT
1. Bituminous Concrete	Square Yard (SY)	\$ _____ (in numbers)
2. Cofferdam	Linear Feet (LF)	\$ _____ (in numbers)

10. Bidder agrees that the Work will be substantially completed and completed and ready for final payment in accordance with Article 14 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

11. Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified in the Agreement.

12. The following documents are attached to and made a part of this Bid:

Required Bid Security in the form of _____

13. Communications concerning this Bid shall be addressed to the address of Bidder below.

14. Terms used in this Bid which are defined in the General Conditions or Instructions to Bidders will have the same meanings indicated in the General Conditions or Instructions to Bidders.

SUBMITTED on: _____, 2021.

By: _____ Title: _____

Barton and Loguidice, LLC.

Sears Park – Boat Launch Replacement
East Hampton, CT

Bidder: _____

Address: _____

SEAL – if Bid is by a Corporation

Barton and Loguidice, LLC.

Sears Park – Boat Launch Replacement
East Hampton, CT

NON-COLLUSION AFFIDAVIT OF BIDDER

NON-COLLUSION AFFIDAVIT OF BIDDER

State of: _____)
_____) SS:
County of: _____)

_____; being first duly sworn, deposes and says
that:

- 1.) He is the owner, partner, officer, representative or agent of the Bidder that has submitted the attached Bid:
- 2.) He is fully informed regarding the preparation and contents of the attached Bid and of all pertinent circumstances regarding such Bid:
- 3.) Such Bid is genuine and is not a collusive or sham Bid:
- 4.) Neither the said Bidder nor any of its officers, partners, owner, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any Bidder, or to fix any overhead, profit or cost element of the bid price or the bid price of any other Bidder or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage with the Town of East Hampton or any person interested in the proposed Contract.
- 5.) The price quoted in the attached Bid is fair and proper and is not tainted by collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest.

Signed: _____

Title: _____

Subscribed and sworn before me this _____ day of _____
_____, 2021.

Notary Public: _____

My Commission expires _____, _____

Barton and Loguidice, LLC.

Sears Park – Boat Launch Replacement
East Hampton, CT

BID BOND

BID BOND

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

BIDDER (Name and Address):

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

OWNER (Name and Address):

BID

Bid Due Date:

Project (Brief Description Including Location):

BOND

Bond Number:

Date (Not later than Bid due date):

Penal sum

(Words)

(Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER

SURETY

(Seal
)

(Seal)

Bidder's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature and Title

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title

Attest: _____
Signature and Title

Note: Above addresses are to be used for giving required notice.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Surety's liability.

2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.

3. This obligation shall be null and void if:

3.1. Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or

3.2. All Bids are rejected by Owner, or

3.3. Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).

4. Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.

5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.

6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.

7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.

8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

Barton and Loguidice, LLC.

Sears Park – Boat Launch Replacement
East Hampton, CT

AGREEMENT

AGREEMENT

BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is dated as of the _____ day of _____ in the year _____ by and between the Town of East Hampton (hereinafter called OWNER) _____ (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Sears Park – Boat Launch Replacement as described by the specifications and shown on the drawings contained therein.

Article 2. ENGINEER

The Project has been designed by:

Barton and Loguidice, LLC.
41 Sequin Drive
Glastonbury, Connecticut 06033
Phone: (860) 633-8770

who is hereinafter called ENGINEER and who is to act as OWNER's representative from time to time, assume some duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents. OWNER will perform most of the duties associated with processing applications for payments in lieu of ENGINEER.

Article 3. CONTRACT TIMES

- 3.1 The Work will be substantially completed within fortyfive (45) calendar days of issuance of Notice to Proceed as provided in paragraph 2.03 of the General Conditions and as modified by the Supplementary Conditions.
- 3.2 *Liquidated Damages.* OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER may suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree

that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER two hundred dollars (\$200.00) for each calendar day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER two hundred dollars (\$200.00) for each calendar day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

Article 4. CONTRACT PRICE

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 4.1 and below:

- 4.1 In accordance with the Lump Sum Price and Unit Price Adjustments contained in the Contractor's Bid Proposal (BP-1 through BP-3)

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by OWNER or ENGINEER as provided in the General Conditions and Supplementary Conditions.

- 5.1 *Progress Payments; Retainage.* OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by the ENGINEER, each month during construction as provided in paragraphs 5.1.1 and 5.1.2. below. All such payments will be measured by the schedule of values established in paragraph 2.07 of the General Conditions (and in the case of Unit Price Work based on the number of units completed), or, in the event there is no schedule of values, as provided in the General Requirements.

- 5.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions.

95% of Work completed (with the balance being retainage).

90% (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.02 of the General Conditions).

- 5.1.2 Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 98% of the Contract Price (with the balance being retainage), less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions.

- 5.2 *Final Payment.* At the end of the One Year Correction Period, the CONTRACTOR shall submit to ENGINEER an Application for Payment of the retainage in accordance with paragraph 14.07 of the General Conditions.

Article 6. INTEREST

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the project.

Article 7. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has examined and carefully studied the Contract Documents 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 4.0.2 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph 4.0.2 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 4.0.2 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 solution 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 This Agreement (pages A-1 to A-6, inclusive).
- 8.2 Exhibits to this Agreement (Exhibits A, B, C, D, E,).
- 8.3 Exhibit A – Contractor's Certificate of Insurance
- 8.4 Exhibit B – Contractor's Performance Bond & Payment Bond.
- 8.5 Exhibit C – Contractor's Bid Proposal
- 8.6 Exhibit D – Bid Addenda (if any....)
- 8.7 Exhibit E – Original Bid Documents
- 8.8 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 paragraph 3.0.4 of the General Conditions.

The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed in this Article 8. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.0.4 of the General Conditions.

Article 9. MISCELLANEOUS

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will 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, its 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 and 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.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement, in triplicate. 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 OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on _____, 2021, (which is the Effective Date of the Agreement).

OWNER: Town of East Hampton

CONTRACTOR: _____

By: David Cox, Town Manager

By: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest _____

Attest _____

Address for giving notices:

Address for giving notices:

Barton and Loguidice, LLC.

Sears Park – Boat Launch Replacement
East Hampton, CT

1 Community Drive

East Hampton, CT 06424

(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 service of process: _____

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

Barton and Loguidice, LLC.

Sears Park – Boat Launch Replacement
East Hampton, CT

CONSTRUCTION PERFORMANCE BOND

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

Date:

Amount:

Description (Name and Location):

BOND

Bond Number:

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)

Name and Title:

SURETY

(Seal)

Surety's Name and Corporate Seal

By:

Signature and Title

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

Attest:

Signature and Title

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)

Name and Title:

SURETY

(Seal)

Surety's Name and Corporate Seal

By:

Signature and Title

(Attach Power of Attorney)

Attest:

Signature and Title:

EJCDC No. C-610 (2002 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, and the American Institute of Architects.

1. 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.
2. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 3.1.
3. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 3.1. Owner has notified Contractor and Surety, at the addresses described in Paragraph 10 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
 - 3.2. 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 3.1; and
 - 3.3. Owner has agreed to pay the Balance of the Contract Price to:
 1. Surety in accordance with the terms of the Contract;
 2. Another contractor selected pursuant to Paragraph 4.3 to perform the Contract.
4. When Owner has satisfied the conditions of Paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:
 - 4.1. Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
 - 4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 4.3. 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 6 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
 - 4.4. 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.
5. If Surety does not proceed as provided in Paragraph 4 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 4.4, 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.
6. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 4.1, 4.2, or 4.3 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 a 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:
 - 6.1. The responsibilities of Contractor for correction of defective Work and completion of the Contract;
 - 6.2. Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions or failure to act of Surety under Paragraph 4; and
 - 6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.
7. 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.
8. Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.
9. 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.
10. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.
11. 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.
12. Definitions.
 - 12.1. 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.
 - 12.2. Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3. Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
 - 12.4. 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 comply with the other terms thereof.

FOR INFORMATION ONLY – Name, Address and Telephone
Surety Agency or Broker
Owner's Representative (engineer or other party)

Barton and Loguidice, LLC.

Sears Park – Boat Launch Replacement
East Hampton, CT

CONSTRUCTION PAYMENT BOND

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

Date:

Amount:

Description (Name and Location):

BOND

Bond Number:

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)

Name and Title:

SURETY

(Seal)

Surety's Name and Corporate Seal

By:

Signature and Title

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

Attest:

Signature and Title

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)

Name and Title:

SURETY

(Seal)

Surety's Name and Corporate Seal

By:

Signature and Title

(Attach Power of Attorney)

Attest:

Signature and Title:

EJCDC No. C-615 (2002 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, the American Institute of Architects, the American Subcontractors Association, and the Associated Specialty Contractors.

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 addresses 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 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 Construction 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 comply with the other terms thereof.

FOR INFORMATION ONLY – Name, Address and Telephone
Surety Agency or Broker:
Owner's Representative (engineer or other party):

TAB D

General Conditions

**Engineers Joint Documents Committee
Design and Construction Related Documents
Instructions and License Agreement**

Instructions

Before you use any EJCDC document:

1. Read the License Agreement. You agree to it and are bound by its terms when you use the EJCDC document.
2. Make sure that you have the correct version for your word processing software.

How to Use:

1. While EJCDC has expended considerable effort to make the software translations exact, it can be that a few document controls (e.g., bold, underline) did not carry over.
2. Similarly, your software may change the font specification if the font is not available in your system. It will choose a font that is close in appearance. In this event, the pagination may not match the control set.
3. If you modify the document, you must follow the instructions in the License Agreement about notification.
4. Also note the instruction in the License Agreement about the EJCDC copyright.

License Agreement

You should carefully read the following terms and conditions before using this document. Commencement of use of this document indicates your acceptance of these terms and conditions. If you do not agree to them, you should promptly return the materials to the vendor, and your money will be refunded.

The Engineers Joint Contract Documents Committee ("EJCDC") provides **EJCDC Design and Construction Related Documents** and licenses their use worldwide. You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from **EJCDC Design and Construction Related Documents**.

You acknowledge that you understand that the text of the contract documents of **EJCDC Design and Construction Related Documents** has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You further acknowledge that EJCDC documents are protected by the copyright laws of the United States.

License:

You have a limited nonexclusive license to:

1. Use **EJCDC Design and Construction Related Documents** on any number of machines owned, leased or rented by your company or organization.
2. Use **EJCDC Design and Construction Related Documents** in printed form for bona fide contract documents.
3. Copy **EJCDC Design and Construction Related Documents** into any machine readable or printed form for backup or modification purposes in support of your use of **EJCDC Design and Construction Related Documents**.

You agree that you will:

1. Reproduce and include EJCDC's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program. All proprietary rights in **EJCDC Design and Construction Related Documents** are and shall remain the property of EJCDC.
2. Not represent that any of the contract documents you generate from **EJCDC Design and Construction Related Documents** are EJCDC documents unless (i) the document text is used without alteration or (ii) all additions and changes to, and deletions from, the text are clearly shown.

You may not use, copy, modify, or transfer **EJCDC Design and Construction Related Documents**, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of **EJCDC Design and Construction Related Documents** in printed or machine-readable format for resale or educational purposes is expressly prohibited.

If you transfer possession of any copy, modification or merged portion of **EJCDC Design and Construction Related Documents** to another party, your license is automatically terminated.

Term:

The license is effective until terminated. You may terminate it at any time by destroying **EJCDC Design and Construction Related Documents** altogether with all copies, modifications and merged portions in any form. It will also terminate upon conditions set forth elsewhere in this Agreement or if you fail to comply with any term or condition of this Agreement. You agree upon such termination to destroy **EJCDC Design and Construction Related Documents** along with all copies, modifications and merged portions in any form.

Limited Warranty:

EJCDC warrants the CDs and diskettes on which **EJCDC Design and Construction Related Documents** is furnished to be free from defects in materials and

workmanship under normal use for a period of ninety (90) days from the date of delivery to you as evidenced by a copy of your receipt.

There is no other warranty of any kind, either expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

EJCDC does not warrant that the functions contained in **EJCDC Design and Construction Related Documents** will meet your requirements or that the operation of **EJCDC Design and Construction Related Documents** will be uninterrupted or error free.

Limitations of Remedies:

EJCDC's entire liability and your exclusive remedy shall be:

1. the replacement of any document not meeting EJCDC's "Limited Warranty" which is returned to EJCDC's selling agent with a copy of your receipt, or
2. if EJCDC's selling agent is unable to deliver a replacement CD or diskette which is free of defects in materials and workmanship, you may terminate this Agreement by returning EJCDC Document and your money will be refunded.

In no event will EJCDC be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use **EJCDC Design and Construction**

Related Documents even if EJCDC has been advised of the possibility of such damages, or for any claim by any other party.

Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

General:

You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.
General Counsel
National Society of Professional Engineers
1420 King Street
Alexandria, VA 22314

Phone: (703) 684-2845
Fax: (703) 836-4875
e-mail: aschwartz@nspe.org

You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

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

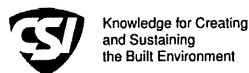
AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by



The Associated General Contractors of America



Construction Specifications Institute

Copyright ©2002

National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314

American Council of Engineering Companies
1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor Nos. C-520 or C-525 (2002 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC Construction Documents, General and Instructions (No. C-001) (2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800) (2002 Edition).

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 - DEFINITIONS AND TERMINOLOGY	6
1.01 <i>Defined Terms</i>	6
1.02 <i>Terminology</i>	8
ARTICLE 2 - PRELIMINARY MATTERS	9
2.01 <i>Delivery of Bonds and Evidence of Insurance</i>	9
2.02 <i>Copies of Documents</i>	9
2.03 <i>Commencement of Contract Times; Notice to Proceed</i>	9
2.04 <i>Starting the Work</i>	9
2.05 <i>Before Starting Construction</i>	9
2.06 <i>Preconstruction Conference</i>	9
2.07 <i>Initial Acceptance of Schedules</i>	9
ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE	10
3.01 <i>Intent</i>	10
3.02 <i>Reference Standards</i>	10
3.03 <i>Reporting and Resolving Discrepancies</i>	10
3.04 <i>Amending and Supplementing Contract Documents</i>	11
3.05 <i>Reuse of Documents</i>	11
3.06 <i>Electronic Data</i>	11
ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS	11
4.01 <i>Availability of Lands</i>	11
4.02 <i>Subsurface and Physical Conditions</i>	12
4.03 <i>Differing Subsurface or Physical Conditions</i>	12
4.04 <i>Underground Facilities</i>	13
4.05 <i>Reference Points</i>	13
4.06 <i>Hazardous Environmental Condition at Site</i>	13
ARTICLE 5 - BONDS AND INSURANCE	14
5.01 <i>Performance, Payment, and Other Bonds</i>	14
5.02 <i>Licensed Sureties and Insurers</i>	15
5.03 <i>Certificates of Insurance</i>	15
5.04 <i>Contractor's Liability Insurance</i>	15
5.05 <i>Owner's Liability Insurance</i>	16
5.06 <i>Property Insurance</i>	16
5.07 <i>Waiver of Rights</i>	17
5.08 <i>Receipt and Application of Insurance Proceeds</i>	17
5.09 <i>Acceptance of Bonds and Insurance; Option to Replace</i>	17
5.10 <i>Partial Utilization, Acknowledgment of Property Insurer</i>	18
ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES	18
6.01 <i>Supervision and Superintendence</i>	18
6.02 <i>Labor; Working Hours</i>	18
6.03 <i>Services, Materials, and Equipment</i>	18
6.04 <i>Progress Schedule</i>	18
6.05 <i>Substitutes and "Or-Equals"</i>	19
6.06 <i>Concerning Subcontractors, Suppliers, and Others</i>	20
6.07 <i>Patent Fees and Royalties</i>	21
6.08 <i>Permits</i>	21
6.09 <i>Laws and Regulations</i>	21
6.10 <i>Taxes</i>	22
6.11 <i>Use of Site and Other Areas</i>	22
6.12 <i>Record Documents</i>	22
6.13 <i>Safety and Protection</i>	22
6.14 <i>Safety Representative</i>	23
6.15 <i>Hazard Communication Programs</i>	23

6.16	<i>Emergencies</i>	23
6.17	<i>Shop Drawings and Samples</i>	23
6.18	<i>Continuing the Work</i>	24
6.19	<i>Contractor's General Warranty and Guarantee</i>	24
6.20	<i>Indemnification</i>	24
6.21	<i>Delegation of Professional Design Services</i>	25
ARTICLE 7 - OTHER WORK AT THE SITE		25
7.01	<i>Related Work at Site</i>	25
7.02	<i>Coordination</i>	26
7.03	<i>Legal Relationships</i>	26
ARTICLE 8 - OWNER'S RESPONSIBILITIES		26
8.01	<i>Communications to Contractor</i>	26
8.02	<i>Replacement of Engineer</i>	26
8.03	<i>Furnish Data</i>	26
8.04	<i>Pay When Due</i>	26
8.05	<i>Lands and Easements; Reports and Tests</i>	26
8.06	<i>Insurance</i>	26
8.07	<i>Change Orders</i>	26
8.08	<i>Inspections, Tests, and Approvals</i>	26
8.09	<i>Limitations on Owner's Responsibilities</i>	27
8.10	<i>Undisclosed Hazardous Environmental Condition</i>	27
8.11	<i>Evidence of Financial Arrangements</i>	27
ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION		27
9.01	<i>Owner's Representative</i>	27
9.02	<i>Visits to Site</i>	27
9.03	<i>Project Representative</i>	27
9.04	<i>Authorized Variations in Work</i>	27
9.05	<i>Rejecting Defective Work</i>	27
9.06	<i>Shop Drawings, Change Orders and Payments</i>	28
9.07	<i>Determinations for Unit Price Work</i>	28
9.08	<i>Decisions on Requirements of Contract Documents and Acceptability of Work</i>	28
9.09	<i>Limitations on Engineer's Authority and Responsibilities</i>	28
ARTICLE 10 - CHANGES IN THE WORK; CLAIMS		28
10.01	<i>Authorized Changes in the Work</i>	28
10.02	<i>Unauthorized Changes in the Work</i>	29
10.03	<i>Execution of Change Orders</i>	29
10.04	<i>Notification to Surety</i>	29
10.05	<i>Claims</i>	29
ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK		30
11.01	<i>Cost of the Work</i>	30
11.02	<i>Allowances</i>	31
11.03	<i>Unit Price Work</i>	31
ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES		32
12.01	<i>Change of Contract Price</i>	32
12.02	<i>Change of Contract Times</i>	33
12.03	<i>Delays</i>	33
ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK		33
13.01	<i>Notice of Defects</i>	33
13.02	<i>Access to Work</i>	33
13.03	<i>Tests and Inspections</i>	33
13.04	<i>Uncovering Work</i>	34
13.05	<i>Owner May Stop the Work</i>	34
13.06	<i>Correction or Removal of Defective Work</i>	34
13.07	<i>Correction Period</i>	34
13.08	<i>Acceptance of Defective Work</i>	35
13.09	<i>Owner May Correct Defective Work</i>	35
ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION		36
14.01	<i>Schedule of Values</i>	36
14.02	<i>Progress Payments</i>	36
14.03	<i>Contractor's Warranty of Title</i>	37
14.04	<i>Substantial Completion</i>	37

14.05	<i>Partial Utilization</i>	38
14.06	<i>Final Inspection</i>	38
14.07	<i>Final Payment.....</i>	38
14.08	<i>Final Completion Delayed.....</i>	39
14.09	<i>Waiver of Claims</i>	39
ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION.....		39
15.01	<i>Owner May Suspend Work.....</i>	39
15.02	<i>Owner May Terminate for Cause.....</i>	39
15.03	<i>Owner May Terminate For Convenience.....</i>	40
15.04	<i>Contractor May Stop Work or Terminate</i>	40
ARTICLE 16 - DISPUTE RESOLUTION.....		41
16.01	<i>Methods and Procedures</i>	41
ARTICLE 17 - MISCELLANEOUS		41
17.01	<i>Giving Notice</i>	41
17.02	<i>Computation of Times</i>	41
17.03	<i>Cumulative Remedies.....</i>	41
17.04	<i>Survival of Obligations</i>	41
17.05	<i>Controlling Law</i>	41
17.06	<i>Headings</i>	41

GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*--The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

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.

5. *Bid*--The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

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.

10. *Claim*--A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *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 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*--See Paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *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.

19. *Engineer*--The individual or entity named as such in the Agreement.

20. *Field Order*--A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *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.

24. *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.

25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *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.

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*--Polychlorinated biphenyls.

31. *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 Waste and crude oils.

32. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *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.

36. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

37. *Resident Project Representative*--The authorized representative of Engineer who may be assigned to the Site or any part thereof.

38. *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.

39. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

40. *Schedule of Values*--A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

41. *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.

42. *Site*--Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

43. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

44. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other

Subcontractor for the performance of a part of the Work at the Site.

45. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

48. *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.

49. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

50. *Unit Price Work*--Work to be paid for on the basis of unit prices.

51. *Work*--The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

52. *Work Change Directive*--A written statement 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 subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered 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.

1.02 Terminology

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

B. Intent of Certain Terms or Adjectives

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the 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 is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. Day

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

a. does not conform to the Contract Documents, or

b. does not meet the requirements of any applicable inspection, reference standard, test, or

approval referred to in the Contract Documents, or

c. 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 14.04 or 14.05).

E. Furnish, Install, Perform, Provide

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Insurance:* 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 Article 5.

2.02 Copies of Documents

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

A. 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 30 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.

2.04 Starting the Work

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 Before Starting Construction

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

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. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 Preconstruction Conference

A. Before any Work at the Site is started, a conference attended by Owner, 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 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

A. At least 10 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 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. 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 labor, documentation, services, 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 provided whether or not specifically called for at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the 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.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein 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.

2. *Contractor's Review of Contract Documents During Performance of Work:* 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 Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. 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.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, 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:

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

b. the provisions of any 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).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:

1. 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 consultants, including electronic media editions; or

2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaption by Engineer.

B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract.

Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party..

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current 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 or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* 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 or Engineer, or any of their Related Entities with respect to:

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

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

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

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 the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, 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.

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

b. 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 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. 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

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *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, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy 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 6.16.A), 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 or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy 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 on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

A. 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 property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument 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 or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* 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 or Engineer, or any of their Related Entities with respect to:

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

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

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition 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. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly 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 condition or take corrective action, if any.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor 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 on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such 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 the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment 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 Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors 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) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06. G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors 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) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. 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 of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, 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 Contract Documents.

B. 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 Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

C. If the surety on any bond furnished by Contractor is declared 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 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. 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.

5.03 *Certificates of Insurance*

A. 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.

B. 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.

5.04 *Contractor's Liability Insurance*

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

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

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

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

4. claims for damages insured by reasonably available 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 other person for any other reason;

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

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.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insured (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least 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;

3. include completed operations insurance;

4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 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 5.03 will so provide);

6. 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 13.07; and

7. 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.

a. 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.

5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, 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.

5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance 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:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions,

and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

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, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, (other than caused by flood) and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

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);

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;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. 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, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 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 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 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, Subcontractors, 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.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. 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.

5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss 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, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) 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.

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for:

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 perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B 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 Contractor, Subcontractors, or Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 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 5.08.B. 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.

B. 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 15 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.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either 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 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. 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.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 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 canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. 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. Contractor shall not be responsible for the negligence of Owner or Engineer 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.

B. At all times during the progress of the Work, Contractor shall assign 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 given to or

received from the superintendent shall be binding on Contractor.

6.02 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. 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 stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, 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 performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required 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 source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

A. 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, appearance, 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 or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. *"Or-Equal" Items:* 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 approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,

3) it has a proven record of performance and availability of responsive service; and

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times, and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. 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. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;

b) whether or not use of the proposed substitute item 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 other work on the Project) to adapt the design to the proposed substitute item; and

c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services;

4) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change,

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by 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 requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. Engineer's Evaluation: Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

E. Engineer's Cost Reimbursement: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract

Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. Contractor's Expense: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner'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 individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor

2. shall anything in the Contract Documents 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 individual

or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. 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.

G. 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 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss 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.

6.07 *Patent Fees and Royalties*

A. 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.

B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors 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) arising out of or relating to 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.

6.08 *Permits*

A. 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. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the 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.

B. 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 (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) arising out of or relating to such Work. 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 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 Taxes

A. 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.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas 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.

2. 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.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors 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) arising out of or relating to 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.

B. Removal of Debris During Performance of the Work: During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. Cleaning: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures: 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.

6.12 Record Documents

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show 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 the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 Safety and Protection

A. Contractor shall be solely 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:

1. all persons on the Site or who may be affected by the Work;

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

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.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property 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 other 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.

C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform 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 Draw-

ings or Specifications or to the acts or omissions of Owner or Engineer or , 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 individual or entity directly or indirectly employed by any of them).

D. 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 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

A. 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.

6.15 *Hazard Communication Programs*

A. 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.

6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor 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 or are required as a result thereof. 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.

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. Shop Drawings

a. Submit number of copies specified in the General Requirements.

b. 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 services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:* Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals , 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.

C. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:

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

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

c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and

d. 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.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents

with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. 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.

2. 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.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.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. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures

1. 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.

6.18 Continuing the Work

A. 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 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 Contractor's General Warranty and Guarantee

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. 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:

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

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

7. any correction of defective Work by Owner.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors 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) arising out of or relating to the performance of the Work, provided that 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 but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A 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 individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal

shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 - OTHER WORK AT THE SITE

7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and

properly 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.

C. 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 to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

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

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

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

8.06 *Insurance*

A. Owner's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility in respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

A. 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 performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. 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

9.01 *Owner's Representative*

A. 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 will not be changed without written consent of Owner and Engineer.

9.02 *Visits to Site*

A. 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, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site 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 observations, Engineer will keep

Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's 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 performance of the Work.

9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. 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 individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

A. 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 Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

A. Engineer will have authority to 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 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

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

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

9.07 *Determinations for Unit Price Work*

A. 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 (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, 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.

9.09 *Limitations on Engineer's Authority and Responsibilities*

A. 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 in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. 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 performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A 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.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by 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).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. 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, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; 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 6.18.A.

10.04 *Notification to Surety*

A. 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. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim, shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part,
2. approve the Claim, or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. 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 11.01.B.

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 outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

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.

3. Payments made by Contractor to Subcontractors for Work performed 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 acceptable. If any subcontract 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 this Paragraph 11.01.

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.

5. Supplemental costs including the following:

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

b. 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.

c. 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, assembly, dismantling, and removal thereof. All such costs shall be 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.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.

e. 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.

f. 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 of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages 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.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety 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 branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

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.

4. 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.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall

be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

A. 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 performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. Cash Allowances

1. Contractor agrees that:

a. the cash 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

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash 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.

C. Contingency Allowance

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. 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.

11.03 Unit Price Work

A. 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 unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. 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 subject to the provisions of Paragraph 9.07.

C. 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.

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

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

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

3. 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 PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. 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:

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 Paragraph 11.03); or

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 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

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:

a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

c. 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 Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.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;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. 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

f. 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 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted

by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times 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 12.02.A. 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.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and 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.

13.03 *Tests and Inspections*

A. 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.

B. 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:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and

3. as otherwise specifically provided in the Contract Documents.

C. 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.

D. Contractor shall 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 acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. 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.

F. Uncovering Work as provided in Paragraph 13.03.E 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.

13.04 *Uncovering Work*

A. 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.

B. 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.

C. If it is found that the uncovered Work is defective, Contractor shall pay 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) arising out of or relating to 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. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If, the uncovered 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 both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to 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, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay 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) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed 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, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. 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) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. 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 .

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, 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.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay 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) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. 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, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

A. 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 13.06.A, 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 or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or 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.

C. 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) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 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. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. 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.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A 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.

14.02 *Progress Payments*

A. Applications for Payments

1. At least 20 days before the date established in the Agreement 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 or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. *Review of Applications*

1. Engineer will, within 10 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.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations on the Site 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:

a. the Work has progressed to the point indicated;

b. 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 9.07, and to any other qualifications stated in the recommendation); and

c. 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.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

b. 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.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. 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 stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent

inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

- a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
- b. 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;
- c. there are other items entitling Owner to a set-off against the amount recommended; or
- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall 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.

3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

14.03 Contractor's Warranty of Title

A. 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.

14.04 Substantial Completion

A. 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.

B. Promptly after Contractor's notification, , 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.

C. If Engineer considers the Work substantially complete, Engineer will 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 14 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 14 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.

D. 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, and protection of the Work, 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.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which 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, subject to the following conditions.

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when 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.

2. 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.

3. 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 Paragraph 14.04 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.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all 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.

14.07 *Final Payment*

A. Application for Payment

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;

b. consent of the surety, if any, to final payment;

c. a list of all Claims against Owner that Contractor believes are unsettled; and

d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 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.

B. *Engineer's Review of Application and Acceptance*

1. 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 for Payment 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 14.09. Otherwise, Engineer will return the Application for Payment 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 for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and, will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

A. 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 (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, 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 corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, 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.

14.09 *Waiver of Claims*

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

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 14.06, 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

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance

with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive 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 granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure 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 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. 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),

2. 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

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds 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) sustained by Owner arising out of or relating to 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. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. 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.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. 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;

2. 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;

3. 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) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. 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.

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 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 Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be

governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or

2. agrees with the other party to submit the Claim to another dispute resolution process, or

3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. 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

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

A. 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.

17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto 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. 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.

17.04 *Survival of Obligations*

A. 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 or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

TAB E

Supplementary Conditions

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the General Conditions 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.

ARTICLE 1 REVISIONS:

1.01.19 Engineer

After the word “Agreement” add the words “OWNER may perform some or all of the duties and assume responsibilities of ENGINEER discussed in these General Conditions including, but not limited to, processing of applications of payments and reviewing submittals.”

1.01.37 Resident Project Representative

After the word “Engineer” add “or Owner”

After the word “thereof” add the words “for part-time or full-time observation of work as it proceeds in the field. These efforts include interpretation of drawings and specifications, review of field change orders, and review of payment applications.”

ARTICLE 2 REVISIONS:

2.05 Before Starting Construction

Delete Article 2.05.B.3 and add the following new Article 2.05.D:

Documentation submitted by CONTRACTOR prior to execution of Agreement shall include a preliminary schedule of values for all of the Work that includes quantities and prices of items which, when added together, equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work. The approved schedule of values shall follow the format provided in the Bidding Documents.

ARTICLE 3 REVISIONS:

3.06 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. In resolving conflicts, errors, and discrepancies, the documents shall be given precedence in the following order: Agreement, Specifications, Drawings. Within the specifications the order of precedence shall be as follows: Special Provisions, Instructions to Bidders, General Conditions, Technical Provisions. Figure dimensions on Drawings shall govern over scale/dimensions, and detailed Drawings shall govern over general Drawings. The Contractor assumes full responsibility for having familiarized itself with the nature and extent of the Contract Documents, work, locality, and local conditions that may in any manner affect the work to be done.

ARTICLE 4 REVISIONS:

4.01 Availability of Lands

Add the following:

- D. If the Contractor, by direct negotiation and bargaining with any land owner, lessee or tenant, has secured for himself any right to use more space or greater privileges in the space provided for purposes incidental to the performance of the Contract, he shall, upon request of the Owner's Representative, furnish to the Owner's Representative proper evidence that such additional right have been properly secured and assurance that no damage to or claim upon the Owner will arrive there from. The Owner shall not be liable in any way for any expense incurred by the Contractor in securing any such right to use additional property.
- E. If access is provided by means of any road or driveway or through private lands, the Contractor shall permit the regular Owners or users thereof to use the same so far as it is consistent with the construction of the work. If any existing driveway or road is damaged by his use thereof, the Contractor shall at once restore it to as good condition as it would have been had he not used it. The Contractor and those under him using any private road or driveway must assume to use that road or driveway on an "as is" basis and use it at their own risk. Neither the Owner nor the land owner shall be liable for damage to persons or property of the Contractor's forces arising from any defect in such road or driveway, except as such defect may be the consequence of negligence of the Owner or the land owner after the award of the Contract.

ARTICLE 5 REVISIONS:

5.04 Contractor's Liability Insurance

Add the following:

- C. The Contractor shall post a Certificate of Insurance, with the Town of East Hampton named as additional insured, in an amount to be determined by the Owner. The Certificate of Insurance shall name the Town of East Hampton as additional insured in the amount of \$1,000,000 which covers the following:
- Public Liability, Bodily Injury and Property Damage
 - Automobile
 - Umbrella
 - Worker's Compensation

- D. Insurance requirements shall also apply to all Subcontractors, and the Contractor shall not allow any Subcontractor to commence work until the Subcontractor's insurance has been obtained

ARTICLE 6 REVISIONS:

Add the following:

6.10.A Taxes

- A. "To the extent that the Town of East Hampton is exempt from Connecticut sales tax, the Contractor may purchase materials or supplies to be consumed in the performance of this contract without payment of such tax."

6.11.A.1 Use of Site and Other Areas

- A.1 "The exact limit of Work and equipment storage shall be verified and agreed to by Owner and Contractor in the field."

ARTICLE 11 REVISIONS:

Add the following:

11.04 Equipment Rental Rates Not Otherwise Covered

With regard to rental rates applicable to work not covered by either Lump Sum pay items or Unit Adjustments, for any power-operated machinery, trucks or equipment, necessary to use, the Engineer will allow the Contractor the rental rate set forth in the most current edition of the "Rental Rate Blue Book," including all Rate Adjustment Tables and amendments, as published by Dataquest, Inc. of San Jose, California in effect at the time the work is performed for Contractor-owned equipment or at a lower rate, if submitted by the Contractor.

- A. Should the proper completion of the work require equipment of a type not covered by the above-mentioned schedule, the Engineer will allow Contractor a reasonable rental rate which shall be based on that prevailing in the area of the work and shall be agreed upon in writing before the work is begun. However, the Contractor shall show the sources for the rates he has proposed.
- B. For power-operated machinery, truck or equipment, which the Contractor must obtain by rental, he shall inform the Engineer of his need to rent the equipment prior to using it on the work. He shall be paid the actual rental for the equipment, provided that rate does not exceed the rental rate set forth in the "Rental Rate Blue Book", including all Rate Adjustment Tables and amendments as published by Dataquest, Inc. The Contractor shall provide a copy of the paid receipt for the rental expense incurred.
- C. The estimated operating cost per hour will apply only to the actual time the equipment is operating. Operators will be paid as stated hereinbefore for labor

except for certain trucks listed in the “Rental Rate Blue Book” as published by Dataquest, Inc. which show the operators to be included.

- D. For rented equipment not owned by the Contractor or a subsidiary of the Contractor, the following rates shall apply:
 - 1. The daily rate per hour shall apply when the equipment is specifically assigned to the work by the Engineer for a period of 7 consecutive calendar days or less.
 - 2. The weekly rate per hour shall apply when the assigned time exceeds 7 consecutive calendar days but does not exceed 21 calendar days.
 - 3. The monthly rate per hour shall apply when the assigned time exceeds 21 consecutive calendar days.
- E. For Contractor-owned equipment or equipment rented or obtained from a subsidiary of the Contractor, the maximum hourly rate to be used shall be the monthly rate as set forth in the current edition of the “Rental Rate Blue Book”, including Rate Adjustment Tables and amendments as published by Dataquest, Inc., divided by 176 (176 working hours per month).

ARTICLE 15 REVISIONS:

Delete the word “persistent” from Article 15.0.2.A.1

ARTICLE 17 REVISIONS:

Add the following:

17.07 Time for Completion and Liquidated Damages:

- A. It is hereby understood and mutually agreed, by and between Contractor and Owner, that the date of beginning and the time for completion as specified in the Agreement of the work to be done hereunder are essential conditions of this Contract; and it is further mutually understood and agreed that the Work embraced in this Agreement shall be commenced on a date to be specified in the Notice to Proceed.
- B. Contractor agrees that said Work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between Contractor and Owner, that the time for the completion of the Work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and conditions in this locality.
- C. If said Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any proper extension thereof granted by Owner, then the Contractor does hereby agree to pay to Owner the amount specified in the Agreement, not as a penalty but as Liquidated Damages for such breach of

Agreement, for each and every calendar day that Contractor shall be in default after the time stipulated in the Agreement for completing the Work.

- D. The said amount is fixed and agreed upon by and between Contractor and Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages Owner would in event sustain, and said amount shall be retained from time to time by the Owner from current periodical estimates.

TAB F

Special Provisions

SPECIAL PROVISIONS

DESCRIPTION:

These Special Provisions amend or supplement the Division II Construction Details (Technical Provisions) and Division III Materials Section in the State of Connecticut Department of Transportation (CTDOT) Standard Specifications for Roads, Bridges and Incidental Construction, Form 818, dated 2020 through Supplemental Specifications dated January 2021, which are incorporated herein and are referred to herein after at “Form 818.” Only the Form 818 Division II Construction Details and Division III Materials Section are incorporated herein.

Copies of Form 818 may be purchased from:

CTDOT Manager of Contracts
P.O. Box 317546
2800 Berlin Turnpike
Newington, CT 06131-7546

GENERAL:

Special Provision amendments or supplements that apply throughout Form 818 Division Details (Technical Provisions) are outlined below:

1. Replace the word “State” and the word “Department, wherever they appear, with the word “Town” throughout Form 818.
2. Method of Measurement: Work items for this lump sum project will not be measured separately for payment unless additions, deletions or modifications to the Work are ordered by the Owner issued Change Order.
3. Basis for Payment: Work items for this lump sum project will not be paid for separately unless additions, deletions or modifications to the Work are ordered by the Owner issued Change Order. Progress payments will be made against the Contract Lump Sum for the entire project using an approved Schedule of Values.

RELEVANT SECTIONS:

The following is a list of relevant sections of Form 818 that apply to this project. Note: This list is provided as reference only, meaning that it does not exclusively limit the scope of work for this project.

<u>Section</u>	<u>Description</u>
2.02	Earth Excavation
2.04	Cofferdam and Dewatering
2.09	Formation of Subgrade
2.10	Water Pollution Control (Soil Erosion)
2.12	Subbase

2.14	Compacted Granular Fill
3.04	Processed Aggregate Base
4.06	Bituminous Concrete
6.01	Concrete for Structures
6.02	Welded Wire Fabric
7.55	Geotextile
9.24	Concrete Driveway Ramp
9.74	Removal of Existing Masonary
9.75	Mobilization
9.80	Construction Stakeout
12.20	Construction Signs

SUBMITTALS:

The Contractor shall submit (3) copies of each shop drawing/product data to the Town or it's agent for approval, prior to construction. The Town or its agent will endeavor to respond with their approval and/or review comments within a (2) week period of their receipt of said submittals. The Contractor shall make submittals to include but not limited to the sections of the Form 818 above and per the special provisions hereon.

COORDINATION OF WORK:

The Contractor shall coordinate with the Town and its agents accordingly.

SCHEDULE:

The contract time for this project is forty five (45) calendar days, starting on the Notice to Proceed date, and does not allow for a winter shutdown period. The intended project schedule is as follows:

Bid Closed:	October 22, 2021
Notice of Award:	October 29, 2021
Notice to Proceed:	November 8, 2021
Substantial Completion:	December 22, 2021

LIQUIDATED DAMAGES:

The Contractor is hereby notified that liquidated damages in the amount of two hundred dollars (\$200.00) per consecutive calendar day apply to this project in order to help ensure a timely completion.

PREVAILING WAGE RATES:

The Contractor is hereby notified that the bid shall be submitted without consideration of prevailing wage rates if all work is less than \$100,000.

UTILITY COORDINATION:

TAB G

Plans

I. Introduction

The Town of East Hampton is seeking a qualified developer to collaborate with the Town for the necessary cleanup, redevelopment and private acquisition of the former Summit Thread properties within the Historic Village Center of East Hampton.

The site consists of three separate parcels, two of which are town owned, the other of which is in private ownership but is anticipated to be town owned during this process. All three will ultimately be available for acquisition by a developer or developers selected pursuant to this Request for Proposals. Proposals submitted may consist of all three parcels, the 13 Summit Street property individually or the two Watrous Street parcels considered together.

In its entirety, the Summit Thread site contains just under 4 acres of land and significant road frontage. The two Town owned parcels are adjacent and offer a mill redevelopment opportunity on one, while the other is vacant and can be used for parking. The privately held parcel contains a large historic mill structure and envelopes a portion of Pocotopaug Creek.

The community seeks to redevelop and replace these tired and unused historic mill complexes with vibrant attractive development that interconnects with the historic Village Center and the Air Line Trail. While this Request for Proposals directly governs redevelopment and disposition of the properties, it also articulates planning objectives that relate, to a certain extent, to the Historic Village Center as a whole. For the anticipated redevelopment of the mill site to be truly successful, it should catalyze, support, and facilitate district-wide improvements. The Town is willing to entertain creative proposals in order to facilitate the cleanup and reuse of these properties.

Over the last two decades, the Town of East Hampton and its residents have undertaken community processes to identify elements that should be prioritized in any new development in or surrounding the Village Center. The Zoning Regulations and Plan of Conservation and Development both prioritize and encourage the redevelopment of these parcels.

The Town intends to use its given authority to access various grant funds in order to collaborate with and assist the chosen developer to achieve the stated goals. The Town intends to choose the most desirable proposal and qualified developer with the skills necessary to complete the project.

Proposals are due at the Office of the Town Manager (the address and additional information are provided in Section VI, Submission Requirements) by noon, local time on November 19, 2021.

Submission by a Proposer of a Proposal represents acceptance of and agreement to all terms and conditions of this RFP.

II. Goals and Objectives.

The Town seeks to enter into an agreement with a developer or developers for the disposition and coordinated development of the Summit Thread site. The Town desires mixed use development that serves as a destination in the Town and fits within the context of the Historic Village Center. However, a proposal which only incorporates a single use will not be rejected if all other goals and objectives can be met.

A detailed list and description of the planning objectives, as well as a summary of the Design Review Guidelines for the Village Center are provided in Section IV below. The Selection Criteria described below call for adherence to these planning and design objectives.

III. Property Description

A. Location

i. Parcel Location

The three parcels are located within the Town of East Hampton adjacent to and within the Village Center.

- a. 13 Summit Street – This parcel is irregularly shaped and is bordered by Summit Street (CT 196) to the south, Bevin Road to the north, Bevin Court to the east, and a private residence and Center School to the west. The property is bisected by Pocotopaug Creek and a pond which is impounded by the Artistic Wire Dam directly adjacent to the building.
- b. 1 Watrous Street – This parcel is irregularly shaped and is bounded by Summit Street (CT 196) to the north, Watrous Street to the west, 13 Watrous Street to the south, and Starr Place and Starr Auto (vehicle repair facility) to the east.
- c. 13 Watrous Street – This parcel is irregularly shaped and is bounded by Watrous Street and 1 Watrous Street to the west, 1 Watrous Street and Starr Auto to the north, Starr Place and private residences to the east, and Railroad Avenue to the South.

ii. Public Transit

The site is not directly adjacent to any public transit facilities; however, Middletown Area Transit (MAT) operates a fixed route bus service through the Village Center. Route “F” of the MAT system operates several times throughout the day and stops along Main Street, approximately 675 feet from the Summit Thread site. This service provides a direct route through Portland to Middletown where connections can be made to Hartford and Meriden.

iii. Vehicular Access

All three sites can be easily accessed via Summit Street (CT 196) as well as either Bevin Blvd or Watrous Street.

iv. Parking

Any redevelopment of the Summit Thread site will require the provision of parking as set forth in the zoning regulations. Parking on the streets is prohibited due to their narrow width. The parcel at 13 Watrous provides an opportunity for a development proposal to include a shared facility which can accommodate the development and additional parking for the public. The Town is willing to retain ownership of this parcel and share a parking facility in perpetuity with the developer to accommodate the 1 Watrous Street property.

v. Pedestrian and Bicycle Access

Bicycle access to the site is good. A pedestrian sidewalk exists along Summit Street which is part of a system of sidewalks which connects the Village Center with the commercial area on Route 66 and Lake Pocotopaug. There is a trail head for the Air Line Trail with limited parking along Watrous Street approximately 400 feet to the south with others nearby on Main and Smith Streets. The Air Line Trail is a multi-use trail which runs from Portland to the Connecticut/Massachusetts state line.

B. Site Description

i. Size

The overall site size is approximately four (4) acres. It is comprised of three (3) separate parcels:

Lot	Address	Acres	Building Size
06A-62-2A	13 Summit Street	2.1	45,000 s.f.
06A-59-12A	1 Watrous Street	.515	19,500 s.f.
06A-59-12	13 Watrous Street	1.36	0
Total		3.975	64,500 s.f.

ii. Shape

The site is somewhat rectangular and bisected by Summit Street (CT 196). It is generally bordered by roads and private property.

iii. Topography

The area encompassing 1 and 13 Watrous Street is generally flat, with a rise in grade toward the northern end of the parcel of about 8 feet. The Summit Street parcel is generally flat but slopes down gradient toward Summit Street approximately 14 feet. These figures are estimates and Proposers will be expected to confirm topography changes as part of their own due diligence.



C. Site Context – Neighborhood and Abutting Properties

i. Historic Use

The site was developed beginning in the 1880s as a part of the Town industrial boom. The property at 13 Summit was built as the Merrick & Conant Silk Manufacturer in 1880 and quickly turned into the Summit Thread Company in 1882. Summit Thread remained on the site until 1940. Between 1940 and about 2010, the building was used for various types of industry and retail business. It has been vacant for approximately 10 years. The property at 1 Watrous Street was constructed by the Summit Thread Company in 1882 and remained in

their ownership until 1940. It has since been used by various industries until about 2016 when the Town of East Hampton took ownership. The property at 13 Watrous Street was constructed as the power house for Summit Thread in 1910. After Summit Thread vacated, it was used as power house for various properties in the Village until Ghezzi Motors purchased the building and used it as an automotive repair shop. The Town took ownership of the property in 2002 and has done extensive remediation, which included demolition of the structure.

ii. Context Within Town

Understanding the site's positioning within the Town will be crucial to the success of a development on this site. The site is centrally located, with adjacencies to important assets within the Town. The site sits at the central point within the Belltown Historic District (described in more detail in Subsection C. iii., below). The site lies within the Village Center which hosts shops and restaurants, as well as the Post Office, Library, Senior Center, and a school. The site is also within walking distance of other commercial areas along Route 66. In addition, nearby Sears Park lies on the shore of Lake Pocotopaug, a 502 acre lake which supports boating, kayaking, fishing, and swimming. Municipal sewer and water are available, along with natural gas and fiber optics. The site also lies within the Village Center TIF District.

iii. Belltown Historic District and Village Center

The Belltown Historic District encompasses the industrial center of East Hampton. This area is historically significant as having been a center for bell making, a highly specialized industry which prospered for over 100 years. To this day, East Hampton is still home to Bevin Brothers Manufacturing, the only manufacturer devoted solely to the production of bells in the United States. The district contains a full range of historic resources, which illustrate the diversity of scale, function, and level of architectural style from the 18th century right through the 20th century.

The Village Center Zone is a mixed use zone lying at the heart of the Village Center and encourages a range of uses especially where commercial spaces are on the ground floor and upper floors are used for residential purposes. The zone allows flexibility in design, allows for minimum to no setback requirements and is flexible on parking requirements. The goal of the zone is to retain the historic character and nature of the village and to allow a natural mix of uses.

D. Traffic and Access Improvements.

All parcels are located in a manner that they can be accessed from Route 196. The Town encourages improvements to the access and circulation. At the Watrous location, it is recommended that the two parcels be looked as one in regard to parking and access.

E. Zoning

As detailed more fully below (see "Submission Requirements") Proposers are required by this RFP to submit a Conceptual Program and Plan (CPP) for their proposed use for the site. The CPP

should include, but not be limited to, the elements of an application required by Section 5.1 (Village Center Zone) or 4.5 (Village Housing Overlay) of the Zoning Regulations.

All development on the site shall be undertaken in accordance with §5.1 or 4.5 of the East Hampton Zoning Regulation applicable to the VC or VHO Zones. Proposers are required to certify that, if selected, they will apply for the appropriate permit to develop the site pursuant to §5.1 or 4.5.

By virtue of this requirement, all proposals must demonstrate their compliance with the requirements as set forth in §4.5 or 5.1 of the East Hampton Zoning Regulation, unless waived by the Planning and Zoning Commission in response to a request for a waiver enumerated in the proposal. Proposers are required, in their submissions, to enumerate each waiver they intend to request. The regulatory requirements are quoted, paraphrased, or summarized here for convenience (summaries and paraphrasing are indicated by brackets []), but Proposers should not rely on this outline and should instead refer to the full text of the regulation.

§4.5.E Housing and Affordability

No application within the VHO which contains residential use shall be approved unless at least 20% of the total dwelling units proposed are devoted to affordable housing.

§5.1 Permitted Uses (VC)

[Permitted uses include Multifamily dwellings, municipal facilities, structured parking facilities, religious or educational uses, childcare facility, non-profit private club, personal service establishment, bank, retail sales establishment, convenience store, medical center or clinic, self-service laundry, restaurants, craft shop, office, motel or hotel, commercial parking lot or garage, and open space.]

§4.5.D Density

1. [For residential uses taking advantage of the VHO, density is set at 20 units/acre for multi-family, 10 units/ acre for townhouses, and 6 units/acre for duplex developments.]
2. [No retail sales establishment may exceed 25,000 square feet.]
3. [In the VC Zone, residential uses may be approved for upper floors, but no less than 75% of the first floor must be a commercial use.]

§5.1.D Dimensional Regulations

[Includes, but is not limited to, maximum building heights of 30', depending on location. Maximum building coverage of 75% of the lot. Setback requirements may be waived.]

§5.1.G Design Review Provisions

Proposers are encouraged to consult the regulations. The VC area is subject to review and approval by the Design Review Board in accordance with CGS Section 8-2j. Since the architectural design, scale and mass of the buildings and other structures are important in determining the visual character of an area, the guidelines listed are recommended so as to harmonize and be compatible with the neighborhood, to protect property values and to preserve and improve the appearance and the beauty of the community. The Commission and the Design Review Board will review the relationship of the buildings to the site and adjoining areas, the landscape treatment, the building design, site lighting, and signage. Provisions within the Regulations and the Design Review Handbook should be considered.

§7.2 Parking and Loading

Parking is required to follow the Section 7.2 of the zoning regulations. Within the Village Center, nearby shared parking facilities can be considered in order to construct less than the minimum required parking. In addition, the Commission will consider mixed use types and the different times of demand. The applicant must demonstrate to the Commission that the peak demand and principal operating hours for each use are suitable for a common parking facility.

F. Environmental

The Town, along with assistance from the Connecticut Brownfields Land Bank, has Conducted Phase One and Two Environmental Assessments as well as a Hazardous Building Materials Assessment at 1 Watrous. In addition, the Town has invested in Phase One and Two Assessments and some cleanup and remediation at 13 Watrous Street. The Town has contracted with an Engineer for the completion of a Phase 1 Environmental Assessment and will be working toward gaining funding to conduct a Phase 2 Assessment and a Hazardous Building Materials Assessment in the near future for 13 Summit Street.

IV. Planning

A. Planning Process

Several planning studies and documents have been created and should be consulted to better understand the site, community and Town objectives, development potential, and the larger context of the Village Center. These documents are available on the Town website under the Land Use Department.

1. Village Center Streetscape and Improvements Plan - 2021
2. Plan of Conservation and Development – 2016
3. AMS Market Assessment Update – 2015
4. Planimetrics Incentive Housing Zone Study - 2011
5. East Hampton EDC Village Center Renewal – 2006
6. TPA/AMS Village Center Revitalization Assessment – 2006
7. Sanders/Mullin Revitalization Study – 1990

B. Planning Objectives

The following planning objectives will be taken into consideration in rating and ranking proposals, and in selecting the most advantageous proposal. Selection criteria on pages 19-22 of this RFP correlate directly with each of these objectives and indicate the manner in which ratings on each objective will be determined. In order to demonstrate the advantageousness of a proposal with respect to each objective, a Proposer must include in its CPP a narrative response, graphics, visual renderings, plans and elevations, as appropriate, specifically addressing that objective.

The Town understands that, with respect to some of the objectives outlined below, there are alternative ways of fulfilling the objective, not all of which will necessarily be included in a proposal. However, as these are the priorities identified by the community, a proposal will not be successful if it does not address a significant portion of the alternatives identified for each objective. Ultimately, the community's goal is to create a new destination for residents, workers, and visitors alike, one which encourages extended stays downtown and creates an opportunity to park once and spend a morning, afternoon or evening enjoying the open spaces, visiting shops, having a meal, or attending a cultural event.

a. Product Type:

- Retail/restaurant component

Part of any commercial component in a mixed-use development should include retail and/or restaurant space(s). This retail may be neighborhood oriented, such as a coffee shop or bakery, or it may be destination retail, such as a farmers' market or sit-down restaurant. Based on the Village Center Zone, retail/restaurant and open space are the most highly favored components of the development, with the following types of retail uses strongly encouraged: food establishments; retail stores; grocery or market; professional office; personal service; fitness.

- Housing for a variety of age groups and income levels

The residential component of a mixed-use development (or if a completely residential development) should be multi-family and/or townhouse rather than single-family. At a minimum, new housing units should be affordable to a mix of income levels such as workforce to market-rate and/or luxury, consistent with the Town's affordability requirement (20%) as set out in the Village Housing Overlay District. A permanent Affordable Housing Restriction shall be recorded with respect to the Affordable Housing Units.

Housing could be available to seniors, millennials, and age groups in between and may be any combination of ownership types.

b. Neighborhood Context and Character of Development:

- Responsive to the context and character of the Village Center. Development should serve as a catalyst for the revitalization of the area. Reuse of existing buildings is preferred.

The character of the Village Center is critical to the Town. The surrounding historic mill buildings create a strong aesthetic fabric and architectural style. A proposed development should not only complement the context of the Village Center, but also enhance and anchor it. The Town seeks a development that includes an outstanding design with iconic and memorable features and character.

- The Town wants this site to serve as an attractive and vibrant destination for Town residents and visitors from nearby communities. The development should have its own identity and branding and serve as a destination. The Site is located near to the Air Line Trail and any proposal should take into consideration this relationship.

c. Linkages, networks, and circulation:

- Development that connects to surrounding neighborhood and Village Center

The Summit Thread site is centrally located between the Route 66 commercial corridor and the Village Center. It is also within close proximity to the Air Line Trail, Memorial School (K-3), and adjacent to Center School (4-5). Sidewalks are present throughout the Village Center and to the Route 66 corridor. Redevelopment of the Summit Thread site should include appropriate access to existing and upgraded sidewalks and accommodations for multi-modal use.

- Pedestrian and bicycle friendly
Circulation to and within the site should accommodate pedestrians and bicyclists. Where appropriate, there should be designated lanes for these users to travel safely within the development. Development should, where possible, facilitate pedestrian and bicycle traffic within the broader Village Center and the Air Line Trail, particularly to and from the downtown.

d. Environmental Responsibility:

- Environmentally conscious development

Environmentally conscious development may be measured by LEED standards or other sustainable building standards. It would include green materials and be sustainable. In addition, the town encourages low-impact development (LID) design techniques such as pervious surfaces, rain gardens, and other stormwater management techniques.

Environmentally sensitive principles would include, but not be limited to, promotion of health and safety through design and maintenance of the built environment; planting of native species; promotion of the smart use of water, inside and out, to

reduce potable water consumption; and reducing the environmental consequences of construction and operation of buildings and infrastructure.

e. Design/Development:

- Adherence to dimensional, design, and other requirements of the Village Center Zone and the Design Guidelines as required by the Design Review Board.
- Design/ Development Guidelines

Depending on the proposal, there are differing design guidelines. A prospective developer should refer to the Zoning Regulations Section 4.5 (Village Housing Overlay) if proposing a solely residential project, or Section 5.1 (Village Center Zone) for the any mixed use or solely commercial projects. General speaking, both regulations encourage development that pays homage to the industrial past while allowing for adaptive reuse of the properties.

V. Land Disposition Agreement

The Selected Developer(s) will be required to negotiate and enter into a Land Disposition Agreement with the Town within sixty days (60) days of the Developer(s') selection by the Town Council that will outline the agreement between the parties regarding the final project and land transfer approval process, projected timelines and other matters as deemed necessary by the parties.

VI. Submission Requirements.

Submission Timeline

1. Pre-Submission Meeting and Tour

A Pre-Submission Meeting/Site Tour will be held at 1 Watrous Street, on Tuesday, October 19 at 1:00 pm. At the Pre-Submission Meeting, Proposers will sign-in to memorialize their attendance and receive instructions for the Site Tour. Thereafter, Proposers will be given a tour of the Summit Thread Site. After the Site Tour, Proposers will be invited to a meeting where further questions of the Town can be asked by the Proposers and the questions will be memorialized and posted on the Town's website.

If the time is changed, the new date and time will be posted on the Town of East Hampton website. Prospective Proposers are strongly encouraged to confirm their attendance in advance of the Pre-Submission Meeting and Site Tour with the Town by email at csiros@easthamptonct.gov. This will be the only Site Tour provided by the Town.

2. Proposer Inquiries

Proposers may submit questions regarding this RFP to the Town of East Hampton. All such requests for information or clarification of the intent and content of any provision of this RFP and any other questions from Proposers regarding this RFP must be submitted via email to

csiroleis@easthamptonct.gov by Tuesday, October 26, 2021 at 4:00pm. All questions will remain anonymous. The Town will post answers to questions, without any identifiers as to the source of the question, as an addendum to the RFP on the Town website. No principal, employee or agent of any Proposer, or any person or firm which will participate in the preparation of the proposal or in the proposed development project, shall communicate in any manner about this RFP, or about the development of the Summit Thread site, with a member of the Selection Committee, the Town Council, the Planning and Zoning Commission, any Town employee or any of its consultants or representatives except through written questions as described above. Any violation of this requirement shall be grounds for disqualification.

3. Town Requests for Clarification

Subsequent to receiving the Proposals, the Town may request clarifications of the Proposers' Proposals. The Town reserves the right to contact individual Proposer team members to clarify their roles and to request additional information.

1. Submission Requirements

A proposal shall be comprised of a sealed envelope or package labelled "EAST HAMPTON SUMMIT THREAD PROPOSAL" and bearing the name of the Proposer, containing three distinct components, each sealed within a separate envelope or package and labelled respectively as follows: (1) QUALIFICATIONS STATEMENT; (2) DEVELOPMENT PROPOSAL; (3) FINANCIAL ANALYSIS & PRICE PROPOSAL.

Within each envelope, the Proposer should provide 10 hard copies and 1 electronic copy of the submission in the form of a flash drive titled "EastHamptonSummitThread Proposal_YourCompany". Proposals must be received by the Town of East Hampton by noon local time Friday, November 19, 2021 at the following address: Town of East Hampton, Office of the Town Manager, 1 Community Drive, East Hampton CT, 06424

- a. **Transmittal Letter.** Qualifications Statements shall include a transmittal letter identifying the Proposer, the principal(s) or officer(s) authorized to execute documents on behalf of each entity which is part of the development team, as well as a contact person from the Proposer authorized to receive communications from the Selection Committee or the Town.
- b. **Proposer Qualifications and Experience.** Qualifications Statements must include resumes for key individuals including the Project Principal and Project Manager, and of key individuals from the design team or other consultants included in the proposal. It is expected that these individuals will work on the proposed Summit Thread project should the team be selected. Resumes must describe the experience of the Proposer in the development of mixed-use projects of comparable size and scope to the proposed Summit Thread project. The Qualifications Statement should highlight such projects in New England, if any. For each project description, Proposers should describe the specific role(s) of the Proposer in the development, the project size, project cost, project location, date of project opening, and current occupancy rate.

- c. **Proposer Organizational Structure.** Qualifications Statements shall clearly identify each entity or individual that is a key member of the Proposer's team on this project and the roles to be played by each such team member. This can be included as an organizational chart and/or narrative format. If the Proposer is a joint venture, the Proposer must clearly identify, for each member of the joint venture, such member's share or interest in the financial or other benefits, risks or liabilities of the venture ("joint venture interest"). If a Proposer anticipates forming one or more entities which do not exist at the time of the proposal submission, but which would be formed in order to carry out the Proposer's development functions in the event the Proposer is selected pursuant to this RFP, the Qualifications Statements shall disclose such to-be-formed entities and describe their structure.
 - d. **Financial Capability of Proposer.** The Qualifications Statement shall include evidence of the financial capability of the Proposer, or other entity described in Paragraph c. above, to secure required financing. Such evidence may include financial statements attesting to the amount of working capital within the Proposer's control that is available for the project, documentation as to financing secured in connection with past projects of comparable size, letters of intent from financial institutions with respect to this project, bonding capacity, or other reliable evidence.
 - e. **Disclosure of Bankruptcies, Foreclosures, Liens, and Litigation.** The Qualifications Statement shall disclose all bankruptcies, foreclosures, liens pending or adjudicated within the past five (5) years, and a list of all lawsuits in which the Proposer was a party since January 1, 2010 along with the docket number, names of all parties in the lawsuit, the Memorandum of Decision, the Judgment and result of any appeal.
 - f. **Current Projects.** The Qualifications Statement shall include a list of current and suspended projects, including any project that (a) is currently under design or construction or has a permit application of any type pending; and any project that (b) has been paused or suspended or has not been completed for any reason, for which the Proposer sought within the last five (5) years any permit, variance, or zoning change on land under the Proposer's current control. For each project, the Proposer shall indicate the nature, location, scope, estimated cost, schedule (including dates of design completion, construction start, and substantial completion), current status of the project, and reasons for the pause, suspension, delay, or abandonment, if applicable.
 - g. **References.** The Qualifications Statement shall include references and their contact information (including telephone number and e-mail address) identifying in what capacity and on what projects each such reference became familiar with the work of the Proposer or key team members. References shall include two from lenders and/or institutional equity investors and two from municipalities in which the project type described above in (b.) have been built.
2. **Development Proposal: Conceptual Program and Plan**
- a. **Executive Summary.** The Development Proposal shall include an Executive Summary providing a description of the proposed development, the Proposer's approach to the design and execution of the project, and key features of the proposal.
 - b. **Conceptual Program and Plan.** Proposers shall submit a Conceptual Program and Plan (CPP) for the site. The CPP should include, but not be limited to, the elements of a pre-application

conceptual plan in accordance with the Village Center Zone, including the footprints of all buildings, areas that will be developed as green or open spaces, and general site improvements.

The CPP shall also contain:

A certification that the Proposer, if selected, will apply for the appropriate permits from the various agencies and Commissions as required based on the type of development proposed. It is a condition of this disposition that all development on the site shall be undertaken in accordance with all applicable State and Local codes, ordinances, and regulations;

A narrative which addresses each of the relevant design objectives in Sections 4.5 or 5.1 of the VHO or VC Zoning Regulations and each of the Design Guidelines for the area; Conceptual drawings of the proposed development, including representations of buildings, site improvements, green and open spaces, and other notable features;

A plan and narrative delineating streets, sidewalks, pathways, and green/open spaces, addressing for each such component depicted on the plan a proposed legal mechanism or combination of such mechanisms (e.g., easement conveyed to the Town, open space or public use restriction, conveyance of green space to Town or non-profit land preservation organization, street acceptance, etc.) for ensuring and preserving public access, public use and passage rights.

Enumeration in narrative form of each waiver, if any, which the Proposer intends to request pursuant to the Zoning Regulations of dimensional, design, parking, or other requirements of the VHO or VC zones. In the alternative, the Proposer may certify that it will, if selected, request no waivers;

An illustrative site plan demonstrating how uses will be distributed on the site; and

A Table of Site Uses detailing the number of units and square footage for each building or space type; number of buildings by use; number of parking spaces; number and square footage of public spaces; etc.

Plans and elevations should be submitted on a scale of 1" = 40'.

3. Financial Analysis and Price Proposal

- a. Financial Analysis. The Financial Analysis and Price Proposal shall contain a financial analysis that includes the proforma Development Costs (including design, construction, and financing costs) of the entire project and the projected income and expenses for the first ten years of occupancy in sufficient detail to evaluate the reasonableness of the projections. If insufficient detail is provided, or the Proposer on request fails to supplement the information submitted, the proposal may be rejected.
- b. Price Proposal. The envelope marked FINANCIAL ANALYSIS AND PRICE PROPOSAL shall contain, on the form provided in this RFP, the Proposer's price offer for the purchase of the

site. No price proposals will be considered until the Selection Committee has completed its evaluations and ranking of the Development Proposals. In the interest of developing the collaboration and partnership described in the Request for Proposals, the Town will consider non-cash proposals. Such non-cash proposals could be in the form of in-kind services provided to the Town for assistance in seeking and administering grants and overseeing environmental clean-up of the site, provision of appropriate environmental engineering services, development of off-site improvements, trades of appropriate and valuable land or other types of consideration.

4. Financial Guarantee

The proposer selected for development will be subjected to performance bonds in the form of either cash or letter of credit. The amount required will be determined based on the scope of the project and in accordance with Section 9.1.E of the Zoning Regulations.

VII. Selection

The Town Manager will appoint the following persons to serve as the Selection Committee for this RFP.

- One Town Council Member
- One Planning & Zoning Commission Member
- One Brownfields Redevelopment Agency Member
- One Economic Development Commission Member
- One Design Review Board Member
- Public Works Director
- Public Utilities Administrator
- Planning and Zoning Official
- Finance Director
- Town Manager

The Selection Committee will review and evaluate proposals in accordance with the procedures set forth herein. As described in Section VI above, Proposers must submit three separate envelopes (1) QUALIFICATIONS STATEMENT; (2) DEVELOPMENT PROPOSAL; and (3) FINANCIAL ANALYSIS & PRICE PROPOSAL.

Qualifications Statement Evaluation and Composite Rating. The Selection Committee will evaluate, and rate Qualifications Statements as described below ([see pages 19-22]) and may reject proposals from Proposers the Selection Committee deems unqualified. Proposers ranked “Unacceptable” in any of the minimum requirements under the Qualifications of Proposer section will be considered not to have met the minimum qualification requirements, be disqualified and not have their Development Proposal and Financial Analysis & Price Proposal reviewed.

After determining the rating for each criterion, the Selection Committee shall specify a qualifications composite rating of Highly Advantageous, Advantageous, or Not Advantageous and the reasons for the composite rating. A composite rating of Highly Advantageous will be awarded if the Selection Committee determines, considering its ratings on each of the underlying evaluation criteria, that it has a high level of confidence that the Proposer can develop the Summit Thread site, in accordance with its proposal, without significant risk to the Town. A composite rating of Advantageous will be awarded if the Selection Committee determines, considering its ratings on each of the underlying evaluation criteria, that it has reasonable confidence that the Proposer can develop the Summit Thread site, in accordance with its proposal, without significant risk to the Town. A composite rating of Not Advantageous will be awarded if the Selection Committee determines that it does not have a sufficient level of confidence to award an Advantageous rating.

Development Proposal Evaluation. All proposals that meet minimum Proposer qualification requirements, and that satisfactorily provide requested supplemental materials, will be reviewed, evaluated, rated and ranked by the Selection Committee based on the Development Proposal selection criteria described below ([see pages 19-22]). At any phase of the evaluation process, the Selection Committee will reject a proposal it finds to be non-responsive or has rated Unacceptable as to any evaluation criterion. Proposals will be reviewed and evaluated in each of the following categories: (a) Provision of Community Objectives, and (b) Adherence to Design Criteria/Vision. The Selection Committee will conduct a preliminary evaluation to identify proposals which, on their face, the Selection Committee determines to be Not Advantageous, Unacceptable, or non-responsive. The Selection Committee will reject such proposals without further consideration. After conducting the preliminary evaluation, the Selection Committee may elect, but is not required, to hear oral presentations. If the Selection Committee elects to hear oral presentations, each qualified Proposer whose proposal has not been rejected will be invited to make an oral presentation to the Selection Committee to introduce key personnel and highlight distinguishing features of their proposal. Oral presentations will be open to the public, but not for public comment. Members of the Selection Committee may ask questions at the oral presentations. Each of the Proposers' participants in its oral presentation is expected to be responsible for the work and active on the project if selected. Invitations to make an oral presentation will provide further instructions as to the time, place, duration, and topics of the presentations requested by the Selection Committee with respect to the specific proposal.

Composite rating for Development Proposal. After evaluating each proposal in accordance with the selection criteria, and after applying the composite rating for the Qualifications Statement as further explained below, the Selection Committee will specify in writing a single composite rating for each Development Proposal (Highly Advantageous, Advantageous, Not Advantageous, Unacceptable) and the reasons for the composite rating.

In determining a composite rating for a Development Proposal prior to considering the Financial Analysis & Price Proposals, the Selection Committee will be guided by the following rules:

1. No Development Proposal will receive a composite rating of “Highly Advantageous” unless it has received ratings of “Highly Advantageous” on a majority of the evaluation criteria.
2. No Development Proposal will receive a composite rating of “Advantageous” unless it has received ratings of “Advantageous” or better on a majority of the evaluation criteria.
3. A Development Proposal shall receive a composite rating of “Not Advantageous” if it has received ratings of “Not Advantageous” on three or more evaluation criteria, regardless of the rating received on the remaining evaluation criteria. The Selection Committee may specify a composite rating of “Not Advantageous” if the Development Proposal receives a rating of “Not Advantageous” on any criterion. No Development Proposal will receive a composite rating higher than the highest rating it receives on any evaluation criterion or lower than the lowest rating it receives on any evaluation criterion.

In determining the composite rating for a Development Proposal, the Selection Committee may take account of an Advantageous or Not Advantageous composite Qualifications Statement rating, if the Selection Committee determines that in its judgment such rating entails a lower level of confidence in the Proposer’s capacity to deliver on its proposal, in which case the Selection Committee may reduce the composite rating of the Development Proposal and specify its reasons for so doing. The composite rating previously determined for each Qualifications Statement will be applied to the evaluation of the Development Proposal as follows:

- If the Proposer has received a Highly Advantageous qualifications rating, the rating will not affect the rating or ranking of the Development Proposal.
- If the Proposer has received a qualifications composite rating of Advantageous or Not Advantageous, the rating or ranking of the Development Proposal may be negatively affected, based on the Selection Committee’s determination of the degree to which the underlying reasons for the Advantageous or Not Advantageous rating warrant a lower level of confidence in the Proposer’s capacity to deliver on its proposal. Based on a Not Advantageous rating, the Selection Committee may determine that its lower level of confidence is such as to warrant rejection of the proposal.

Ranking. The Selection Committee will rank the proposals in order of their advantageousness to the Town and specify reasons for their ranking. Proposals may be ranked as equal to one another (i.e., tied for placement in the ranking). In determining the ranking for a proposal, the Selection Committee may take account of an Advantageous or Not Advantageous Qualifications Statement rating, if the Selection Committee determines that in its judgment such rating entails a lower level of confidence in the Proposer’s capacity to deliver on its proposal.

Conditional ratings and rankings. When determining the Development Proposal composite rating and the ranking of a proposal, the Selection Committee shall specify in writing (a) revisions, if any, to the CPP and other elements of the proposal, and (b) a recommended increase, if any, in the proposed price which should be obtained by negotiation prior to executing a Land Disposition Agreement with the Proposer, and may condition the rating or ranking of the proposal on successful negotiation of the revisions specified, the recommended price increase, or both.

Financial Analysis & Price Proposal. Upon completion of the evaluation and ranking of Development Proposals, the Selection Committee will consider the Financial Analysis & Price Proposals.

The Financial Analyses will be reviewed before consideration of the Price Proposals. The Financial Analysis of each Proposer will be reviewed to ensure feasibility of the proposal. If a proposal is determined to be likely infeasible, it may be rejected, and the ranking of proposals will be adjusted accordingly.

The Selection Committee will then determine the most advantageous proposal from a responsible and responsive Proposer¹, taking into consideration price and the evaluation criteria set forth in this RFP ([see page 19-22]).

In making this determination, the Selection Committee will be guided by the following rules:

1. If the Proposer of the highest-ranked proposal has offered the highest price, to include cash and non-cash offers, that proposal will be deemed the most advantageous.
2. If the highest price has been offered by a Proposer whose proposal is not the highest-ranked, then the Selection Committee shall, starting with the highest-ranked proposal and thereafter in descending rank order, consider each successive proposal, taking into consideration price and the evaluation criteria, to determine which proposal is the most advantageous. As to each proposal so considered, the Selection Committee shall specify in writing its reasons for determining that such proposal is or is not the most advantageous.
3. In determining which proposal is most advantageous, the Selection Committee shall not recommend and need not further consider any proposal that has been ranked equal to or lower than the proposal for which the highest price has been offered.

Selection Committee Recommendation

The Selection Committee will recommend to the Town Council that the Town enter into the Land Disposition Agreement with the Proposer determined by the Selection Committee to have submitted the most advantageous proposal. The Selection Committee may elect instead to provisionally recommend a Proposer to the Town Council, conditioned upon the Proposer agreeing to the specific revisions to the CPP and other elements of the proposal, an increase in the proposed price, or both, as identified by the Selection Committee in writing to the Town Council.

Alternatively, the Selection Committee may recommend that the Town Council make a determination from two or more equally advantageous proposals, or that all proposals be rejected in the best interests of the Town.

¹ 1 "Responsible and responsive Proposer" as used herein means a Proposer who (a) has the capability to perform fully the requirements of this RFP and the Land Disposition Agreement, and the integrity and reliability which assures good faith performance, as determined by the Selection Committee pursuant to the selection process in this RFP; and (b) has submitted a proposal which conforms in all respects to this RFP.

The Town Council may accept the Selection Committee's recommendation; request the Selection Committee to conduct further evaluations; reject all proposals if the Town Council determines that doing so is in the best interests of the Town; or make a determination, in reliance upon the Selection Committee's ratings and ranking, that a different proposal is the most advantageous proposal from a responsible and responsive Proposer, taking into consideration price and the evaluation criteria set forth in this RFP.

If the Town Council accepts the Selection Committee's recommendation as to a proposal with respect to which the Selection Committee recommends negotiating specific revisions to the CPP and other elements of the proposal and/or an increase in the proposed price, the Town Council may condition an award on successful negotiation of the specified revisions and/or price increase prior to the execution of the Land Disposition Agreement. In authorizing such negotiations, the Town Council will rely on the Town Manager to conduct the negotiations. If the Town Council, acting through the Town Manager, is unable to successfully negotiate the specified revisions and/or price increase with the Proposer which has been provisionally recommended by the Selection Committee within thirty (30) days of the Selection Committee making such recommendation, then the Town Council may elect either to continue such negotiations or to proceed in accordance with the provisions of the previous paragraph.

Selection Criteria: Qualification of Proposer

The Selection Committee will conduct an initial review of Qualifications Statements and will deem Unacceptable and reject any which do not meet the following minimum requirements:

1. **Financing.** Demonstrated experience financing at least three mixed-use real estate projects of a size and scope comparable to the proposed Summit Thread project, or demonstrated experience obtaining financial commitments for such projects. The Proposer must demonstrate cash reserves or line of credit of not less than \$3 million and financial commitments, capacity to secure financing, and/or bonding capacity to complete the development of the Summit Thread site in a timely fashion as required by the Land Disposition Agreement. In addition, the Selection Committee will reject Qualifications Statements based on incomplete financial information, or evidence of financial instability or unreliability.
2. **Project development.** Demonstrated record of successfully developing three mixed-use real estate projects of comparable size and scope to the proposed Summit Thread project. In addition, the Selection Committee may reject Qualifications Statements based on incomplete information regarding projects or team members.
3. **Business history.** The Proposer, in substantially its current form of business organization, or as Joint Venture (JV) partner must have been in the commercial real estate development business for at least the past seven (7) years.
4. **Qualifications and experience of key personnel.** The Principal or Principals in charge, and the Lead Architect, shall each have not less than 10 years of experience, and the Project Manager and all other key personnel shall each have not less than seven (7) years of experience, in their respective areas of responsibility, and the Project Manager shall be a current employee of the Proposer (or, if the Proposer is a joint venture, of a member of the joint venture).

If a Proposer is a partnership or joint venture, the primary partner or member of the joint venture must meet the minimum standards stated in criteria (2) and (3) above regardless of the joint venture interest division. The minimum standards stated in criterion (1) above must be met by the partnership or joint venture. If the Selected Developer is a partnership or joint venture, the Land Disposition Agreement with the Town will provide that all partners or venturers thereof will be jointly and severally liable for the Proposer's obligations under the LDA.

The Selection Committee will evaluate Qualifications Statements which appear to meet the foregoing minimum requirements and shall specify in writing a rating of Highly Advantageous, Advantageous, or Not Advantageous for each of the following criteria, and the reasons for the rating.

In the course of conducting its evaluation of the Qualifications Statements, the Selection Committee may request a Proposer to submit further information reasonably related to any criterion. Such request shall be in writing or via electronic mail and shall set a reasonable deadline for submitting the information. The Selection Committee may disqualify a Proposer who fails to submit the requested information.

Evaluation Criteria. The Proposer's qualifications will be evaluated based on the following criteria:

- a. **Comparable experience of the Proposer (Project Examples of the Proposer).** The Selection Committee will rate highly Proposers which have successfully developed mixed-use real estate projects, including projects in New England, most closely similar in size, duration, complexity and sensitivity to the proposed Summit Thread project utilizing in key roles the key personnel and joint venturers (if any) identified in the Qualifications Statement.

"Highly Advantageous" if the Selection Committee finds that relevant projects identified by the Proposer as having been completed within the last 10 years are excellent in design and construction, and have achieved at least 90% occupancy; and that the Proposer has successfully developed one or more projects closely similar to the historically oriented, environmentally sensitive and architecturally outstanding development sought by this RFP.

"Advantageous" if the Selection Committee finds that relevant projects identified by the Proposer as having been completed within the last 10 years are excellent in design and construction, and have achieved at least 90% occupancy; that no single project undertaken by the Proposer is closely similar to the historically oriented, environmentally sensitive and architecturally outstanding development sought by this RFP, but that, taken together, the projects identified by the Proposer demonstrate a capacity to successfully undertake the development sought by this RFP.

"Not Advantageous" if the Selection Committee finds that the requirements for an Advantageous rating have not been met.

- b. **Qualifications and experience of key personnel.** The Selection Committee will rate highly Proposers whose key personnel have demonstrated extensive experience in successfully completing projects most closely similar in size, duration, complexity and sensitivity to the proposed Summit Thread project, performing roles and responsibilities similar to the roles and responsibilities proposed for such key personnel in the Qualifications Statement. Key personnel include, at minimum, Principal-in-Charge, Project Manager, and Lead Architect

“Highly Advantageous” if the Selection Committee finds that all key personnel are highly experienced and have each achieved excellent results.

“Advantageous” if the Selection Committee finds that not all key personnel meet the requirements for a rating of Highly Advantageous, but that nevertheless the Selection Committee finds that, taken together, the experience levels of key personnel demonstrate a capacity to successfully undertake the development sought by this RFP.

“Not Advantageous” if the Selection Committee finds that the requirements for an Advantageous rating have not been met.

- c. **Past performance/references of the Proposer, key personnel and joint ventures, if applicable.** The Selection Committee will rate highly Proposers (including their key personnel) which, in reference interviews, receive strongly positive and authoritative references regarding (i) compliance with the terms of their contractual obligations to municipalities and to lenders; (ii) demonstrated ability to effectively and professionally design, construct, and manage major mixed-use real estate development projects, including completed projects of high quality; (iii) cooperation and coordination with the owner and other project participants; and (iv) minimization of claims and disputes. The Selection Committee will also take account of the Proposer’s track record of timely prosecution and completion of recent and current projects.

“Highly Advantageous” if Proposers receive uniformly positive and authoritative references and demonstrate a record of timely prosecution and completion of recent and current projects.

“Advantageous” if Proposers generally receive positive references and demonstrate a record of timely prosecution and completion of recent and current projects, if the Selection Committee finds that, taken together, the references and record of performance on current and recent projects are indicative of a capacity to complete the proposed Summit Thread project effectively and professionally without significant risk to the Town’s interests.

“Not Advantageous” if the Selection Committee finds that the requirements for an Advantageous rating have not been met.

- d. **Qualifications, Experience and Quality of Design Firms working on the Project (Project Examples of Design Firm)** The Selection Committee will rate highly Proposers whose design firms/teams have designed projects, including projects in New England, similar in size, complexity and sensitivity to the proposed Summit Thread project.

“Highly Advantageous” if the Selection Committee finds that two or more relevant projects identified by the Proposer and attributable to the design firm are excellent in design, and that at least one such project is closely similar to the historically oriented, environmentally sensitive and architecturally outstanding development sought by this RFP.

“Advantageous” if the Selection Committee finds that two or more relevant projects identified by the Proposer and attributable to the design firm are excellent in design; that no single project designed by the design firm is closely similar to the historically oriented, environmentally sensitive and architecturally outstanding development sought by this RFP, but that, taken together, the projects identified by the Proposer and attributable to the design firm demonstrate a capacity to successfully design the development sought by this RFP.

“Not Advantageous” if the Selection Committee finds that the requirements for an Advantageous rating have not been met.

Selection Criteria: Development Proposal

After the Selection Committee has completed its review and rating of Qualification Statements, the Development Proposals, except for those previously rejected, shall be considered and shall be evaluated. The evaluations shall specify a rating, and the reasons for the rating, for each of the following criteria:

Provision of Community Planning Objectives

a. Neighborhood Context and Character of Development:

“Highly Advantageous”: Considered as a whole, the development described in the CPP would, in the judgment of the Selection Committee, be an attractive and vibrant destination for residents and visitors, with iconic and memorable features and character celebrating East Hampton’s history and distinguishing the site as a keystone of the Belltown Historic District, draw upon the East Hampton Plan of Conservation and Development (POCD), various village plans, and serve as a catalyst for the revitalization of the Village Center.

“Advantageous”: The development would be an attractive destination for residents and visitors, but without any particularly iconic or memorable features.

“Not Advantageous”: The development would likely draw residents and/or visitors but would offer little to distinguish it as the keystone of a uniquely East Hampton historic district.

“Unacceptable”: Does not qualify for a rating of “Not Advantageous.”

b. Linkages, networks, and circulation:

Pedestrian and Bicycle Experience, Connectivity to Surrounding Areas (including Village Center, Route 66, and Air Line Trail).

“Highly Advantageous”: Project design provides public access and improves the pedestrian and bicycle experience, connectivity to the Village Center, Route 66, and Air Line Trail.

“Unacceptable”: Project design makes no improvements to connections to surrounding areas.

Traffic Circulation

“Highly Advantageous”: The CPP provides public access and is fully consistent with the Zoning Regulations, Street Standards, or in the judgment of the Selection Committee provides an alternative of equal or superior benefit to the Town.

“Not Advantageous”: Does not qualify for a rating of “Highly Advantageous” but, in the judgment of the selection committee, would not impede the execution of the traffic improvement plan outside the boundaries of the site.

“Unacceptable”: Does not qualify for a rating of “Not Advantageous”.

c. Product Type

“Highly Advantageous”: The CPP includes significant components of all of the following categories of permitted uses: multifamily dwellings; retail sales establishment; and restaurants.

“Not Advantageous”: Does not qualify for a rating of “Highly Advantageous”.

“Unacceptable”: Consists wholly or predominantly of any of the following uses or a combination thereof: educational use, medical center or clinic; motel or hotel; business, professional or administrative office; private club; commercial parking lot or garage. This rating will be given even if the CPP contains significant components that would otherwise qualify as High Advantageous.

d. Environmental Responsibility:

“Highly Advantageous”: All buildings meet the requirements for LEED certification. In addition, incorporates low-impact development (LID) design techniques.

“Advantageous”: The largest building in the project meets the requirements for LEED certification. In addition, incorporates low-impact development (LID) design techniques.

“Not Advantageous: Incorporates low-impact development (LID) design techniques but building(s) do(es) not meet the requirements for LEED certification.

“Unacceptable”: Does not incorporate LID techniques.

Adherence to Design Objectives

a. Adherence to all dimensional, design and other requirements of the VC Zoning Regulation

“Highly Advantageous” The Proposer certifies and demonstrates that its CPP can be executed without the need for waivers and certifies that it will seek no waivers from the Zoning Board of Appeals.

“Advantageous”: The Selection Committee finds that, if one or more of the enumerated waivers is allowed by the Planning Board, the project would nonetheless be consistent with the overall

purposes and objectives of the VC, and further finds that the necessary waivers will allow the project to achieve a high quality design incorporating a desired mix of open space, affordability, a mix of uses, and/or physical character.

“Not Advantageous”: The Selection Committee finds that the proposal does not qualify for a rating of “Advantageous.”

b. Adherence to the VC Design Guidelines

“Highly Advantageous”: The Selection Committee finds that its CPP is fully consistent with the VC Design Guidelines.

“Advantageous”: The Selection Committee finds that the proposal is generally consistent with the Design Guidelines for the Rail Corridor, with deviations that do not significantly detract from the intent of the guidelines.

“Not Advantageous”: The Selection Committee finds that the proposal does not qualify for a rating of “Advantageous”.

Selection Criteria: Financial Analysis and Price Proposal

- a. **Financial Analysis.** The proforma analysis will be reviewed to ensure that the proposal provides evidence of strong financial and market feasibility and that there appears to be a high likelihood of obtaining key permits. If the analysis as reviewed by the Town provides evidence of limited or no financial and/or market feasibility, and/or there appears to be little likelihood of obtaining key permits, the proposal will be deemed Unacceptable.

b. Price Proposal

Rule for Award

The most advantageous proposal from a responsible and responsive Proposer will be selected, taking into consideration price and the evaluation criteria set forth in this RFP.

Post - Selection

Land Disposition Agreement Execution

Upon the Town’s notifying the Selected Developer that it has been designated the Selected Developer, the Town and the Selected Developer will without delay negotiate the final terms of the Land Disposition Agreement. Unless otherwise provided by written consent of the Town, the Land Disposition Agreement will be executed within sixty [60] days of the Selected Developer receiving this notification from the Town.

VIII. Reservations and Conditions

A. General Reservations

1. The Town makes no representations or warranties as to the accuracy, correctness, currency, and/or completeness of any and all of the information provided in or furnished pursuant to this RFP, or that such information accurately represents the conditions that would be encountered on the site and in the vicinity, now or in the future.
2. The Town reserves the right to extend, suspend, supplement, withdraw, or amend this RFP or this RFP selection process or schedule for any reason or for no reason at any time. The Town shall not be liable to any potential or actual Proposer, or to the Selected Developer, for costs or expenses incurred by them as a result of the issuance, extension, supplementation, withdrawal, or amendment of this RFP or the process initiated hereby.
3. The Town reserves the right to reject any proposal that does not include all requested components, that is not submitted in conformance with this RFP or any amendments thereto, or that contains responses to the submission requirements set forth in this RFP which are not satisfactory to the Town, or to reject any or all proposals, in its sole discretion, for any reason or for no reason. The Town further reserves the right to waive or decline to waive irregularities in any proposal when it determines that it is in the Town's best interest to do so, and to waive any defects in this RFP submission process when it determines such defects are insubstantial or non-substantive.
4. During the selection process, the Town reserves the following rights: to negotiate with one or more Proposers; to select a back-up Proposer; to waive portions of the RFP; to waive any informalities in proposals; to reject any or all proposals; and to issue a new Request for Proposals, for any reason deemed appropriate by the Selection Committee or Town Council.
5. In the event of any default by the Selected Developer hereunder, then in addition to the Town's other rights hereunder, the Town may proceed to select another Proposer as the Selected Developer, terminate this RFP, or begin a new selection process.
6. The Town reserves the right to discontinue its selection of any Proposer prior to the execution of the Land Disposition Agreement. The Town shall not be liable to any such Proposer for costs or expenses incurred by it as a result of this discontinuance.
7. The Town reserves the right to seek additional information from any or all Proposers. Until such time as the Town has received proposals in response to this RFP and has received any and all additional information and/or revised proposals that the Town may request pursuant to this RFP, such proposals shall not be deemed to be complete.
8. If any matter or circumstance under this RFP requires the consent or approval of the Town or that such matter be satisfactory to the Town, then same may be granted, withheld, denied or conditioned by the Town in the exercise of its sole and absolute discretion.
9. If the Selected Developer fails to execute the Land Disposition Agreement within the required 60-day period, or thereafter fails to close the transaction within the specified time period (other than by reason of a default thereunder by the Town), then the Town shall have the right, in addition to its rights with respect to the deposits paid by the Developer, to designate another Proposer as the Selected Developer, to re-advertise the site for sale or other disposition, to discontinue the disposition altogether, or otherwise to deal with the property in the Town's sole and absolute discretion.

B. Severability

If for any reason, any section or provision of this RFP or any addendum to it is determined to be illegal, invalid, or unenforceable under present or future laws or regulations, the remainder of this RFP shall not be affected thereby.

C. Conflict of Interest, Collusion

1. By submitting a proposal under this RFP, a Proposer certifies that no relationship exists between the Proposer and the Town or any officer, employee, or agent of the Town that constitutes a conflict of interest or that may be averse to the Town.
2. By submitting a proposal under this RFP, a Proposer certifies that it has not acted in collusion with any other Proposer or other entity doing business with the Town in a way that would constitute unfair competition or that may be adverse to the Town.
3. Note that "Proposer" as used herein means the Proposer; any joint venturer of the Proposer; any director, principal, officer, partner, owner of an equity interest in the Proposer, employee, agent or representative of the Proposer; or any partnership, corporation or other entity with which any of the foregoing is or has been affiliated.

D. Confidentiality

1. Proposers should assume that all materials submitted in response to this RFP will be open to the public. To the extent allowed by Connecticut and federal public records laws, the Town will make reasonable efforts not to disclose or make public any pages of a proposal which the Proposer has stamped or imprinted as "confidential." Confidential data will be limited to confidential financial information concerning the Proposer's organization. The Town assumes no liability for disclosure or use of any information or data.
2. All information submitted in response to this RFP becomes the sole property of the Town, with the exception of confidential financial information concerning the Proposer or its financial partners. No Proposer has proprietary rights to any ideas or materials submitted in its proposal.

E. Proposer's Responsibilities

1. All costs and expenses of every kind and nature paid or incurred by a Proposer in connection with responding to this RFP, including, without limitation, fees and costs of attorneys, consultants and contractors; title examination and title insurance costs; survey and engineering fees and expenses; and design fees and expenses, shall be the sole cost and expense of the Proposer, and the Town shall have no responsibility therefor. In no event shall the Town be responsible for payment of any brokerage, finders or similar commissions or fees in connection with the disposition of the property which is the subject of this RFP.
2. Proposers shall thoroughly familiarize themselves with the provisions of this RFP. Upon receipt of this RFP, each Proposer shall examine this RFP for missing or partially blank pages due to mechanical printing or collating errors. It shall be the Proposer's responsibility to identify and procure any missing pages.

3. Proposers shall be entirely responsible for reviewing and verifying all zoning and other regulatory requirements, title, environmental, engineering, and other information contained in or furnished pursuant to this RFP regarding the Property. Any information contained in or furnished pursuant to this RFP is included (or made available) as a matter of convenience only and the Town shall not be liable for any mistakes, costs, expenses, damages, or other consequences arising from use of or reliance on this information in any respect, and each Proposer, by submitting a proposal to the Town in response to this RFP, expressly agrees that it shall not hold the Town or any of its officers, agents, contractors, consultants, attorneys, or any third party liable or responsible therefor in any manner whatsoever.

IX. Appendices

Site Plans

Environmental Materials



To: The East Hampton Town Council,

The documentation for the tax refunds listed below is available in the Office of the Collector of Revenue for your review. There are thirty-three (33) refunds totaling \$4,377.36.

Respectfully Submitted,

Christh. Mannfeld, cmc

Kristy L. Merrifield, CCMC
Collector of Revenue

0.	514.05	28.18	1,879.04	17.27	17.27	234.37	200.97	445.96	463.87	22.67	15.47	3.11	13.25	19.54	22.09	12.31	12.31	25.07	27.16	31.79	22.67	20.59	22.52	20.59	22.52	19.03	34.59	20.59	15.97	25.31	14.92	125.30	7.01	4,377.36
----	--------	-------	----------	-------	-------	--------	--------	--------	--------	-------	-------	------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	--------	------	----------