

Section GC

GENERAL CONDITIONS

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GENERAL CONDITIONS

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GC. GENERAL CONDITIONS

GC.1 HEADINGS

The headings of the sections herein and in other parts of these Contract Documents are for convenience of reference only and shall have no bearing on their interpretation.

GC.2 NUMBERING OF SECTIONS

The sections herein and in other parts of these Contract Documents, except for the Standard and Supplementary Specifications, are numbered in three parts; the first part, a capital block letter or letters, designates the general portion of the Contract Documents as follows:

- NB. Notice to Bidders (Advertisement)
- P. Proposal and Consent of Surety
- IB. Information for Bidders
- GC. General Conditions
- SP. Special Provisions
- S. Standard Specifications
- SS. Supplementary Specifications

The second part, an Arabic numeral, denotes the article number of the general portion of the Contract Documents; and the third part, also an Arabic numeral, denotes the number of the section.

The Standard and Supplementary Specifications are an exception to the above rule. The Specifications are numbered in parts which denote the division, section, subsection and subpart of the New Jersey Department of Transportation Standard Specifications which are applicable or are being amended or added to by the provisions of the subject section, or may in some cases, denote entirely independent technical information not previously referred to in the Standard Specifications.

When a particular portion, section or article does not lend itself to or require such extensive division as outlined above, the second or even the first portion of the heading may be omitted. The heading numbering of the portions, articles and sections herein shall have no bearing on their interpretation.

GC.3 DEFINITIONS

Whenever in these Contract Documents the following terms and abbreviations or pronouns in place of them are used, their intent and meaning shall be interpreted as follows:

| | |
|----------|--|
| "AASHTO" | American Association of State Highway & Transportation Officials |
| "ACI" | American Concrete Institute |
| "AISC" | American Institute of Steel Construction |
| "APWA" | American Public Works Association |

| | |
|--------------|---|
| "ASA" | American Standards Association |
| "ASCE" | American Society of Civil Engineers |
| "ASTM" | American Society for Testing and Materials |
| "NEC" | National Electric Code |
| "NEMA" | National Electrical Manufacturers Association |
| "N.J.D.O.T." | New Jersey Department of Transportation |
| "L.S." | Lump Sum |
| "EA." | Each |
| "L.F." | Lineal Feet |
| "C.Y." | Cubic Yards |
| "S.F." | Square Feet |
| "S.Y." | Square Yards |

"BID" - The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the work to be performed.

"BIDDER" - Any individual, firm or corporation submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.

"CHANGE ORDER" - A written order recommended by the Engineer, which is signed by the CONTRACTOR and the OWNER authorizing an addition, deletion, or revision of the work, or an adjustment of the contract amount or contract time.

"CLERK" - The Clerk of the governing body, if the OWNER be a County or Municipality.

"CONTRACT" - The Agreement covering the performance of the work and the furnishing of materials in the construction of the work. The Contract shall include the "Proposal," "Contract Documents," "Plans," "Specifications," "Payment and Performance Bond," and "Notice to Bidders," and any and all supplemental agreements which reasonably could be required to complete the construction of the work in a substantial and acceptable manner.

"CONTRACT DOCUMENTS" - The Contract, Notice to Bidders, Proposal, Information for Bidders, General Conditions, Special Provisions; Specifications, Standard and Supplementary; Drawings, Addenda and Modifications.

"CONTRACTOR" - Party of the second part to the contract, acting directly or through his agents or employees.

"ENGINEER" - Whenever the word Engineer is used in reference to the work or any part thereof in these Specifications or the Contract, it shall be understood to apply and refer to the professional engineering representative of the OWNER, duly authorized to represent the OWNER in the execution of the work covered by the Specifications and Contract. The term "Engineer" or the pronouns used in place thereof shall refer to acting either directly or through assistants under the Engineer, limited to the particular duties entrusted to them. If the Engineer is not the preparer of the Contract Documents, the OWNER shall determine the division of responsibility between the preparer of the documents and the OWNER'S construction phase representative.

"INSPECTOR" - An authorized representative of the ENGINEER assigned, under the supervision of the Engineer, to the inspection of the work.

"MODIFICATION" -

- a) A written amendment of the Contract Documents signed by both parties,
- b) a change order, or
- c) a written clarification or interpretation issued by the Engineer.

"OWNER" - A public body or authority, association, partnership, corporation or individual for whom the work is to be performed; the party of the first part in the Contract.

"PAYMENT AND PERFORMANCE BOND" - The approved form of security furnished by the CONTRACTOR and his Surety as a guaranty of the CONTRACTOR and his surety that all lawful work will be performed and all lawful claims paid in accordance with the terms of the Specification and Contract.

"PLANS" - All drawings, or reproductions of drawings, pertaining to the construction of the project.

"PROJECT"- The design or scheme used and set forth on the plans and to be carried out by the specifications in order to complete the work in a manner satisfactory to the OWNER.

"PROPOSAL" - The approved prepared form on which the Bidder will or did submit his, their or its prices for the work contemplated.

"PROPOSAL SECURITY" - The security designated in the proposal, to be furnished by the Bidder as a guaranty of good faith to enter into a contract with the OWNER if the work is awarded to him.

"ROADWAY" - That portion of the highway included between the gutter or side ditch lines, reserved for the accommodation of the traveling public, and its appertaining structures and slopes, and all ditches, channels, waterways, etc., necessary to its correct drainage.

"SPECIFICATIONS" - The directions, provisions and requirements contained herein, together with all written agreements, made or to be made, pertaining to the method and manner of performing the work, or to the quantities and qualities of materials to be furnished under the contract.

"SUBCONTRACTOR" - An individual, firm or corporation having a direct contract with the CONTRACTOR or with any other subcontractor for the performance of a part of the work at the site.

"SURETY" - The corporate body which is bound with and for the CONTRACTOR who is primarily liable and which engages to be responsible for his payment of all debts pertaining to and for his acceptable performance of the work for which he has contracted.

"WORK" - Any and all obligations, duties and responsibilities necessary to the successful completion of the project under the Contract Documents, including the furnishing of all labor, materials, equipment and other incidentals.

"WORKING DAY" - A calendar day, exclusive of Saturdays, Sundays, and Legal Holidays, on which, in the sole opinion of the Engineer, weather and working conditions permit the CONTRACTOR to make effective use, during normal working hours, of not less than one-half of his normal current daily man-hours.

GC.4 CONTRACT DOCUMENTS

GC.4.1. DESCRIPTION OF CONTRACT DOCUMENTS

The Contract Documents consist of the Contract, Notice to Bidders (Advertisement), Proposal, Information for Bidders, General Conditions, Special Provisions, Standard Specifications, Supplementary Specifications, Plans, Addenda and Modifications.

GC.4.2. SEQUENCE OF PRECEDENCE

In the case of conflict between the various parts of the Contract Documents, they shall be interpreted; (a) to require the higher, in terms of quality of materials and workmanship, of the possible interpretations, and (b) in accordance with this sequence of precedence:

- a. Contract Agreement
- b. Addenda, Bulletins, Changes of Plan
- c. Details
- d. Drawings
- e. Special Provisions
- f. Supplementary Specifications
- g. Standard Specifications (Technical Only)
- h. Standard General Conditions
- i. Information for Bidders

In case of discrepancies between calculated and scaled dimensions on the plans, the calculated dimensions shall govern.

GC.4.3. OWNERSHIP OF DOCUMENTS

All Contract Documents and copies thereof are furnished by the Engineer for use only on the project herein described and, with the exception of those sets which have been signed in connection with the execution of the Contract, shall at all times remain the property of the Engineer. They shall not be used in connection with any other project. Except for use as intended in connection with the project, the ENGINEER asserts an exclusive copyright.

GC.5 INTENT OF CONTRACT DOCUMENTS -
DESCRIPTION OF COMPLETE PROJECT

It is the intention of the Contract Documents to describe a complete project to be constructed in accordance with all the requirements therein notwithstanding that each and every item required may not be shown on the drawings or mentioned in the specifications. The Contract Documents comprise the entire agreement between the OWNER and the CONTRACTOR and may be amended or added to only as herein described.

GC.6 DOCUMENTS ARE COMPLEMENTARY

The Contract Documents are complementary; they are to be considered as one instrument; the intent is to make them explanatory one of the other. No sections thereof or any papers attached to or bound with the Contract Documents shall be detached as each one is a necessary part thereof.

GC.7 OWNER TO FURNISH PLANS AND SPECIFICATIONS

The OWNER will furnish or cause the Engineer to furnish the CONTRACTOR with two (2) complete sets of Plans (paper prints) and two complete sets of other Contract Documents after the execution of the contract agreement. Additional sets of plans or Contract Documents will be furnished the CONTRACTOR upon application, at the cost of reproduction.

When Plans are revised or supplemental drawings are prepared, two (2) copies of such revisions or supplements shall also be furnished the CONTRACTOR for inclusion with the previously issued plans.

GC.8 CONTRACTOR TO REVIEW PLANS

The CONTRACTOR shall be assumed to have reviewed all plans, drawings, details and schedules for conflicts or discrepancies. He shall notify the Engineer of any and all conflicts or discrepancies therein for interpretation and correction and/or revision as necessary.

The CONTRACTOR will be deemed to have fully examined the plans and Contract Documents during the preparation of his Proposal and to have been aware of and have made allowances therein for any such discrepancies; consequently, no additional compensation on account of any such discrepancy will be due the CONTRACTOR in excess of the amounts scheduled in his Proposal.

GC.9 WORK TO BE PERFORMED

The work of the Contract comprises the performance and completion of the project, including the furnishing of all materials, equipment, transportation, labor and all else necessary therefore and incidental thereto and final cleaning up, payment of all due obligations and the replacement of any defective work or materials all as herein provided.

GC.10 QUALITY OF WORK REQUIRED

GC.10.1. MATERIALS REQUIRED

Unless otherwise provided, all materials shall be new and shall be of domestic manufacture. All materials required for the work, unless otherwise provided, shall be provided by the CONTRACTOR and shall be subject to the Engineer's approval before and/or after delivery and before and/or after incorporation into the work.

GC.10.2. EQUIPMENT REQUIRED

All bidders should familiarize themselves with the requirements herein regarding the equipment required for the proper execution of the work. All equipment used shall, in the opinion of the Engineer, be proper for the work to be performed. No equipment which, because of its weight or dimensions, will cause damage to public or private property shall be allowed.

GC.10.3 WORKMANSHIP REQUIRED

All workmanship shall be, in every respect, in accordance with the best current practice. Only skilled craftsmen, fully qualified in the various disciplines required, shall be used on the work.

GC.10.4 EQUIVALENT OR "OR EQUAL" ITEMS

Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no equivalent is permitted, materials or equipment of other suppliers may be accepted. If the CONTRACTOR wishes to furnish or use a proposed equivalent, the CONTRACTOR will be required to show, to the satisfaction of the Engineer, that the proposed equivalent will perform adequately the duties required by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. No equivalent shall be used without the written permission of the Engineer, who shall be the sole judge of equality. No changes will be made in the basis of payment nor in the contract time as a result of the use of the authorized equivalent items. When the Contract Documents permit the selection of more than one type of material, equipment or product, only one type shall be used on the project.

GC.10.5 SUBSTITUTE ITEMS

If the CONTRACTOR wishes to furnish or use a substitute item of material or equipment, the CONTRACTOR shall make written application to the Engineer for approval thereof, certifying that the proposed substitute, although not equivalent or equal to that specified, performs adequately the functions and achieves the results called for by the general design, and is suited to the same use as that specified. The application shall state that the evaluation and approval of the proposed substitute does not prejudice the CONTRACTOR'S achievement of completion on time. It shall also state whether or not approval of the proposed substitute for use in the Work requires a change in any of the Contract Documents to adapt the design to the proposed substitute, and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application, and available maintenance, repair, and replacement service shall be indicated. The application shall also contain an itemized estimate of all costs that result directly or indirectly from approval of such substitute, including costs of redesign, all of which will be considered in evaluating the proposed substitute. The Engineer may require the CONTRACTOR to furnish additional data about the proposed substitute.

If specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Contract Documents, the CONTRACTOR may furnish or use a substitute means, method, technique, sequence, or procedure of construction which is acceptable, if the CONTRACTOR submits sufficient information to allow the Engineer to determine that the substitute proposed is an acceptable substitute to that indicated or required by the Contract Documents. The procedure for review by the Engineer is to be similar to that described in the previous paragraph.

The Engineer is to be allowed a reasonable time within which to evaluate each proposed substitute. The Engineer will be the sole judge of acceptability, and no substitute shall be ordered, installed, or used without approval. If approval is given, it is on the condition that the CONTRACTOR is fully responsible for producing Work in conformity with Contract requirements. If, after trial use of the substituted materials, equipment, means, method, technique, sequence, or procedure of construction, the Engineer determines that the Work produced does not meet Contract requirements, the CONTRACTOR shall discontinue the use of the substitute and shall complete the remaining Work with

the specified materials, equipment, means, method, technique, sequence, or procedure of construction. The CONTRACTOR shall remove the deficient Work and replace it as specified, or take such other corrective action as the Engineer may direct.

No increase will be made in the basis of payment for the Pay Items involved, nor in the Contract Time as a result of authorized substitutes. The OWNER may condition approval of a substitute on an equitable decrease in the basis of payment for the pay items involved if, in the opinion of the Engineer, the function of the substitute is acceptable although it is not of equal substance or may entail greater long term cost to the OWNER. The Engineer may require the CONTRACTOR to furnish at no cost to the OWNER a special performance guarantee or other surety with respect to any substitute. The Engineer will document the time expended in evaluating proposed substitutions and in making changes in the Contract Documents including determining that a proposed substitute is unacceptable. The CONTRACTOR shall reimburse the OWNER for such cost unless the OWNER, in consideration of any benefits related to the substitution, waives any part of such reimbursement.

GC.11 COOPERATION WITH OTHERS

GC.11.1. WORK OF OTHER CONTRACTORS

The right is reserved by the OWNER to do work with its own employees or by other contractors and to permit public utility companies and others to do work during and within the limits of, or adjacent to, the project. The CONTRACTOR shall conduct his work so as to cause as little interference with the work of such other contractors as possible.

GC.11.2. REQUIREMENTS OF OTHER BODIES

Certain work to be done incidental to this contract may be required by persons, municipalities or bodies other than the OWNER. Plans, specifications or other available detail information, such as is in the possession of the OWNER, will be placed on file for the bidder's reference.

All such filed data, if any, is only for the guidance of the CONTRACTOR, who may use such data at his discretion. No responsibility is assumed by the OWNER, the Engineer, or their agents, as to the completeness or accuracy of the data, or for the acceptance of the work.

The CONTRACTOR shall be responsible for the approval and acceptance of work that is to meet the requirements of persons, municipalities or bodies other than the OWNER. The work may include, but shall not be restricted to, replacement of sidewalks, curbs, pavement or utilities, as well as other incidental work required to complete the Contract.

GC.11.3. DISPUTES CONCERNING NON-COOPERATION

It is agreed that, the Engineer is vested with the authority to render a judgement of fault insofar as the interference, if any exists, is occasioned by the CONTRACTOR or by any of his subcontractors or agents or by the OWNER. Such decision of the Engineer shall be binding and conclusive on any party to the Contract.

GC.12 CONTRACTOR'S PERSONNEL

GC.12.1. CONTRACTOR'S SUPERINTENDENCE

The CONTRACTOR shall attend to the work personally or through a competent, English-speaking superintendent, or competent designee, who shall be continually present on the project site whenever work is in progress. Such a superintendent or designee shall be satisfactory to the Engineer and, except in extraordinary circumstances, shall not be removed or replaced without due notice being given the Engineer. The superintendent or designee shall have full authority to act for the CONTRACTOR without the need to consult any higher level of authority.

GC.12.2. CONTRACTOR'S EMPLOYEES

All workers must be competent and fully qualified in the type of work to be performed. The Contractor will remove from the work any employee who is found by the Engineer to be incompetent, or who is performing work in an unworkmanlike manner or contrary to the Specifications or the Engineer's instructions, or who is disorderly.

GC.12.3. WORK FORCE TO BE SUFFICIENT

The quality of superintendence and the number of workers employed on the site of the work shall, in the opinion of the Engineer, be sufficient to complete the project within the stipulated time. No progress payments due or becoming due during this project shall be certified for payment for as long as any CONTRACTOR may be held in violation of the terms of this section.

GC.12.4. CERTAIN EMPLOYMENT PROHIBITED

Neither the CONTRACTOR nor any subcontractor shall engage, on any basis, during the period of this Contract any of the professional, technical or administrative personnel of the OWNER or Engineer who are, or have, since the date of advertising, been employed by the OWNER or Engineer, or who have participated in the planning or design of the project, without the written consent of the OWNER.

GC.13 CONTRACTOR'S WORKING FACILITIES

GC.13.1. WORKING SITE - ADDITIONAL RIGHTS OF WAY

The OWNER will provide land, easements or rights of way for the work within the limits designated on the plans. The CONTRACTOR shall not enter or occupy any land outside of the limits so designated on the plans without first obtaining the written consent of the property owner(s) which shall hold harmless the OWNER and Engineer from any costs or damages resulting from the CONTRACTOR'S use of the property. It shall be the CONTRACTOR'S responsibility to insure that his proposed use of such lands conforms to all applicable provisions of the local zoning ordinance. A copy of the written consent of the property owner(s) shall be filed with the Engineer. Upon completion of the work, including all cleanup and restoration, the CONTRACTOR shall obtain a written release from the owners of all lands used, and file such release or releases with the Engineer.

The CONTRACTOR shall become familiar with the rights of way provided as indicated on the plans. The CONTRACTOR shall make all necessary arrangements for additional rights of way required by the CONTRACTOR such as for storage of equipment and material. No further payment will be made for additional rights of way other than that included in the unit prices bid for the construction work.

GC.13.2. TEMPORARY UTILITIES

The CONTRACTOR shall furnish, at the CONTRACTOR's own expense, an adequate supply of water, electric power and telephone service as required in the performance of the work. The CONTRACTOR shall furnish and install all temporary connections, meters and other appurtenances, shall conform to all requirements of the utility companies, and shall pay all expenses and charges incidental thereto.

After the completion of the work, the temporary facilities shall be removed by the CONTRACTOR. The CONTRACTOR shall provide sufficient artificial lights so that all work may be done in a workmanlike manner when or where there is not sufficient daylight.

GC.13.3. SANITARY FACILITIES

The CONTRACTOR shall provide and maintain, in a strictly sanitary manner, and at the CONTRACTOR's own expense, toilet facilities for himself and his workers, which shall be screened from public view. The location thereof and the method of waste disposal shall be subject to the approval of the Engineer. The CONTRACTOR shall observe and enforce all sanitary regulations and maintain satisfactory conditions on all parts of the work.

GC.14 REPLACEMENT OF SURVEY MARKERS

When any monument, whether of stone, concrete, wood or metal or a mark on a structure, designating the lines of the streets or highway or of private property, is in the line of any excavation or other construction work and may have to be removed, the CONTRACTOR shall notify the Engineer in writing at least twenty-four (24) hours in advance. Under no circumstances shall such monument be removed or disturbed by the CONTRACTOR or by any of his workers without the permission of the Engineer. Should any such monument, before the Engineer has had the opportunity to provide for the replacement, be destroyed through accident or neglect, the CONTRACTOR will be required, at his own expense, to employ a licensed professional surveyor, acceptable to the Engineer, to re-establish such points and will replace same at least equivalent to their original condition.

GC.15 USE OF COMPLETED SECTIONS OF THE WORK

The Engineer may order completed or partially completed but previously unused sections of the work to be placed in operation prior to the acceptance of the entire project. Unless otherwise provided herein, the maintenance of such sections of the project shall be the responsibility of the OWNER, who shall also be responsible to the CONTRACTOR for any additional costs occasioned by such opening. The Engineer shall have, and is hereby agreed to have, the final authority in the determination of such additional costs. This section does not apply to reconstruction of existing facilities.

GC.16 FINAL CLEANING UP

Before the final acceptance of the work, the CONTRACTOR shall remove all equipment, temporary work, unused and useless materials, rubbish and temporary buildings, shall repair or replace in an acceptable manner any private or public property which may have been damaged or destroyed on account of the prosecution of the work, shall fill all depressions and water pockets on public or private property caused by his work, shall clean all obstructions from waterways caused by his work, shall clean all drains, sewers and ditches within and adjacent to the work which have been obstructed by his operations, and shall leave the site and adjacent public and private property in a neat and presentable condition wherever his operations have disturbed conditions existing at the time of starting the work. When required by the Engineer to do so, the CONTRACTOR shall

procure and submit to the Engineer signed statements from affected property owners that he has fulfilled his obligations with regard to their respective properties.

GC.17 ENGINEER'S STATUS DURING CONSTRUCTION

Unless the OWNER designates an alternate representative, the Engineer shall be the OWNER's representative during the construction period. All instructions of the OWNER to the CONTRACTOR shall be issued through the Engineer. The Engineer shall make periodic visits to the site of the work to observe the progress and quality of the executed work to determine, in general, if the work is proceeding according to the Contract Documents. The Engineer shall not be required to make continuous or exhaustive on-site inspections nor shall the Engineer be responsible for construction means, methods, techniques, sequences or procedures, or the safety precautions incidental thereto. On the basis of the Engineer's on-site observations as an experienced and qualified design professional, the Engineer shall keep the OWNER informed of the progress of the work and will endeavor to guard the OWNER against defects and deficiencies in the completed work.

If the OWNER and Engineer agree, the Engineer shall provide one or more Project Representatives (Inspectors) to assist the Engineer in carrying out the Engineer's responsibilities at the project site. Such representatives are to be provided at the OWNER's expense.

GC.18 ENGINEER'S DECISIONS AND ORDERS

GC.18.1. WORK TO SATISFY ENGINEER

The quality of the work provided for herein shall be acceptable to the Engineer, and the Engineer's decision upon all questions relating to the quality and acceptability of the work performed shall be final and binding.

GC.18.2. CLARIFICATION AND INTERPRETATIONS (POST-BID)

The Engineer shall issue, with reasonable promptness, such written clarification or interpretations of the plans or specifications as he may determine necessary for the proper execution of the work. Such clarifications must be consistent with the overall intent of the Contract Documents and shall be binding upon all parties to the Contract.

GC.18.3. ENGINEER TO DECIDE PAYMENT DISPUTES

The Engineer shall determine the amount and quality of the work performed and of the materials furnished which are to be paid for under the Contract. Any such decision shall be final and conclusive and, in case any question may arise, shall be a condition precedent to the right of the CONTRACTOR to receive any money due under the Contract, or to the right of the OWNER to withhold amounts due.

GC.19 ENGINEER'S FIELD OFFICE

On all projects where the item "Engineer's Field Office" is scheduled in the proposal, the CONTRACTOR shall provide a field office, for the exclusive use of the Engineer and inspectors, meeting the minimum requirements set forth in the Special Provisions. Such a field office shall be made available, fully equipped, within ten (10) days of starting work on the project and shall be maintained a minimum of thirty (30) days and a maximum of ninety (90) days following final acceptance of the work.

GC.20 INSPECTION AND TESTING PROCEDURES

GC.20.1. THOROUGH INSPECTION REQUIRED

The OWNER contemplates and will require, and the CONTRACTOR agrees to, thorough inspection of the work by the OWNER, the Engineer or their representatives. Such inspection may include, but is not limited to, all labor performed and materials furnished, delivered or intended to be used in the work and including their manufacture, fabrication, installation and testing.

GC.20.2. ACCESS TO THE WORK

The CONTRACTOR shall furnish the Engineer with every reasonable facility for ascertaining whether or not the work is performed is in accordance with the requirements and intent of the Contract Documents.

The OWNER or the Engineer shall have the right to inspect all work done and all materials furnished either in the field or at the point of manufacture. The CONTRACTOR shall furnish or cause to be furnished to the Engineer safe access at all times to the places where preparation, fabrication or manufacture of materials and/or construction of the work is in progress.

When the Engineer or the Engineer's representative is in or about the premises mentioned above in the course of the Engineer's duties, the Engineer shall be deemed conclusively to be an invitee of the CONTRACTOR. If the CONTRACTOR is not the owner of the premises mentioned above, the owner thereof shall be deemed an agent of the CONTRACTOR with respect to the obligation assumed hereby. The CONTRACTOR or his agent, as described above, shall be liable for the payment of claims for injuries to the Engineer or his representative due to negligence on the part of the CONTRACTOR or his agent.

GC.20.3. COVERING UNINSPECTED WORK

If any work be buried, covered or otherwise concealed prior to inspection or otherwise contrary to the orders and direction of the Engineer and such work is not subject to testing and approval by any acceptable alternate method, it must, if required by the Engineer, be uncovered for examination. Such uncovering and all necessary restoration, regardless of the final acceptability of the work uncovered, shall be at the expense of the CONTRACTOR.

GC.20.4. UNCOVERING COMPLETED WORK

The Engineer, with the approval of the OWNER, may order the uncovering of any completed portion of the work at any time prior to acceptance regardless of the degree of inspection initially provided and regardless of any prior approvals. If, after examination, such uncovered work is found to be in accordance with the Contract Documents, then all expenses involved in the uncovering, examination, testing and restoration shall be borne by the OWNER. If such uncovered work does not meet the requirements of the Contract Documents, then all expenses involved, including the correction of all deficiencies in the work, shall be borne by the CONTRACTOR.

GC.20.5 INSPECTORS

The work shall be conducted under the general inspection of the Engineer who may be assisted by such Inspectors as the OWNER and the Engineer may agree to employ. (See Section GC.17.)

Inspectors are stationed on the site of the work to represent the Engineer and to report to the Engineer concerning the progress of the work and the quality of workmanship and materials being furnished. Such Inspectors shall inform the Engineer and the CONTRACTOR when it appears that work being performed and/or the materials being furnished do not conform to the requirements of the Contract Documents. Such inspection, if provided, shall not relieve the CONTRACTOR of the basic responsibility to furnish materials and perform work in complete accordance with the requirements of the Contract Documents.

The Inspector may not order extra or additional work, revoke, alter, enlarge, relax or release any requirements of the Contract Documents or issue instructions contrary to the Contract Documents.

If disputes arise between the Inspector and the CONTRACTOR relating to the acceptability of the work, the Inspector is authorized to reject the work involved and to notify the CONTRACTOR that further work on the portions of the project involved is unauthorized and subject to non-payment until the question at issue can be referred to and decided by the Engineer.

GC.20.6. TESTING MATERIALS

Except as may be provided elsewhere, tests or analyses of materials which are usually tested after delivery to the site, such as concrete aggregates, mixed and placed concrete, and similar materials, will be performed by the Engineer or testing laboratories which will be approved by the Engineer and selected and paid for by the OWNER. The preliminary testing of concrete mixtures and tests or analyses of other materials, samples of which are to be submitted prior to delivery, will also be performed by the laboratory and paid for by the OWNER. The CONTRACTOR shall furnish all labor and material and otherwise make provisions for the collection and undisturbed storage of all samples of materials as required and directed by the Engineer. The OWNER will furnish necessary sampling equipment and containers, and transport all samples from the site to the laboratory.

If the Engineer orders sampling and analyses or tests of materials which are usually accepted by certification of the manufacturer, but which appear defective or non-conforming to the requirements of the Specifications, the OWNER will bear the reasonable costs of sampling, transportation, tests and analyses if the material is found to be sound and conforming to the specifications. The CONTRACTOR shall bear all costs if the material is found to be unsound and/or non-conforming to the specifications.

GC.20.7. CERTIFICATES OF MANUFACTURER

For raw or manufactured materials or products which are normally tested in the shop by the manufacturer, the CONTRACTOR shall furnish the Engineer three (3) copies of certified records of physical, chemical and other pertinent tests, and/or certified statements from the manufacturer that the materials have been manufactured and tested in conformity with the Specification. Where such a small quantity of material is required as to make physical tests or chemical analyses impractical, a certificate from the manufacturer stating the results of such tests or analyses of similar materials which were concurrently produced, may, at

the discretion of the Engineer, be considered as the basis for the acceptance of such materials.

GC.21 CONTROL OF THE WORK

GC.21.1. UNAUTHORIZED OR DEFECTIVE WORK

Any materials or work unauthorized or found to be defective, or not in strict conformity with the requirements of the drawings and Specifications or defaced or injured by action of the CONTRACTOR or his subcontractors or employees or others, or through action of fire, the weather or by any other cause, shall be removed immediately and new materials or work substituted therefore without delays by the CONTRACTOR.

No previous inspection or partial payment shall be held as an acceptance of defective work or materials or to relieve the CONTRACTOR from the obligation to furnish sound materials and to perform good satisfactory work. The Engineer is to be the final judge of the materials and work furnished.

If the OWNER deems it inexpedient to correct work damaged or not completed in accordance with the contract, the difference in value between such work and that specified, together with a fair allowance for damage, shall be deducted from the Contract price.

GC.21.2. SUSPENSION OF WORK - CONTRACTOR NOT AT FAULT

Regardless of any fault on the part of the CONTRACTOR, the OWNER shall have the authority to suspend the work wholly or in part, for such period or periods as it may deem necessary. If it should become necessary to stop work for such an indefinite period, the CONTRACTOR shall store all materials in such a manner that they will not obstruct or impede the traveling public unnecessarily nor become damaged in any way, and he shall take every precaution to prevent damage or deterioration of the work performed, provide suitable drainage of the site by opening ditches, shoulder drains, etc., and erect temporary structures where necessary. The CONTRACTOR may not suspend the work without written authority.

During the suspension of work due to any cause whatsoever, when deemed necessary by the OWNER, the entire work under contract or any section thereof, shall be thrown open to use, and the CONTRACTOR shall place any such section in satisfactory condition for use without additional compensation. The CONTRACTOR shall be responsible for the satisfactory maintenance of any such section of work thrown open to use prior to its final acceptance.

When work is suspended as herein provided, payments for completed portions of the work will be made as hereinafter provided for normal progress payments and a suitable extension of time for completing the suspended work will be made. No other compensation or allowance will be made on account of such suspension unless it be for more than fifteen (15) days, except as may be provided by NJSA 40A:11-19.

Should the suspension exceed fifteen (15) days and should the CONTRACTOR have additional expenses on account thereof, he shall have the right to file with the OWNER a statement of such additional expense and if the OWNER deems such statement proper, the CONTRACTOR will be reimbursed therefore, provided:

- a. That the statement of additional expense is filed within fifteen (15) days of the conclusion of the period of suspension in question;
- b. That the statement of additional expense includes no charges occurring during the first fifteen (15) days of any suspension; and

- c. That no charges are made by the CONTRACTOR for any work performed during the period of suspension.

If the period of suspension exceeds one year, the OWNER will, upon the request of the CONTRACTOR, annul the Contract as hereinafter provided.

GC.21.3 SUSPENSION OF WORK - CONTRACTOR AT FAULT

The OWNER shall have the right to suspend the whole or any part of the work if the CONTRACTOR'S performance, in the opinion of the Engineer, is not in accordance with the provisions of the Contract Documents. This non-performance may include, but not be limited to, failure in the requirements of maintenance and protection of traffic, drainage and subsurface utilities, erosion control and public safety and convenience.

If it does become necessary to suspend the work, the CONTRACTOR shall, at the CONTRACTOR'S expense, repair all streets, sidewalks, etc. that have been excavated so that they are in such a condition that the traveling public may safely pass. All materials shall be stored so as not to obstruct or impede traffic.

The CONTRACTOR shall make no claims for delays caused by this suspension. No extension of time will be granted by the OWNER, and once the work is allowed to continue, the CONTRACTOR shall complete the work within the time permitted by the Contract.

GC.21.4. ANNULMENT OF CONTRACT

If the CONTRACTOR shall be adjudged bankrupt or make an assignment for the benefit of creditors; or if a receiver or liquidator shall be appointed for the CONTRACTOR or for any of the CONTRACTOR'S property and shall not be dismissed within twenty (20) days after such appointment, or the proceedings in connection therewith shall not be dismissed within twenty (20) days after such appointment, or the proceedings in connection therewith shall not be stayed on appeal within the said twenty (20) days; or if the CONTRACTOR shall fail or refuse to regard laws and ordinances, and such orders as may from time to time be given by the Engineer with respect to the work; or if the CONTRACTOR shall assign or sublet the work other than as herein specified or if the CONTRACTOR fails in doing the work as specified, or fails to perform the work with sufficient materials to ensure the prompt completion of said work, or shall perform the work unsuitably or shall neglect or refuse to remove materials or perform anew such work as shall be rejected as defective and unsuitable, or shall discontinue the prosecution of the work, the OWNER may, upon written certificate from the Engineer and after two (2) days written notice to the CONTRACTOR from the OWNER of the fact of such delay, neglect or default on the part of the CONTRACTOR, have full power and authority, without violating the Contract, to take the prosecution of the work out of the hands of said CONTRACTOR, to appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable and may enter into an agreement with another or others for the completion of said Contract, according to the terms and provisions thereof, or use such other methods as, in the OWNER'S opinion, shall be required for the completion of said Contract in an acceptable manner.

Should the OWNER so elect to take the prosecution of the work out of the hands of the said CONTRACTOR, all right, title and interest in and to the equipment and material owned by the CONTRACTOR and used in the execution of the Contract, shall be vested in the OWNER, and on completion of said Contract, the OWNER may dispose of the same in the manner that to it may be deemed to the best interest of the parties concerned. All costs and charges incurred by the OWNER, together with the costs of completing the work under Contract, shall be deducted from the monies due or which may become due said CONTRACTOR. In case the expense so incurred by the OWNER shall be less than the sum which would have been payable under the Contract, if it had been completed by said CONTRACTOR, then the said CONTRACTOR shall be entitled to receive the difference, and in case such expense shall exceed the sum which would have been payable under the Contract, then the CONTRACTOR and his Surety shall be liable and shall pay to the OWNER the amount of said excess.

GC.21.5. SUBCONTRACTS OR ASSIGNMENTS

Except for subcontracts as described in this section, the CONTRACTOR shall not sell, transfer, assign or otherwise dispose of the Contract or bid on any portion thereof, or of the work provided for therein, or of the CONTRACTOR'S title, right or interest therein, to any person, firm or corporation without the written consent of the OWNER.

The CONTRACTOR will be required to perform a minimum of fifty percent (50%) of the money value of the work of the Contract with his own forces. The CONTRACTOR may not subcontract more than fifty percent (50%) of the money value of the work of the Contract, except in circumstances which, in the sole discretion of the OWNER, are exceptional. Neither the money value of the Contract which is subcontracted to minority business enterprises in accordance with Contract requirements nor, if the project involves erection, alteration or repair of any public building, the money value of the Contract which is subcontracted to the subcontractors listed pursuant to N.J.S.A. 40A:11-16, will be considered in calculating the percentage of the Contract which is subcontracted.

Except for portions of the work subcontracted to minority business enterprises in accordance with Contract requirements, or subcontractors listed pursuant to N.J.S.A. 40A:11-16, the CONTRACTOR shall not subcontract any portion of the work representing twenty-five percent (25%) or more of the money value of the Contract to a single subcontractor without the written consent of the OWNER. When considering any such a request, the OWNER may apply the criteria of Section IB.2 to the proposed subcontractor.

If the CONTRACTOR is required to submit Evidence or Registration pursuant to NJSA 34:11-56.48 et. seq. (see Proposal Submission Checklist), each subcontractor listed in the Proposal pursuant to NJSA 40A:11-16 must submit evidence of registration pursuant to NJSA 34:11-56-48 et seq. prior to award of the Contract and all other Subcontractors, whether or not subject to OWNER approval, must submit similar evidence prior to starting work.

GC.21.6. LEGAL ADDRESS OF CONTRACTOR

Both the address given in the Proposal upon which this Contract is founded and the CONTRACTOR'S office at or near the site of the work are hereby designated as places to either of which notices, letters and other communications to the CONTRACTOR may be mailed or delivered. The delivering at either of the above-named places, or depositing in a postpaid wrapper directed to either such place in any post office box regularly maintained by the post office, of any notice,

letter or other communication to the CONTRACTOR, shall be deemed sufficient service thereof upon the CONTRACTOR, and the date of said service shall be the date of such delivery or mailing. The first named address may be changed at any time by an instrument in writing executed and acknowledged by the CONTRACTOR and delivered to the OWNER. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter or other communication upon the CONTRACTOR personally.

GC.22 CONTRACT CHANGES

GC.22.1. CHANGES IN ESTIMATED QUANTITIES

In entering this Contract, the CONTRACTOR agrees that the quantities of work as stated in the Proposal or indicated on the drawings are only approximate and that, during the progress of the work, the OWNER and/or Engineer may find it advisable to, and they shall have the right to, omit portions of the work or to increase or decrease the quantities. The CONTRACTOR agrees to accept payment for the actual amount of work performed under each item as measured in place by the Engineer.

The CONTRACTOR agrees that he will not make claim for anticipated profits or loss of profits, because of any difference between the quantities of the various items of work as measured in place by the Engineer and the said estimated quantities.

The CONTRACTOR will not be entitled to payment and hereby agrees that he will not be entitled to payment for any increase in the quantities estimated unless ordered or authorized in writing and signed by the Engineer, and approved by the OWNER.

GC.22.2 MINOR FIELD MODIFICATIONS

The OWNER shall be required to authorize all change orders, except that in accordance with N.J.A.C. 5:30-11.4, minor field modifications may be authorized, provided that they do not affect the overall scope of work of the Contract, by the Engineer. This type of change order shall result only in minor price increases to the originally awarded contract price.

GC.22.3. SUPPLEMENTARY AGREEMENTS

If it is found necessary to have any work executed beyond that covered by the items of work in the Contract, the CONTRACTOR hereby agrees to execute the same in as diligent a manner as followed in the execution of the work under the original Contract. All provisions of the Contract will apply in the execution of said work.

The amount of compensation to be paid to the CONTRACTOR for any supplementary work, as so classified and ordered, shall be determined by any of three methods, as approved by the OWNER as follows:

- a. By such applicable combination of items and contract unit prices, if any, as are set forth in the Contract and may be used to describe the work performed; or
- b. If no such combination of unit prices is possible, then by unit prices or by a lump sum mutually agreed upon by the OWNER and the CONTRACTOR; or
- c. If no such unit prices are set forth and if the parties cannot agree upon unit prices or a lump sum price, then the CONTRACTOR shall

receive the true necessary cost to the CONTRACTOR, including direct labor costs plus benefits and worker's compensation, public liability, unemployment and social security insurance; actual costs of materials furnished and necessarily used in the performance of the work; and for CONTRACTOR owned equipment and plant and/or rented equipment and plant. The hourly rates for CONTRACTOR owned equipment and plant will be determined from the applicable volume of the Rental Rate Blue Book by dividing the monthly rate by 176. Rented equipment and plant will be paid as the actual rental costs for the equipment for the time that the equipment is actually used to accomplish the work, plus the cost of moving the equipment on to and away from the job.

True necessary cost shall be determined as follows:

| | |
|------|---|
| | Total direct labor cost (hours worked multiplied by hourly rate) exclusive of overhead labor, |
| plus | Total taxes and benefit costs on direct labor |
| plus | Total material costs (bare cost - FOB) |
| plus | Total equipment and plant (CONTRACTOR owned and/or rented) |

In addition to true necessary cost the CONTRACTOR shall receive, as compensation for profit and, if applicable, general overhead, a percentage of the sum of Total Direct Labor Cost (actual hours worked multiplied by hourly rate), exclusive of overhead labor, plus Total Material Cost (bare cost-FOB) determined as follows:

1. Ten percent (10%) if an extension of time for the supplemental work is not granted.
2. Twenty percent (20%) if an extension of time for the supplemental work is granted.

Overhead includes all salaries and expenses of all administrative officers, general superintendence (which includes any non-working supervisor splitting time on more than 2 projects), clerical employees, small tools and minor equipment and other miscellaneous supplies and services.

If any portion of the supplemental work is performed by subcontract, and the amount of such subcontract be verified as reasonable by the Engineer, then the CONTRACTOR shall be paid the amount of such subcontract plus ten percent (10%) as full compensation. If the Engineer and CONTRACTOR cannot agree on a reasonable cost for the subcontracted work, the Engineer may require that the true necessary cost of the subcontracted work and the Subcontractor's overhead and profit be determined as described above for work performed by the CONTRACTOR.

The Engineer's determination and certificate of such cost when approved by the OWNER shall be binding and conclusive on the CONTRACTOR, and the Engineer shall be deemed the arbiter to determine the cost of such work. It is understood that before any work is started, or materials are ordered, the rate to be paid for labor, materials, equipment rental and all other unit costs applicable to the work, and the number and kind of laborers, quantities of material, type of equipment or appurtenances to be

used in initiating and continuing the work shall be mutually agreed to by the CONTRACTOR and the Engineer and the CONTRACTOR shall make no changes in the labor, materials, equipment, supplies and appurtenances without prior written approval of the Engineer.

All components of cost, work performed, equipment, material and labor furnished, shall be reported by the CONTRACTOR on daily report sheets, and the CONTRACTOR shall be paid on the basis of those daily reports signed by the Engineer.

GC.22.4. CHANGE ORDERS

All adjustment of quantities, contract changes, and change orders shall be made in accordance with N.J.A.C. 5:30-11. et. seq. The CONTRACTOR should familiarize himself with these regulations, copies of which are available in the office of the Engineer. Provisions of these contract documents which conflict with the contents of N.J.A.C. 5:30-11 et. seq. are null and void only to the extent of such conflict.

Except as provided in GC.22.2, before any additional or supplementary work is performed, the Engineer will prepare a Change Order for any such changes in quantities, additional items or other alterations in the requirements of the Contract Documents and obtain the OWNER's approval thereof. He shall also prepare a reduction order prior to final payment if any quantities have been omitted.

These Change Orders shall be written, shall carry a statement or recommendation over the signature of the Engineer and shall be executed by the CONTRACTOR and the OWNER. These orders shall be combined with the original Contract and the final estimate shall be in accord with this combination.

GC.22.5. SUPPLEMENTARY DRAWINGS

Supplementary drawings may be issued by the Engineer, to the CONTRACTOR, from time to time, where the plans require supplementing, to explain the work more fully or to show additions or changes which have been ordered by the OWNER. These supplementary drawings shall have the same force and effect as any other Contract Document.

GC.22.6. EXTENSIONS OF TIME

An extension of time may be granted by the OWNER on account of some unusual difficulty, supplemental work, accident or other good and sufficient cause, and by so doing, said OWNER may waive the right to deduct from any subsequent estimates, during the period of any such allowed extension of time, the liquidated damages already provided for but in any and all such cases of extension of time, the CONTRACTOR shall be liable to the OWNER for all wages and expenses which said OWNER must pay for the inspection of the work or material after the date herein set forth in the completion of the work, except when such extension of time is required by a duly issued change order increasing the quantity of work to be performed. All requests from the CONTRACTOR for extension of time must be accompanied by the approval of the Surety Company or bondsmen.

GC.23 SUBMISSIONS - SHOP, SETTING AND WORKING DRAWINGS

The CONTRACTOR shall submit, with reasonable promptness and in an orderly sequence as to cause no delay in his own work or that of any other contractor, sufficient copies of all shop, setting or working drawings, details and schedules required for completion of the work, and the Engineer will pass upon them with reasonable promptness. Unless otherwise provided in the Special Provisions or directed by the Engineer, the CONTRACTOR shall submit at least three copies. One will be returned marked to indicate the action taken by the Engineer. If the CONTRACTOR wants more than one copy returned, the number of copies to be submitted should be two plus the number to be returned.

Before submission, the CONTRACTOR shall have determined and verified all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information. The CONTRACTOR's submissions shall include any necessary design calculations, details, illustrations, material identifications, brochures, catalog cuts or other information necessary to construct the work as specified in the Contract Documents. Unless identified as a proposed substitution (GC.10.3), the CONTRACTOR's submission shall not include a change in the plans, details or specifications without specifically identifying such change. Each submittal shall bear a title block or stamp and signature certifying that the CONTRACTOR has satisfied its obligations under the Contract Documents with respect to the CONTRACTOR's review and approval of the submittal.

Prior to issuance of a Notice to Proceed in accordance with Section IB.3.3, or prior to such other date acceptable to the Engineer, the CONTRACTOR shall submit for review and approval by the Engineer, a submission schedule for shop, setting and working drawings indicating anticipated submission dates and review periods for the entire project duration, or for at least 180 days if the time allowed for completion is more than 180 days. The CONTRACTOR shall monitor this schedule during the project and submit additions or revisions for approval by the Engineer if and as required. If the original submission schedule was not for the full project duration, a monthly addition shall be provided so as to maintain a 180 day scheduling period.

When working drawings, or any other submission which requires design or the exercise of engineering judgment, are specified or required, the CONTRACTOR's submission shall be prepared by a professional engineer, competent in the pertinent area of practice and licensed in the State in which the project is located. The submission shall include the professional engineer's signature and seal and, unless otherwise provided in the Special Provisions, the submission shall conform to NJDOT design manuals and standards for the work and shall include design calculations with pertinent code references.

The Engineer's review of shop, setting or working drawings shall only be to assess general layout, conformance to the design concept of the project and compliance with the general requirements of the Contract Documents. The CONTRACTOR and any professional who prepares, or assists the CONTRACTOR to prepare, shop, setting or working drawings or other submissions shall be fully responsible for the completeness and accuracy of the submission as well as fully responsible to confirm the suitability of the submission in consideration of the CONTRACTOR's obligation to construct the work as specified in the Contract Documents and in accord with applicable laws, codes and regulations or requirements of other agencies having jurisdiction. The CONTRACTOR also assumes responsibility for any deviations from the requirements of the Contract Documents unless the CONTRACTOR has, in writing, specifically called the Engineer's attention to such deviations at the time of submission and has received the

Engineer's written approval of such deviations.

Although the Engineer's review of submissions is normally limited to general layout, conformance to the design concept of the project and compliance with the general requirements of the Contract Documents, the OWNER may, but is not obligated to, cause the Engineer to perform a more detailed review for the purpose of giving the OWNER greater confidence that the work will conform to the Contract Documents. Such more detailed review, if performed, does not relieve the CONTRACTOR nor any professional employed by the CONTRACTOR from full and complete responsibility for all submissions nor is such review performed for the benefit of the CONTRACTOR, or any vendor, supplier, subcontractor or agent of the CONTRACTOR, or any professional employed by the CONTRACTOR, or anyone other than the OWNER.

The Engineer's action on submissions shall generally be one of the following:

1. NO EXCEPTION TAKEN - Indicating that the Engineer, while performing the limited scope of review required, did not note any deviations related to general layout or design concept of the Project or the general requirements of the Contract Documents.

2. EXCEPTION TAKEN AS NOTED - Indicating that the Engineer, while performing the limited scope of review required, did note deviations. It is left to the CONTRACTOR to note the Engineer's observations and take action to eliminate such deviations. The CONTRACTOR may be required to acknowledge the Engineer's observations in writing.

3. REVISE AS NOTED/RESUBMIT FOR REVIEW - Indicating that the Engineer, while performing the limited scope of review required, noted material deviations or omissions which require that the submission be revised and resubmitted for review.

4. REJECTED/RESUBMIT AS SPECIFIED - Indicating that the Engineer, while performing the limited scope of review required, found the submission to be unacceptable with significant deviations related to general layout, the design concept of the project or the general requirements of the Contract Documents. The CONTRACTOR must expeditiously prepare a new submission eliminating the significant deviations.

5. SUBMITTAL NOT REQUESTED OR NO ACTION REQUIRED - Returned unreviewed. A file copy may be retained by the Engineer.

The CONTRACTOR shall only perform the work of the Project consistent with all submissions subject to any action taken on those submissions by the Engineer.

GC.24 PROSECUTION OF THE WORK

GC.24.1. BEGINNING WORK

The CONTRACTOR shall begin work within fifteen (15) calendar days of the date of the Notice to Proceed (IB.3.3). Should the CONTRACTOR, without cause which, in the opinion of the Engineer, is sufficient to justify delay, fail to begin work within the time specified, he may, at the option of the OWNER, be declared in default of Contract.

GC.24.2. PLACE OF BEGINNING WORK

The place where the work is to be started may be stated in the Special Provisions or may be designated by the Engineer on the ground or in the Notice to Proceed. If not designated, it will be selected by the CONTRACTOR.

The work will be prosecuted from as many different points in such parts and at such times as may be necessary or directed, and shall be conducted in such manner and with sufficient materials, equipment and labor as is considered necessary to ensure its completion within the time set forth in the Contract. Should the prosecution of work for any reason be discontinued by the CONTRACTOR, with the consent of the Engineer, he shall notify the Engineer at least twenty- four (24) hours before again resuming operations.

GC.24.3. PROGRESS SCHEDULE

Prior to beginning any work, the CONTRACTOR shall submit to the Engineer four (4) copies of a progress schedule for all items of construction. The schedule shall show the sequence of construction operations, the estimated time of initiation and completion of each operation and the times of establishment and estimated duration of any traffic relocations. Such progress schedules shall be subject to the Engineer's approval. If the CONTRACTOR finds it necessary to deviate from the approved progress schedule, he may submit a revised schedule for review by the Engineer. If the Engineer deems it necessary, he may require the CONTRACTOR to submit and obtain the Engineer's approval of a revised schedule. Such submissions will be made by the CONTRACTOR within seven (7) days of the Engineer's request. The CONTRACTOR, once he receives the approval of a particular schedule, may not deviate from it without the permission of the Engineer.

GC.24.4. JOB MEETINGS

The CONTRACTOR, his subcontractors, his materialmen and suppliers whose presence is requested shall attend all job meetings called by the Engineer upon forty-eight (48) hours notice, weekends and holidays excluded. Lack of attendance at any job meeting by any of the above shall be sufficient reason for the suspension of work as herein provided. The proceedings of all job meetings shall be documented with minutes of the meeting by the Engineer, who shall furnish copies of such proceedings to the OWNER and copies to the CONTRACTOR for distribution as required.

GC.25 PUBLIC RELATIONS AND SAFETY

GC.25.1. PUBLIC SAFETY AND CONVENIENCE

The CONTRACTOR shall conduct his work with the least possible obstruction to traffic and the public. The protection of persons and property, and the convenience of the public and of residents adjacent to the work, are of first importance and shall be provided for by the CONTRACTOR in an adequate and satisfactory manner. Suitable and safe temporary crossings shall be constructed and maintained where access to adjacent property is required. Fire hydrants shall be left free of obstruction at all times, and access provided for fire apparatus.

Materials and equipment stored on the site shall be placed so as to cause as little inconvenience to residents and the traveling public as is necessary. Roadways, sidewalks, gutters, and sewer inlets adjoining the work under construction shall not be obstructed more than is absolutely necessary.

The CONTRACTOR shall provide for prompt removal from existing roadways of all dirt and other materials that have been spilled, washed, tracked or otherwise deposited thereon by his hauling and other operations whenever, the accumulation is sufficient to cause the formation of mud, interfere with drainage, damage pavements, or create a traffic hazard.

The CONTRACTOR shall employ construction methods and means that will keep flying dust to a minimum. The CONTRACTOR shall provide for the laying of water whenever the public is affected by such dust. The materials and methods of dust control shall be subject to the approval of the Engineer.

GC.25.2. MAINTENANCE AND PROTECTION OF TRAFFIC

The CONTRACTOR shall erect or place, and maintain in good condition, barricades, warning signs, lights, flares, yellow-flashing light units, drums, traffic cones, and other warning and danger signals and devices, appropriate and adequate for the specific needs at working sites, closed roads, intersections, open excavations, locations of material storage, standing equipment and other obstructions, at points where the usable traffic width of the road is reduced, at points where traffic is deflected from its normal courses or lanes, and at other places of danger to vehicular or pedestrian traffic.

All traffic control devices, other than those shown on the plans and where required by the CONTRACTOR'S operations, shall conform to the current Manual on Uniformed Traffic Control Devices and shall be acceptable to the OWNER or the OWNER's designee for traffic control.

The CONTRACTOR shall provide sufficient watchmen and traffic directors and shall take all other precautions, that may be necessary for the safety of the public and protection of the work.

The CONTRACTOR shall obtain consent of all appropriate authorities having jurisdiction and the concurrence of the Engineer for any detours, which may be required. The CONTRACTOR shall make all necessary arrangements with such authorities regarding the establishment, maintenance and repair of such detours, the regulation and direction of traffic thereon, and the installation and maintenance of signs and traffic control devices.

Insofar as the technical requirements of this project, the CONTRACTOR shall be aware of the requirements of Section 159 of the Standard Specification and the related Supplementary Specifications and Special Provisions.

GC.25.3. CLOSING WORK AREAS TO PUBLIC USE

All streets, intersections, sidewalks, parking areas and all other publicly used portions of the project are to be kept open overnight and on Saturdays and Sundays of each week, unless written permission is granted by the Engineer to do otherwise.

The CONTRACTOR will not occupy a lane, shoulder, median, or sidewalk area adjacent to traffic with equipment, material, personnel, or employee vehicles without the approval of the OWNER or the OWNER's designee for Traffic Control and notice to the Engineer.

The CONTRACTOR will schedule and perform the Work so that successive construction operations and lane or roadway openings follow preceding operations as closely as possible and will confine construction operations adjacent to traffic to one side of the roadway at a time unless otherwise specified by the

Contract. Where the Work is performed in stages adjacent to traffic, the CONTRACTOR will ensure that the road opened to traffic adequately accommodates traffic and will not interfere with existing traffic access, except when required to perform the Work or as approved by the OWNER or OWNER's designee for Traffic Control.

The CONTRACTOR will not work above vehicular or pedestrian traffic, except as specified in the Contract. Where construction interferes with existing pedestrian access, the CONTRACTOR will provide temporary pedestrian access acceptable to the OWNER or OWNER's designee for Traffic Control. Where necessary, install and maintain temporary sidewalks and curb ramps. Pay particular attention to accessible routes, including school crossings and crosswalks. Ramp (1:12 maximum) all grade transitions greater than 1/4". Temporarily replace crosswalk markings when construction is not active for more than 24 hours. Remove temporary access measures when no longer required.

The OWNER or the OWNER's designee for Traffic Control has the right to reject or rescind approval of roadway, lane or shoulder closures because of the following:

1. Weather conditions.
2. The closure is unnecessary to perform the work.
3. Emergency conditions either on or off the Project that results in an unacceptable impact to the traveling public.

The OWNER will not make payment for delays or costs arising from the rejecting or rescinding of roadway, lane or shoulder closures.

If the Work is stopped for more than 5 days or if the Work is suspended, the CONTRACTOR will restore excavated areas within or adjacent to the traveled way as directed by the OWNER or the OWNER's designee for Traffic Control.

If required by construction operations, the CONTRACTOR, with approval by the OWNER or the OWNER's designee for Traffic Control and with prior notice to the Engineer, may close roadways during working hours only and drives for continuous periods not to extend over more than seventy-two (72) hours. Property owners affected by such closings shall receive written notice of such closings at least twenty-four (24) hours prior to the start of a closure. Copies of such notices shall be provided to the Engineer.

GC.25.4. INADEQUATE PRECAUTIONS BY CONTRACTOR

If the OWNER deems the precautions taken by the CONTRACTOR to be inadequate, the OWNER, with or without the advice of the Engineer, may order additional protection. Should the CONTRACTOR, after such order by the OWNER, neglect to put up, provide or maintain such suitable protection as is required, the Engineer or the authorities of the OWNER may, if directed by the OWNER, immediately, and without notice to the CONTRACTOR, furnish materials and put up and maintain such protection as is deemed necessary and the cost thereof shall be paid by the CONTRACTOR.

All expenses incurred for protective measures herein specified and for repairs and replacements, shall be borne by the CONTRACTOR.

GC.25.5. MAINTENANCE OF DRAINAGE

The CONTRACTOR shall provide all that is required for the removal and disposal of water from the trenches, excavations for structures and other points of work. Ground water shall be lowered and maintained at such elevation that there will be no spring action or flow of water into excavations until any construction which would be affected is complete. Adequate facilities, as approved by the Engineer, shall be provided for the interception of suspended matter from the pump discharge before its disposal into existing drainage facilities. Where well points are to be used, the CONTRACTOR shall obtain approval of the plans and equipment from the Engineer.

The CONTRACTOR shall provide and maintain acceptable ditches, flumes or pumping installations, as required, to care for water courses and sewerage facilities (natural or artificial) intercepted by his operations or structures. In all cases where temporary pipes must be installed, or where sewage, water, or drainage must be pumped or otherwise carried over or around excavations or any other portions of the work, the CONTRACTOR shall furnish such pipes, pumps and all other materials, equipment and labor as are required to maintain continuity of service in the utilities affected.

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

GC.25.6. EMERGENCIES

In emergencies affecting the safety of persons, public or private property or the work of the project, the CONTRACTOR, without specific instructions or authorization from the Engineer or OWNER, is obligated to act, at the CONTRACTOR'S discretion, to prevent damage, injury or loss. He will give the Engineer prompt written notice of any changes in the work or deviations from the Contract Documents caused by such action as the CONTRACTOR was obligated to take.

GC.26 PUBLIC UTILITIES - SUBSURFACE STRUCTURES

Available information as to the location of existing subsurface structures and utilities has been collected from various sources. The results of such investigations, shown on the contract drawings, are not guaranteed as to accuracy.

Attention is particularly directed to the fact that the locations, elevations and sizes of utilities and other subsurface structures shown on the contract drawings are not warranted to be even approximately correct, nor can they be assumed to be the only subsurface facilities or structures which may be encountered in the work.

The CONTRACTOR shall make all necessary supplemental investigation, and shall have no claims against the OWNER or Engineer for damages, delays or additional costs due to subsurface structures or utilities encountered in locations shown or other than as shown on the contract drawings.

The CONTRACTOR is required to notify, in writing, any utility owners involved as to the nature and scope of the project and of the CONTRACTOR'S operations that may affect their facilities. The Engineer shall receive a copy of such notices. The terms public utility or public utilities used in these specifications shall be construed to mean those publicly or privately owned, including those owned by the OWNER not directly affected by the work.

Prior to excavation of any kind, the CONTRACTOR shall have all utilities

marked and shall excavate or otherwise determine the exact locations and elevations, if required, of the utility. The CONTRACTOR shall also comply with the Underground Facilities Protection Act and notify the state's One Call System prior to performing any work. The CONTRACTOR will identify itself as the OWNER's CONTRACTOR and describe the complete limits of the work. The CONTRACTOR shall then notify the Engineer and utility of any direct conflicts and afford the Engineer reasonable time to determine if any changes in the work are required and/or afford the utility reasonable time to complete any necessary alterations of its facilities. In preparing its bid the CONTRACTOR shall reasonably allow for normal utility delays commonly encountered on similar projects due to such causes as imprecise utility locations, relocation or removal and reconnection of services and resetting of utility structures.

When utility facilities are damaged by the CONTRACTOR, the CONTRACTOR shall notify their owners, who may cause the CONTRACTOR to repair the damage or may cause its repair by others. If the utility was marked or if the CONTRACTOR had failed to request a markout, repair shall be at the CONTRACTOR'S expense. If the cost thereof has not been paid by the CONTRACTOR within thirty (30) days after billing, the OWNER, upon application of the utility, may retain an amount sufficient to cover the cost from any monies due or that become due the CONTRACTOR.

When alterations to any utilities are not occasioned, in the opinion of the Engineer, by the essential requirements of the project, but are performed largely for the convenience of the CONTRACTOR, then the cost of such alterations shall be borne by the CONTRACTOR. When such alterations are, in the opinion of the Engineer, essential for carrying out the work as planned, the cost thereof shall be borne by the OWNER or by the owner of the utility in accordance with applicable laws, regulations, precedent, custom or such special agreements to which the OWNER may be a party.

GC.27 RESPONSIBILITY OF CONTRACTOR

GC.27.1. RESPONSIBILITY FOR WORK

Insofar as permitted by law, the CONTRACTOR, regardless of fault, is responsible for:

- a. All risk of loss or damage to completed portions of the Work prior to acceptance of the entire Work;
- b. All risk of loss or damage to portions of the Work in progress or not completed;
- c. All risk of injury to any person so long as the injury is related to the Work regardless of whether the injury occurred before or after acceptance of the entire Work;
- d. All risk of damage to any property including, without limitation, property of: 1) the OWNER; 2) the CONTRACTOR, subcontractors, material men, vendors, lessors or others performing the Work, or their employees; and 3) others so long as the damage is related to the Work regardless of whether the damage occurred before or after acceptance of the entire Work; and
- e. All risks of claims associated with the implementation of (or failure to implement) safety and health programs, so long as the alleged cause of the claim is related to the Work regardless of whether the alleged cause of the claim arose before or after acceptance of the entire Work.

GC.27.2. RESPONSIBILITY FOR DAMAGES AND CLAIMS, INDEMNIFICATION AND THE ASSUMPTION OF DEFENSES

The CONTRACTOR shall indemnify and defend the OWNER and the Engineer and their officers, agents and employees from all claims, demands, liability, suits, losses, costs and expenses of any kind resulting, or alleged to result, from the Work.

To the fullest extent permitted by law, the CONTRACTOR shall assume the defense of and indemnify and keep indemnified and hold harmless the OWNER and the Engineer and their officers, agents and employees from and against all claims, demands, liability, suits, losses, costs and expenses of any kind which: a) result from or are alleged to result from or arise out of the performance of the Contract and, b) are attributable to bodily injury, sickness, disease, disability or death, or to damage to or destruction of property, including the loss of use thereof. It is understood and agreed that this obligation is a broad form indemnification agreement requiring indemnification and assumption of defenses based upon the relatedness or alleged relatedness of claims, demands, liability, suits, losses, cost or expenses to the Work. Neither the indemnification nor the assumption of defense obligation is dependent on the fault of the CONTRACTOR.

Both the OWNER and Engineer are entitled to this indemnification and the assumption of their defense by the CONTRACTOR regardless of whether they are, or either of them is, partially responsible for the claim, demand, liability, suit, loss, cost and expense. Only if either the OWNER or Engineer is solely responsible for the claim, demand, liability, suit, loss, cost and expense would one of them not be entitled to indemnification and/or to the assumption of their defense by the CONTRACTOR.

In any and all claims against OWNER or Engineer or any of their agents or employees by any employee of CONTRACTOR, any Subcontractor, any other person or organization directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification and defense obligation under this subsection shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The whole, or so much of the monies due under and by virtue of the Contract as shall be considered necessary by the OWNER may be retained by the OWNER until all claims, demands, liability, suits, losses, cost and expenses of any kind have been settled and evidence to that effect furnished to the satisfaction of the OWNER.

GC.27.3. CONTRACTOR ASSUMES ABSOLUTE LIABILITY FOR JOB SAFETY

The indemnification and assumption of defense obligations stated in subsection 27.2 above shall also apply to the CONTRACTOR's duty to maintain job safety or job health programs and will not be dependent upon any question of negligence on the CONTRACTOR's part or on the part of the CONTRACTOR's subcontractors, agents, servants, or employees. Neither the approval by the OWNER or Engineer of the methods of doing the work, nor the failure of the OWNER or Engineer to call attention to improper or inadequate methods or to require a change in methods nor the neglect of the owner or Engineer to direct the CONTRACTOR to take any particular actions or precautions or to refrain from doing any particular thing, unless the acts or omissions of either the OWNER or Engineer are the sole cause of the injuries or damage, shall excuse the CONTRACTOR from its obligation to indemnify and assume the defenses of the OWNER

and Engineer if claims are brought by persons or entities injured or damaged by the failure or alleged failure to maintain safety or job health programs.

GC.27.4. INSURANCE REQUIREMENTS

The CONTRACTOR shall procure and maintain, until the later of final payment or the release of any maintenance guarantee required by GC.33, insurance for liability for damages of any kind imposed by law or assumed under this Contract. No separate specific payment will be made for providing any insurance; the cost thereof will be included in the items scheduled in the Proposal.

General Requirements

1. Evidence of insurance satisfactory to the OWNER is a condition precedent to initiating any work and must be filed with the Engineer no later than twelve (12) calendar days, Sundays and Holidays excepted, after the date that the OWNER awards the Contract or, the award is conditional, after the date that all conditions of award are satisfied.
2. Certificates of Insurance will usually be satisfactory evidence of insurance; however, the OWNER and/or Engineer may request, and the CONTRACTOR shall submit, such additional documentation as the OWNER and/or Engineer may consider necessary including: copies of declaration pages, copies of endorsements or certified copies of the entire policies, including premium provisions. Insurance binders are not acceptable as evidence of insurance.
3. The evidence of insurance submitted must include, or be accompanied by, full information concerning exclusions and deductible clauses. The OWNER may allow deductible clauses that the OWNER does not consider excessive, overly broad or harmful to the OWNER's interests. Standard exclusions, not inconsistent with the requirements of this subsection, will be permitted. Non-standard exclusions may be permitted at the discretion of the OWNER. Regardless of the allowance of exclusions or deductibles, the CONTRACTOR shall be fully responsible for all risks assumed under this Contract.

It is the responsibility of the CONTRACTOR, the Insurers and the Agents of the CONTRACTOR and/or of the Insurers to provide insurance as required by this subsection covering the risks assumed by the CONTRACTOR under this Contract including, but not limited to, the contractual indemnification and assumption of defense obligation set forth in subsections 27.2 and 27.3 above. The OWNER and Engineer may and will rely upon the inferred representation of the CONTRACTOR, his Insurers and their Agents embodied in the evidence of insurance provided, that the coverage provided is in full accordance with the Contract Documents unless the Contractor, his Insurers or their Agents specifically advise the OWNER and Engineer in writing of any exceptions or deviations. Any general statement to the effect that coverage is limited by the terms, conditions, declarations, endorsements and/or exclusions of the policies shall be of no force or effect.

4. The OWNER and Engineer and their officers and employees will be named as Additional Insureds on the Commercial General Liability (CGL), Comprehensive Automobile Liability (Auto) and Excess Liability or Umbrella Coverage (Excess) policies. The evidence of insurance submitted shall indicate if this requirement is met by a Blanket Additional Insured policy endorsement or by a project specific additional insured endorsement. In

the latter case, the evidence of insurance shall include a copy of the endorsement which must be in a form acceptable to the OWNER.

5. The Engineer and OWNER shall receive notice thirty (30) calendar days prior to the effective date of any changes which modify the coverage provided and prior to cancellation of any coverage for any reason except non-payment of premium. The Engineer and OWNER shall receive notice ten (10) calendar days prior to the effective date of any cancellation for non-payment of premium. Any "Failure to Notice" clause in the policies, endorsements or insurance certificates which attempt to limit the liability of the insurers and/or agents shall be of no force or effect.
6. All policies shall be issued by insurance companies authorized to do business in New Jersey holding a rating of B+ or better (without any negative implications) from A.M. Best and Company.
7. In the event that the Contractor provides evidence of insurance, valid for a period of time less than the period during which the Contractor is required by the terms of the Contract to maintain insurance, the Contractor shall be obligated to renew its insurance policies as necessary and to provide new certificates of insurance so that the OWNER and Engineer are continuously in possession of evidence of the Contractor's insurance according to this subsection.

Insurance To Be Provided

Different minimum insurance limits are shown for projects identified as Insurance Levels A, B and C. The Insurance Level associated with this project shall be identified in the Special Provisions or, if no specific Insurance Level is identified in the Special Provisions, shall be Level B.

1. Commercial General Liability (CGL)

| | | <u>Project Insurance Level</u> | | |
|-----------------------|--|--------------------------------|-----------|------------|
| | | <u>A</u> | <u>B</u> | <u>C</u> |
| <u>Minimum Limits</u> | | | | |
| a. | Combined Single Limit (CSL) | 500,000 | 1,000,000 | 1,000,000 |
| b. | Policy Aggregate (If any) | 1,000,000 | 2,000,000 | 3,000,000 |
| c. | Project Aggregate (If any) | 500,000 | 2,000,000 | 3,000,000 |
| d. | Total Coverage Limit (Primary plus Excess Coverage) | 1,000,000 | 5,000,000 | 10,000,000 |

The coverage to be provided under this policy shall be at least as broad as that provided by the standard basic, unamended, and unendorsed comprehensive general liability coverage forms currently in use in the State, which shall not be circumscribed by an endorsement limiting the breadth of coverage. Moreover, such policy shall be endorsed so as to delete any exclusions applying to property damage liability arising from explosions or arising from damage to underground utilities and collapse of foundations.

The insurance policy shall be endorsed to include contractual liability coverage, premises/operations coverage, products/completed operations coverage, broad form property damage coverage, independent contractors coverage, and personal injury coverage.

The minimum total coverage limit required may be provided by a primary policy or by a combination of primary and excess or umbrella coverage.

Excess coverage or umbrella coverage shall include the same terms and conditions

as the primary underlying coverage (following form) in an amount such that the primary and umbrella coverage together equals or is greater than the minimum required. Said excess or umbrella policy shall contain a clause stating that it takes effect (drops down) in the event the primary coverage is impaired or exhausted.

2. Comprehensive Automobile Liability

| | | <u>Project Insurance Level</u> | | |
|----|---|--------------------------------|-----------|------------|
| | | <u>A</u> | <u>B</u> | <u>C</u> |
| | <u>Minimum Limits</u> | | | |
| a. | Combined Single Limit (CSL) | 500,000 | 1,000,000 | 1,000,000 |
| b. | Total Coverage Limit (Primary Plus Excess Coverage) | 1,000,000 | 5,000,000 | 10,000,000 |

The Policy shall cover owned, Non-owned and Hired vehicles.

The minimum total coverage limit required may be provided by a primary policy or by a combination of primary and excess or umbrella coverage.

Excess coverage or umbrella coverage shall include the same terms and conditions as the primary underlying coverage (following form) in an amount such that the primary and umbrella coverage together equals or is greater than the minimum required. Said excess or umbrella policy shall contain a clause stating that it takes effect (drops down) in the event the primary coverage is impaired or exhausted.

3. Workers Compensation and Employer's Liability

| | | <u>Minimum Limits</u> | | |
|----|--------------------------|-----------------------|---------|-----------|
| a. | Coverage A | New Jersey Statutory | | |
| b. | Coverage B Each Accident | 100,000 | 500,000 | 1,000,000 |
| | Disease, Policy Limit | 500,000 | 500,000 | 1,000,000 |
| | Disease, Each Employee | 100,000 | 500,000 | 1,000,000 |

Workers Compensation Insurance shall be provided according to the requirements of the laws and this State and shall include in all states endorsement to extend coverage to any State that may be interpreted to have legal jurisdiction.

Unless the CONTRACTOR's Subcontractor's provide comparable coverage, the CONTRACTOR's insurance shall extend to the employees of the Subcontractor.

4. Excess Liability Coverage

Excess liability coverage is not required. The minimum total coverage limit may be met by a primary policy. If the CONTRACTOR offers excess liability or umbrella coverage to meet a portion of the insurance requirements it may be accepted by the OWNER if it includes essentially the same terms and conditions as the primary underlying coverage (following form) and contains a clause stating that it takes effect (drops down) in the event that the primary coverage is impaired or exhausted.

5. Additional or Special Insurance Requirements

A. Marine Liability Insurance

When the CONTRACTOR or a subcontractor is engaged in marine operations, it shall be required to obtain US Longshoremen's and Harbor Worker's coverage, Jones Act coverage and Maritime coverage is applicable. The CONTRACTOR or subcontractor shall also procure and maintain Marine Liability Insurance with protection and indemnity coverage with a minimum limit of liability of \$2,000,000 per occurrence.

B. Builder's Risk

If the contract provides for the construction, repair, alteration or renovation of a building, a Builder's Risk Policy may be required. Such requirements, if any, will be set forth in the Special Provisions. The policy shall be for 100% of the completed value of the structure, as estimated by the Engineer, and written in the name of the OWNER and the Contractor, as their interests may appear.

C. Railroad Protective

If the contract requires the CONTRACTOR to enter on any railroad right-of-way, the CONTRACTOR must submit certificates of insurance indicating that he has met the insurance requirements of that railroad and the requirements of 23 CFR 646, Subpart A. Such requirements will be determined by the CONTRACTOR if not set forth in the Special Provisions.

D. Pollution Liability Insurance

The CONTRACTOR or the subcontractor engaged in work involving hazardous substances, as defined in Section 3 of PL 1993, c.139 (C.13:1K-8), or hazardous waste, as defined in Section 1 of PL 1976, c.99 (C.13:1E-38), shall procure and maintain pollution liability insurance, also known as "environmental impairment liability insurance."

Pollution liability insurance shall be provided either by endorsement to a commercial general liability policy or as a separate policy. This policy shall cover pollution claims including those arising from the development and implementation of any specified contaminated material remedial action work plan and Health and Safety Plan. The minimum limit of liability shall be the same as the CGL policy if provided by endorsement or \$2,000,000 per occurrence and aggregate if provided by a separate policy, unless otherwise provided in the Special Provisions.

The policy is to be written for the benefit of the OWNER, the Engineer and their officers, employees, and authorized representatives; they are to be named as additional insureds. The CONTRACTOR shall provide documentation from the insurance company indicating the coverage, limitation of coverage and terms of coverage.

Failure to Provide Required Insurance

In the event the CONTRACTOR fails or refuses to renew a insurance policy, or the policy is canceled, terminated, or modified so that the insurance does not meet the requirements of this Subsection, the OWNER may refuse to make payment of any further monies due under this Contract or refuse to make payment of monies due or coming due under other contracts between the CONTRACTOR and the OWNER. The OWNER may use monies retained under this paragraph to renew the Contractor's insurance for the periods and amounts referred to above. Alternately, the OWNER may default the CONTRACTOR and direct the surety to complete the Project. During any period when the required insurance is not in effect, the OWNER and/or Engineer may suspend performance of the Contract. If the Contract is so suspended, additional compensation or extension of Contract Time is not due on account thereof.

GC.28 LIENS AND CHATTEL MORTGAGES

In case any lien, stop notice or claim for work, labor or materials, done, performed or delivered and used in the prosecution of the work herein provided for, shall be filed with the OWNER, then in that case the OWNER may retain from any monies due to the CONTRACTOR, a sum equal to the amount of such claims or notice, until such time as the CONTRACTOR shall furnish a receipt or release therefrom or thereof.

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

GC.29 RIGHT OF PROPERTY IN MATERIALS

Nothing in these specifications or in the Contract shall be considered as vesting in the CONTRACTOR any right of property in materials used, after they shall have been attached or affixed to the work or the soil, but all such materials shall, upon being so attached or affixed, become the property of the OWNER.

GC.30 PATENTS, ROYALTIES AND LICENSES

As part of his obligation, hereunder and without any additional compensation, the CONTRACTOR shall pay for all patent fees, licenses or royalties required with respect to the work, and will fully indemnify the OWNER, the Engineer and their agents, and employees for any loss on account of infringement of any patent rights unless, prior to his use on the work of a particular process or a product of a particular manufacturer, he notifies the OWNER in writing that such process or product is an infringement of a patent.

GC.31 CLAIMS AND PROTESTS

If the CONTRACTOR considers any work required of him to be outside the requirements of the Contract or considers any record or ruling of the Inspectors or Engineer as unfair, he shall ask for a written instruction or decision immediately and should then file a written protest with the OWNER and the Engineer against the same within five (5) working days thereafter or he shall be considered as having accepted the record or ruling, and shall, therefore, forfeit any claim to future compensation in any form on account of such order or decision. The CONTRACTOR may not suspend work while a claim or protest is pending.

GC.32 PAYMENT

GC.32.1. MEASUREMENT OF QUANTITIES

All work completed under the Contract shall be measured by the Engineer according to United States Standard Measures using the units scheduled in the Proposal. Whenever requested by the Engineer, the CONTRACTOR shall provide the necessary capable assistance together with suitable facilities for weighing, measuring or otherwise determining the quantities of materials used in the work.

GC.32.2. ADJUSTMENT OF ESTIMATED QUANTITIES

The quantities shown are approximate only, and the OWNER reserves the right to increase or decrease them at the unit price bid. Such change, however, will be only upon written order of the Engineer. The OWNER reserves the right to omit any items in the Proposal if deemed to the best interest of the OWNER to do so.

The CONTRACTOR is advised that there may be "if and where" directed items in the Proposal and there also may be small amounts of "if and where" directed quantities in many of the items in the Proposal. The CONTRACTOR shall only construct the quantities indicated on the plans and the use of if and where directed items shall only be at the specific direction of the Engineer.

GC.32.3. SCOPE OF PAYMENTS

The CONTRACTOR shall receive and accept the compensation, as herein provided, in full payment for furnishing all materials, labor, tools, plants, supplies and equipment and for performing and maintaining all work contemplated and embraced under the Contract, also for all loss or damage arising out of the nature of the work, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered during the prosecution of the work, until its final acceptance by the OWNER after duration of the maintenance period, and for all risks of every description connected with prosecution and maintenance of the work, also for all expenses incurred by, or in consequence of, the suspension or discontinuance of the said prosecution of the work as herein specified, and for any infringement of patent, trademark or copyright and for completing the work and the whole thereof, in an acceptable manner according to the plans and specifications. The payment of any current or final estimate, or of any retained percentage, shall in no way or degree, prejudice or affect the obligation of the CONTRACTOR at his own cost and expense, to repair, correct, renew or replace any defects and imperfections, in the construction of, in the strength of, or quality of materials used in or about the construction of the work under contract and its appurtenances as well as all damage due or attributable to such defects, which defects, imperfections, or damages shall be discovered on or before final inspection and acceptance of the work or during or after the maintenance period, and of which defects, imperfections or damages the Engineer shall be the judge, and the said CONTRACTOR shall be liable to the OWNER for failure to do so.

GC.32.4. PAYMENTS AND ACCEPTANCE

Unless the Engineer elects to prepare progress payment estimates, the CONTRACTOR, on the periodic progress billing date set forth in the Special Provisions or, if no periodic progress billing date is set forth in the Special Provisions, after the last day of each month and prior to the seventh calendar day, Saturdays, Sundays and Holiday excepted, of the following month (but not more than once per month) may submit progress payment estimates in writing to the Engineer signed by the CONTRACTOR, covering the work performed during the period covered by the progress payment estimate. The Engineer may request supporting data to justify CONTRACTOR'S progress payment request.

Payment for 80% of the invoiced amount for stored materials and/or equipment shall be subject to the following conditions being met and/or satisfied:

1. The materials and/or equipment shall be received in a condition satisfactory for incorporation in the work.
2. The materials and/or equipment shall be stored in such a manner that they will not be damaged due to weather, construction operations, or any other cause. Normally, a lighted, fenced area with locking access must be provided. At the Engineer's discretion, a security guard may be required.
3. An invoice from the supplier shall be furnished for each item.
4. A release of liens from the supplier shall be furnished for each item.

The CONTRACTOR warrants and guarantees that title to all work, materials, and equipment covered by a payment certificate, whether incorporated in the project or not, will pass to the OWNER upon receipt of such payment by the CONTRACTOR free and clear of all liens and claims, surety interests, or encumbrances (except retention which may be withheld from suppliers and subcontractors to guarantee completion and performance). Payment does not relieve the CONTRACTOR from his obligation to maintain equipment, materials, and constructed items until such time that the maintenance bond for the project has expired.

The Engineer will, after receipt of each progress payment estimate, either indicate preliminary approval in writing and present the progress payment estimate to the OWNER for final approval or indicate disapproval and return the progress payment estimate to the CONTRACTOR, accompanied by written corrections, requests for revisions or reasons for rejection. The ENGINEER shall take action indicating preliminary approval or disapproval in a timely manner, normally within five (5) working days of receipt of the progress payment estimate from the CONTRACTOR, so as to allow the OWNER to consider final approval within the time allowed by N.J.S.A. 2A:30A-1 et seq. If a progress payment estimate is disapproved by the ENGINEER, the CONTRACTOR may make the corrections or revisions requested by the ENGINEER and resubmit the estimate. At the ENGINEER'S discretion, items in dispute may be deleted from a progress estimate and the balance of the estimate may be forwarded to the OWNER with preliminary approval.

The OWNER will make a clear and final determination as to whether the CONTRACTOR is entitled to payment of progress estimates which have received preliminary approval from the ENGINEER. If the OWNER disputes any portion of a progress estimate which has received preliminary approval from the ENGINEER, the

OWNER will provide timely written notice including specific reasons for rejection to the CONTRACTOR and ENGINEER within the time allowed by N.J.S.A. 2A:30A-1 et seq., normally twenty (20) days of the actual periodic progress billing estimate date if the Governing Body of the OWNER is not required to approve all bills prior to payment or by the public meeting of the Governing Body of the OWNER next following twenty (20) days of the actual periodic progress billing estimate date if the Governing Body is required to approve all bills prior to payment.

The OWNER shall pay to the CONTRACTOR all approved progress estimates, or approved undisputed portions of progress estimates, within thirty (30) days of the actual periodic progress estimate billing date if the Governing Body of the OWNER is not required to approve all bills prior to payment or, if the Governing Body of the OWNER is required to approve all bills prior to payment, in the next normal payment cycle of the OWNER following action by the Governing Body of the OWNER at the public meeting of Governing Body next following twenty (20) calendar days after the actual periodic progress estimate billing date.

From the total of the amounts ascertained for the work performed in accordance with the Contract during the preceding periods will be deducted an amount equivalent to ten percent (10%) of the whole to be retained by the OWNER until after the completion of the entire Contract in an acceptable manner and the balance, or a sum equal to ninety percent (90%) of the whole, shall be certified by the Engineer to the OWNER for payment.

If the Contract exceeds \$100,000.00, the CONTRACTOR is advised Public Law 1979, Chapter 464 is applicable. In this case, from the total amount due, as ascertained through a current Engineer's estimate, will be deducted an amount equivalent to two percent (2%) of the whole. This amount shall be retained by the OWNER until after the completion of the entire Contract in an acceptable manner and the balance of the sum of 98% of the whole shall be certified by the Engineer to the OWNER for payment.

The OWNER will withhold the required retainage for the amount of all work satisfactorily completed by the CONTRACTOR as identified on each payment estimate, pending completion of the Contract. The CONTRACTOR may agree to withholding of payments in the manner prescribed by the Contract. Such agreement will be indicated by signing of estimate or payment certificates unless written communication to the contrary is made to the OWNER and Engineer, and deposits with the OWNER negotiable bearer bonds of the State of New Jersey, or negotiable bearer bonds or notes of any political subdivision of the State of New Jersey.

- a. The value of such bonds or note will be equal to the full amount that would otherwise be withheld.
- b. If the amount of the contract is increased, additional bonds or notes will be provided or withholding shall be made on the amount of any such increase.
- c. The nature and amount of such bonds and/or notes will be subject to approval by the OWNER.
- d. The term "value" shall mean par value or current market value, whichever is lower. If, after being deposited, the current market value of such bonds and/or notes decreases by \$1,000 or more, the CONTRACTOR shall provide additional bonds and/or notes to restore the full amount required or be subject to withholding on the difference.

If the CONTRACTOR agrees to the withholding of payments, the amount withheld shall be deposited, with a banking institution or savings and loan association insured by an agency of the Federal government, in an amount bearing interest at the rate currently paid by such institution or association on time or savings deposits. Any interest accruing on such cash withholdings shall be credited to the OWNER.

If the CONTRACTOR deposits bonds and/or notes, the interest on such bonds and/or notes shall accrue to the CONTRACTOR. The interest accruing on such bonds and notes, shall be returned to the CONTRACTOR within thirty (30) days of fulfillment of the terms and conditions of the Contract relating to final acceptance and payment.

At the time of acceptance, the whole work must have been finished in a neat and workmanlike manner and must be in that condition at that date. Defects arising from any cause or at any time before acceptance must be made good and the whole work put in the condition as herein specified before acceptance.

If at any time of making monthly or other estimates, the Engineer should neglect to condemn defective material or work, such neglect shall not be construed as an acceptance of any such material or work.

The Engineer shall not be required to prepare or process for payment any current progress estimates whose aggregate amount is less than \$1,000.00 or one percent (1%) of the Contract amount, whichever sum be the lesser.

Upon completion of the work, the Engineer shall certify to the OWNER, in writing, as to the completion of the work and shall further certify as to the entire amount and value of each class of work performed.

The OWNER after receipt of such certificates and within the time allowed by N.J.S.A. 2A:30A-1 et seq., shall certify and pay the amount unpaid and due, which amount shall be one hundred percent (100%) of the entire cost of the work, less previous payments, liquidated damages, costs of inspection and any other proper deduction as herein provided.

GC.32.5. DISAPPROVING OR WITHHOLDING PAYMENTS

The OWNER or Engineer may disapprove, decline to prepare or withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary to protect the OWNER from loss on account of:

- a. Defective work not remedied.
- b. The potential of damage to completed work arising from the failure to complete other work.
- c. Claims filed, or reasonable evidence indicating probable filing of claims.
- d. Failure of any CONTRACTOR to make payments promptly to subcontractors for material or labor.
- e. A reasonable doubt that the Contract can be completed for the balance then unpaid.

The OWNER or Engineer may disapprove, decline to prepare or withhold payment if the following conditions precedent to a payment are not met by the CONTRACTOR:

- a. Provide, periodically update and adhere to the progress schedule

required by subsection GC.24.3.

- b. Provide required administrative submissions including, but not limited to, certified payrolls required by the Prevailing Wage Rate Act and monthly reports required by Affirmative Action Regulations.
- c. Provide required documentation of the quantity and acceptability of the completed work including, but not limited to Certificates of Manufacturer, reports of laboratory testing, field measurements, shipping advices, invoices and delivery tickets.
- d. Maintain and/or provide evidence of minimum required insurance.
- e. Provide and maintain the minimum number of traffic control devices and otherwise comply with Contract requirements, and the directions of the OWNER or OWNER's designee for traffic control, with regard to maintenance and protection of traffic.

When all the above grounds are removed or conditions precedent met, payment will be issued for amounts withheld because of them.

GC.33 MAINTENANCE BOND

Unless otherwise specified, before final payment is made as herein provided or before the performance security required by Section IB.9 is released, the CONTRACTOR and a surety shall execute and delivery to the OWNER a maintenance bond having a penal sum equal to:

- a. One hundred percent (100%) of the final adjusted contract amount, if such amount be \$50,000 or less;
- b. Fifty percent (50%) of the final adjusted contract amount, if such amount be greater than \$50,000 but less than \$250,000; and,
- c. Twenty-five percent (25%) of the final adjusted Contract amount, if such amount be \$250,000 or more.

The bond and surety shall be satisfactory to the OWNER. The surety shall hold a Certificate of Authorization to do business in the State of New Jersey and shall conform to P.L. 1995, c. 384. The Surety Disclosure Statement and Certification required by P.L. 1995, c. 384 shall be attached to the bond. Such maintenance bond shall remain in full force and effect for a period of two (2) years from the date of completion, acceptance and final payment for the work by the OWNER and shall provide that the CONTRACTOR and the surety guarantees to replace for the said period of two (2) years from the date of completion, acceptance and final payment for the work, all work performed and/or all materials furnished that was not performed or were not furnished in accordance to the terms and performance requirements of the Contract Documents, and will make good any defects thereof which become apparent before the expiration of two (2) years.

GC.34 ACCEPTANCE OR PAYMENT NOT A WAIVER

Neither the acceptance by the OWNER or the Engineer, nor by any of their employees, nor any order, measurement or certificate of the Engineer, nor any order by the OWNER for payment of money, nor any payment for, nor acceptance of, the whole or any part of the work by the Engineer or the OWNER, nor any extension of time, nor any possession taken by the OWNER or employees thereof, shall

operate as a waiver of any portion of this Contract or any power herein reserved to the OWNER, or any right to damages herein provided, nor shall any waiver of any breach of this Contract be held to be a waiver of any other or subsequent breach. All remedies provided in this Contract shall be taken and construed as cumulative, that is, in addition to each and every other remedy herein provided.

GC.35 FINAL PAYMENT TERMINATES OWNER'S LIABILITY

No person, firm or corporation other than the signer of this Contract as CONTRACTOR now has any interest hereunder, no claim shall be made or be valid and neither the OWNER nor any of his agents shall be liable for or be held to pay any money, except as provided in this Contract. The acceptance by the CONTRACTOR of the final payment aforesaid shall operate as, and shall be, a release to the OWNER, the Engineer and their agents.

GC.36 DISPUTE RESOLUTION

Any disputes arising under this Contract shall be resolved in accordance with and subject to the limitations contained in NJSA 40A:11-50 as follows:

1. All remedies provided elsewhere in the Contract documents to resolve disputes, claims and protests shall be exhausted. Where the Engineer is empowered or required to issue a decision, such decision shall be a condition precedent to proceeding to resolve the dispute in accordance with paragraph 2.
2. Prior to litigation, the Owner and Contractor shall endeavor to settle disputes, claims or protests which have been properly filed in accord with the Contract Documents prior to completion, acceptance and final payment, by mediation in accordance with the current Construction Industry Mediation Rules of the American Arbitration Association. Demand for mediation shall be filed in writing by the party requesting mediation with the other party to this Agreement and with the American Arbitration Association.
3. Nothing herein shall be construed to prevent the Owner and Contractor from agreeing to utilize any other alternative dispute resolution procedure in lieu of or in addition to mediation.
4. Nothing herein shall be construed to prevent the Owner from notifying any performance guarantor (Surety) of, and requesting the Surety's assistance in resolving, any disputes which involve the Contractor's performance.