

CONTRACT/BID/SPECIFICATIONS

WILBUR BOULEVARD PUMP STATION GENERATOR (EQUIPMENT ONLY), AND SPRING STREET WATER BOOSTER STATION GENERATOR (EQUIPMENT ONLY)

FOR THE

TOWN OF POUGHKEEPSIE

ONE OVEROCKER ROAD

POUGHKEEPSIE, NEW YORK

CONTRACT 2019-05

TOWN SUPERVISOR	JAY BAISLEY
BOARD MEMBERS	JEFFREY D. RENIHAN BILL CARLOS JESSICA LOPEZ MICHAEL CIFONE MICHAEL WOOLEVER ANN SHERSHIN
TOWN CLERK	FELICIA SALVATORE
TOWN ATTORNEY	JAMES NELSON

PREPARED BY:

**ENGINEERING DEPARTMENT
TOWN OF POUGHKEEPSIE
ONE OVEROCKER ROAD
POUGHKEEPSIE, NEW YORK 12603**

SEPTEMBER 2019

ADVERTISEMENT FOR BIDS

Receipt of bids: Separate sealed Bids will be received by the Town Clerk, Town of Poughkeepsie, One Overocker Road, Poughkeepsie, NY 12603 until 11 a.m. (local time) on **November 4, 2019** at which time they will be publicly opened and read aloud for the "WILBUR BLVD AND SPRING STREET GENERATORS", Contract No. 2019-05. All bids must be made upon and in accordance with the form of proposals prepared by the Engineering Department and shall be submitted in sealed envelopes so marked "GENERATOR PACKAGE – 2019". This bid is to be considered for the purchase and delivery for Wilbur Blvd Pump Station Generator equipment only, purchase and delivery for Spring Street Water Booster Station Generator equipment only.

The information for Bidders, Specifications and other Contract Documents may be reviewed and obtained on **September 24, 2019** at the Office of the Town Clerk, Town of Poughkeepsie, One Overocker Road, Poughkeepsie, NY 12603 and are also available on the Town's website along with any associated Bid Addenda. Pursuant to the provisions of GML 102, persons desiring to take a copy may obtain them, subject to a deposit in the amount of \$100 for each set, payable by check or money order. There is no charge for the Bid Documents downloaded and printed from the Town's website.

Each bid shall be accompanied by an acceptable form of Bid Deposit Guarantee in the amount of five (5) percent of the amount bid payable to the Town of Poughkeepsie as a guarantee that if the Bid is accepted, the Bidder will enter in a contract with the Town.

The Bid Deposit shall be a Certified Check of the bidder or Bid Bond and be drawn payable to the Town of Poughkeepsie.

OWNER'S RIGHTS RESERVED: The Town of Poughkeepsie, (the Town), reserves the right to reject any or all Bids and to waive any formality or technicality in any Bid in the interest of the Town.

STATEMENT OF NON-COLLUSION: Bidders are required to execute the non-collusion bidding certificate attached thereto pursuant to Section 103-d of the General Municipal Law of the State of New York.

Bidders are also required to comply with the provision of Section 291-299 of the Executive Law of the State of New York.

The Town of Poughkeepsie hereby notifies all Bidders that it will affirmatively insure that in regard to any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration of an award.

BY ORDER OF THE TOWN BOARD, DATED SEPTEMBER 18, 2019

THE TOWN OF POUGHKEEPSIE IS AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION
EMPLOYER

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I INFORMATION FOR BIDDERS

1. Receipt and Opening of Bids

The Town of Poughkeepsie (the Town or Owner), invites bids on the form attached hereto, all blanks of which must be completely filled in. Bids will be received by the Town at the office of the Town Clerk until 11 o'clock a.m., local time, November 4, 2019 and then at said office publicly opened and read aloud. The envelopes containing the bids must be sealed and addressed to the Town of Poughkeepsie at One Overrocker Road, Poughkeepsie, New York 12603 and designated as bid for the "GENERATOR PACKAGE - 2019".

The Town may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all bids. Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified shall not be considered. No bidder may withdraw a bid within 45 days after the actual date of the opening thereof.

2. Preparation of Bid:

Each bid must be submitted on the prescribed form. All blank spaces for bid prices must be filled in, in ink or typewritten, in both figures and words, and the foregoing Certifications must be fully completed and executed when submitted.

Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, his/her address, and the name of the project for which the bid is submitted. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in the Advertisement for Bids.

3. Qualifications of Bidder:

The Town may make such investigations as deemed necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the Town all such information and data for this purpose as the Town may request. The Town reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the town that such bidder is properly qualified to carry out the obligations of the contract documents and to deliver the items specified. Conditional bids will not be accepted. Names and qualification of all subcontractors must be submitted with the bid.

4. Bid Security:

Each bid must be accompanied by a Certified Check of the bidder or bid bond on the form of bid bond attached hereto drawn payable to the Town of Poughkeepsie, in the amount of five (5) percent of the amount bid. Such bid security will be returned to all except the three lowest bidders within five days after the opening of bids, and the remaining certified checks or bid bonds will be returned promptly after the Town and the accepted bidder have executed a contract, or, if no agreement has been made within 30 days after the date of the opening of bids, upon demand of the bidder at any time thereafter, so long as he/she has not been notified of the acceptance of his/her bid.

5. Addenda and Interpretations:

No interpretation of the meaning of the specifications or other pre-bid documents will be made to any prospective bidder orally. Every request for such interpretation should be in writing addressed to Robert Bozek or Kyle Southern at the Town Engineering Department and to be given consideration must be received at least five days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be mailed by certified mail with return receipt requested to all prospective bidders (at the respective addresses furnished for such purposes), not later than three days prior to the date fixed for the opening of bids. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any

obligation under his/her bid as submitted. All addenda so issued shall become part of the bid/agreement documents.

6. Obligation of Bidder:

At the time of the opening of bids each bidder will be presumed to have read and to be thoroughly familiar with the contract documents (including all addenda). The failure or omission of any bidder to examine any form, instrument or document shall in no way relieve any bidder from any obligation with respect to his/her bid.

7. Conditions of Work:

Each bidder must inform him/her self of the conditions relating to the work required under this project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of his/her obligation to furnish all material and labor necessary to carry out the provisions of his/her contract.

8. Sales Tax:

This work is exempt from certain sales/use taxes and the Contract amount excludes such taxes, but includes all other taxes.

9. Bid Comparison

Bids will be compared on the basis of the totals on the bid form comprising all items at the respective lump sum prices and/or unit prices bid for those items. In the event there is a discrepancy between any figures written in words and written numerically, the price written in words shall govern. The Town reserves the right to waive any irregularities or informalities, or to reject any or all bids.

10. Bid Quantities

The Town reserves the right to increase or decrease any item in this contract they deem to be in the best interest of the Town.

11. Method of Award - Lowest Qualified Bidder:

It is the Town's intention, to award the contract based on the lowest price of the base bid plus the alternatives chosen which have been submitted by a qualified bidder as long as the base bid plus the alternatives chosen does not exceed the amount of funds then estimated by the Town as available to finance the contract. If such bid exceeds such amount, the Town may reject all bids.

12. Notice to Proceed:

Contractor shall not proceed with any work under this agreement, for which work the Contractor is contemplating claiming reimbursement, until Contractor has received the Executed Contract and a Notice to Proceed from the Town.

13. Requirements of NYS Workers' Compensation Board:

Before the Town enters into agreement with the Contractor, he must submit proof that he has obtained the required workers' compensation and disability benefits coverage, or that he is not required to provide such coverage.

Attached are samples of Forms C-105.2 and DB-120.1 (Certificates of Insurance), and Form SI-12 (Affidavit Certifying That Compensation Has Been Secured), which are designed to provide necessary proof of coverage when completed by the insurance carrier and/or the Worker's Compensation Board. Also attached is a sample of Form DB-155 (Compliance with DB Law), which may be submitted by self-insured employers under the Disability Benefits Law as acceptable proof that disability benefits coverage has been obtained.

Please note that it is acceptable of employers insured by the State Insurance Fund to submit the Fund's computer generated certificate of insurance as proof of coverage, in place of prescribed Form C-105.2. In addition, the Office of General Services has been authorized by the Board to

accept the Fund's form as satisfactory proof of coverage, when entering into contracts with such employers.

Employers who are not required by Law to provide workers' compensation and/or disability benefits coverage must submit Form C-105.21 (Statement That Applicant Does Not Require W.C. or D.B coverage), which when completed by the Workers' Compensation Board is proof that the applicant is not required to carry either type of insurance.

II BID FORM

To: The Town Board of the Town of Poughkeepsie.

In compliance with your Notice to Contractors, published in the _____ dated _____, the undersigned, _____ proposes and agrees as follows:

1. To furnish all the equipment, and incidentals, and to furnish labor and do all the work required, to construct, furnish, and complete the "GENERATOR PACKAGE- 2019" and associated work in accordance with the prices so named in this bid in a worker like manner, in accordance with the plans and specifications, all of which are a part of the contract hereto annexed.
2. To complete all the work as specified and all payment requests submitted, on which this bid is based by ninety (90) days of the notice to proceed.
3. To furnish the Town within five (5) calendar days from the date of the request, if identified as the apparent low bidder and if requested by the Town, a statement of qualifications.
4. To enter into a contract within ten (10) calendar days from the date of the Notice of Award for this bid, and within fifteen (15) calendar days from the date of acceptance of this bid to furnish, with suitable surety to be approved by the Attorney to the Town, performance and labor and material payment bonds, the amount of each of the bonds to be the full amount of the bid as it appears in this proposal. If the undersigned fails to perform any of the promises made herein, the Bid Security will be paid to the Town of Poughkeepsie as liquidated damages for such default; otherwise the Bid Security will be returned to the undersigned.
5. To comply with the Davis-Bacon Act and other federal labor standards or provisions and to pay New York State prevailing wage rates applicable to this contract.

In compliance with the Instructions to Bidders, the undersigned declares that he/she has examined the site of the work and informed himself/herself fully in regard to all conditions pertaining to the place where the work is to be done. He/she has examined the plans and specifications for the work and the contract documents relating thereto, has read all addenda furnished prior to the opening of bids, and has satisfied himself/herself relative to the work to be performed.

If the undersigned fails to perform any of the promises made herein, the certified check, which is herewith deposited with the Town Clerk, will be paid to the Town of Poughkeepsie or payment of the bond herewith deposited will be enforced for the

benefit of the Town of Poughkeepsie as liquidated damages for such default; otherwise the check or bond will be returned to the undersigned.

ADDENDA:

Receipt of the following addenda (if any) is hereby acknowledged:

	<u>DATE</u>	<u>SIGNATURE</u>
ADDENDUM NO. 1	_____	_____
ADDENDUM NO. 2	_____	_____
ADDENDUM NO. 3	_____	_____

The bidder proposes to perform the work required for the Base Bid in accordance with the Contract Documents for the sum of:

_____ \$ _____
(in writing) (and figures)

Dated: _____, 2019

SIGN BID HERE

Authorized Signature Title

Print Name

Legal Company Name _____

Address _____

City, State, Zip _____

Telephone No. _____

Federal I.D. # _____

III BASE BID

GENERATOR PURCHASE & DELIVERY
TOWN OF POUGHKEEPSIE

ITEM NO./DESCRIPTION	EST. QTY.	PAYMENT UNIT	UNIT PRICE BID		TOTAL PRICE BID
			WRITTEN AMOUNT	IN FIGURES	
WILBUR BLVD PUMP STATION GENERATOR, TRANSFER SWITCH, DELIVERY And DISTRIBUTOR START UP	1	ea			
SPRING STREET WATER BOOSTER STATION GENERATOR, TRANSFER SWITCH, DELIVERY And DISTRIBUTOR START UP	1	ea			
				TOTAL	

BASE BID TOTAL _____

IV CERTIFICATION OF NON-COLLUSION BY BIDDER

The undersigned represents that pursuant to Sections 103-a and 103-b of the General Municipal Law of the State of New York, no person referred to in the attached proposal who is the bidder or who is or was a member, partner, director or officer of the bidding firm or entity under this proposal has refused to sign a waiver of immunity or to answer any relevant questions relating to any transaction or contract with the State of New York, any political subdivision thereof, or any public authority, during the period of five years prior to the date hereof. The undersigned agrees that any contract awarded as a result of this bid may be canceled without penalty upon the grounds set forth in Sections 103-a and 103-b of the said General Municipal Law of the State of New York. The names and addresses of all persons and parties interested in the foregoing bid are as follows:

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

1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

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

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

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

Signed _____

Printed Name _____

V BID BOND FORM

KNOW ALL PERSONS BY THESE PRESENTS: that

* _____ as
Principal; and

** _____ as Surety, are
hereby held

and firmly bound unto the Town Board, Town of Poughkeepsie, New York in the amount
of:

_____ Dollars

(\$ _____)

for the payment whereof Principal and Surety bind ourselves, our heirs, executors,
administrators, successors and assigns, jointly and severally, firmly by these presents.

Signed this _____ day of _____ 2019.

WHEREAS,

The condition of the above obligation is such that, whereas the Principal has
submitted to the Town Board a certain bid, attached hereto and hereby made a part
hereof, to enter into a contract in writing for the improvements for "GENERATOR
PACKAGE- 2019" in the Town of Poughkeepsie, New York, as shown and specified in
the contract, plans, and specifications.

NOW THEREFORE,

- (a) If said Bid shall be rejected, or in the alternate
- (b) If said Bid shall be accepted and the Principal shall execute and deliver the
Contract Agreement in the form attached hereto (properly completed in
accordance with said Bid) and furnish such performance bond and labor and
material payment bond as required,

then this obligation shall be void. Otherwise, the same shall remain in force and effect,
it being expressly understood and agreed that the liability of the Surety for any and all
claims hereunder shall, in no event, exceed the amount of this obligation as herein
stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said
Surety and its bond shall in no way be impaired or affected by any extension of the time
within which the Principal may accept such bid; and said Surety does hereby waive
notice of any such extension.

*Insert Bidder's Name **Insert Surety's Name

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are Corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

(Seal of Principal if a Corporation)

PRINCIPAL

By: _____

(Corporate Seal of Surety Co.)

(Officer's/Partner's/Individual's) signature

(Officer's/Partner's/Individual's) name printed

name printed (Corporation/Partnership/Individual)

STATE of _____)

COUNTY of _____) ss:

On this _____ day of _____, 2019
before me personally came _____ to me
known and known to me to be the person described in and who executed the
foregoing instrument, and he/she duly acknowledged that he/she executed the
same.

Notary Public, County

No. _____ Term Expires _____

VI CONTRACT AGREEMENT

SAMPLE CONTRACT AGREEMENT

TOWN BOARD

TOWN OF POUGHKEEPSIE, NEW YORK

THIS AGREEMENT, made and executed this _____ day of _____, in the year Two Thousand and Nineteen by and between the Town Board, Town of Poughkeepsie and _____ Contractor,

WITNESSETH: in consideration of the mutual agreements herein contained the parties hereto have agreed and hereby agree with each other, the Town, its successors and assigns, and the Contractor, and his/her successors and assigns, as follows:

The Town Board, Town of Poughkeepsie, New York agrees to pay and the Contractor agrees to accept (unless modified pursuant to the terms set forth in the General Conditions attached hereto) a total, final and fixed Contract Price of:

_____ (\$_____)

for the GENERATOR PACKAGE - 2019.

The Contractor will furnish all labor and materials necessary to perform the work shown on the Plans and Specifications as prepared for the Town Board, Town of Poughkeepsie as noted herein.

Included in this Contract are all equipment, facilities, transportation, materials, insurance, certificates, tests, guarantees, protection of equipment, and all other things whether or not explicitly shown or mentioned, necessary and proper for or incidental to the completion of a worker like job, complete in every respect and detail, left ready and in perfect condition for the Owner's use, as called for in the plans and specifications.

The Contractor acknowledges that a delay in the completion of the delivery of equipment may result in additional expenses to the Town and agrees, in the event he/she fails to complete all the work within the time period as specified hereafter to reimburse the Town in the form of liquidated damages in the amount of one-half percent (0.5%) of the total bid price for each calendar day of delay in the physical completion of the work beyond the agreed upon project time period as specified in the Town's Notice to Proceed unless said project time period is extended by mutual agreement in written form by both parties hereto.

The Contractor, by placing his/her signature on this Contract, hereby certifies that he/she has read and is aware, cognizant, and knowledgeable of the contents of all bid documents and the contract documents and he/she agrees to abide by and be bound by

their contents and by all applicable federal, State and local laws, ordinances and statutes.

The Contractor agrees to defend, indemnify and hold harmless the Owner for any actions arising from injuries to the Contractor's employees, even if caused in whole or in part by Owner's negligence.

Payments, both progress and final, will be made after submittal to, review and approval by the Town Engineer and the Town Board.

The Contractor agrees to begin work on the day specified in the Town's Notice to proceed and unless the date for completion is extended pursuant to Town Board approval, he/she agrees to complete the work within ninety (90) days from the starting date specified in the Notice to Proceed.

(Corporate Seal if applicable)

(Officer's/Partner's/Individual's) signature

(Officer's/Partner's/Individual's) name printed

(Corporation/Partnership/Individual) name printed

STATE of _____)

COUNTY of _____) SS:

On this _____ day of _____, 201_____.

before me personally came _____ to me known and known to me to be the person described in and who executed the foregoing instrument, and he/she duly acknowledged that he/she executed the same.

Notary Public,

County

No. _____ Term Expires _____

Town Board, Town of Poughkeepsie (Owner)

Attest By: _____

Signature

Name (printed)

Title (printed)

SAMPLE

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ secretary of the corporation named as principal in the _____ within bond; that _____ who signed the said bond on behalf of the principal, was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation of its governing body.

_____ (Corporate Seal)

INSTRUCTIONS

The name, including full given name and business or residence address of each individual party to the bond shall be inserted in the space provided therefore, and each such party shall sign the bond with his usual signature on the line opposite the scroll seal.

If the principals are partners, their individual names shall appear in the space provided therefore, with the recital that they are partners composing a firm, naming it, and all the members of the firm shall execute the bond as individuals.

If the principal or surety is a corporation, the name of the state in which incorporated shall be inserted into the space provided therefore, and said instrument shall be executed and attested under the corporate seal as indicated in the form. If the corporation has no corporate seal the fact shall be stated in which case a scroll or adhesive seal shall appear following the corporate name.

The official character and authority of the person or persons executing the bond for the principal, if a corporation, shall be certified by the secretary or the assistant secretary, according to the form herein provided. In lieu of such certificate there may be attached to the bond copies of so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

IX PHONE NUMBERS

MARC PFEIFER, HIGHWAY SUPERINTENDENT
(845) 462-6535
8 Burnett Boulevard
Poughkeepsie, New York 12601

KEITH BALLARD, WATER SUPERINTENDENT
(845) 462-6535
198 Cedar Avenue
Poughkeepsie, New York 12601

KYLE SOUTHERN, ASSISTANT TOWN ENGINEER
(845) 790-4748
Poughkeepsie Town Hall
One Overocker Road
Poughkeepsie, New York 12603

ROBERT BOZEK, ASSISTANT TOWN ENGINEER
(845) 790-4747
Poughkeepsie Town Hall
One Overocker Road
Poughkeepsie, New York 12603

X GENERAL CONDITIONS

ARTICLE 1: DEFINITIONS

1.1 WORDS AND EXPRESSIONS

The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Contract, be construed as follows, unless a different meaning is clear from the context.

- * "Act of God" shall mean an act, event, happening, or occurrence, and disaster and effect due to natural causes and inevitable accident, or disaster; a natural and inevitable necessity which implies entire exclusion of all human agency which operates without interference or aid from man and which results from natural causes and is in no sense attributable to human agency.
- * "Addendum" or "Addenda" shall mean the additional contract provisions issued in writing by the Engineer prior to the receipt of bids.
- * "Certificate of Completion" shall mean a letter or notice signed by the Owner after the Engineer has determined that no further work is to be done.
- * "Certificate of Substantial Completion" shall mean a letter or notice signed by the Engineer when the work or a designated portion thereof is sufficiently complete that the Owner may occupy or use the work for the use for which it is intended.
- * "Change Order" shall mean the fully executed written order to the Contractor authorizing an addition, deletion or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or contract time.
- * "Change Order" shall mean a written order to the Contractor executed by the Owner and the Engineer after execution of this Contract, directing a change in the work and may include a change in the Contract Price or the time for the Contractor's performance, or any combination thereof:
- * "Contract" or "Contract Documents" shall mean each of the various parts of the contract listed below, both as a whole and severally.
- * Except for titles, sub-titles, headings, running headlines, tables of contents and indices (all of which are printed herein merely for convenience) the following, except for such portions thereof as may be specifically excluded, shall be deemed to be part of this contract:
 1. Contract Agreement
 2. Performance Bond
 3. General Conditions for Contract
 4. Special Conditions for Contract

5. Detail Specifications
6. Drawings
7. All Addenda
8. All provisions required by law to be inserted in this contract whether actually inserted or not
9. Change Orders

- * "Contractor" shall mean the person, partnership, firm or corporation with whom the Owner has executed the Contract Agreement.
- * "Contract Work" shall mean everything expressly or implicitly required to be furnished and done by the Contractor by any one or more parts of the Contract defined herein, except extra work as defined herein.
- * "Engineer" shall mean the consulting engineer for the Town as designated and duly appointed by the Town, directed or assigned by them to this Contract, with the powers and duties as stated in the contract documents.
- * "Extra Work" shall mean work other than that required either expressly or implicitly by the contract in its present form. It may include work in areas designated on the plans as areas of future work, or in areas within the contract limits or adjacent thereto. Extra work shall be authorized by a change order.
- * "Final Acceptance" shall mean acceptance of the work by the Owner as evidenced by his signature upon the final Certificate of Completion. Such acceptance shall be deemed to have taken place only if and when such signature is affixed to said Certificate of Completion.
- * "Inspector" shall mean an authorized representative of the Owner assigned to make any and all necessary inspections of the work performed and materials furnished by the Contractor.
- * "Owner" shall mean the party of the first part hereto, the Town, the Supervisor, or any other person designated by them to act on their behalf.
- * "Plans" shall mean only those drawings specifically entitled as such and listed in the Specifications or in any addendum.
- * "Project" shall mean the entire improvement to which this contract relates.
- * "Site" shall mean the area upon or in which the Contractor's operations are carried on, and such other areas adjacent thereto as may be designated as such by the Engineer.

- * "Specifications" shall mean all of the directions, requirements, and standards of performance applying to the work as hereinafter detailed and designated as such.
- * "Subcontractor" shall mean any person, firm or corporation, other than employees of the Contractor, who or which contracts with the Contractor to furnish, or actually furnishes, labor, materials or labor and equipment at the site.
- * "Surety" shall mean any person, firm or corporation that has executed as surety, and bond or bonds required to be executed by the Contractor as they relate to the provisions of the Contract.
- * "Town Attorney" (owner's attorney) shall mean the attorney for the Town Board, Town of Poughkeepsie, New York as designated and duly appointed by that Board, directed or assigned by them to this contract, with the powers and duties established by the Town Board.
- * "The Work" shall mean everything expressly or implicitly required to be furnished and done by the Contractor under the contract and shall include both contract work and extra work.
- * Whenever they refer to the work or its performance, the words "directed", "required", "permitted", "ordered", "designated", "prescribed", and words of like import are used, they shall imply the direction, requirement, permission, order, designation or prescription of the Engineer and "approved", "acceptable", "satisfactory", "in the judgment of", and words of like import, shall mean approved by, or acceptable to, or satisfactory to, in the judgment of the Engineer.

ARTICLE 2: ROLES AND RESPONSIBILITIES

2.1 THE CONTRACTOR

The Contractor shall supervise, direct and perform the work in accordance with the true intent and meaning of the contract documents. Unless otherwise expressly provided, the work must be performed in accordance with the best modern practice, with materials and workmanship of the highest quality, all as determined by, and entirely to the satisfaction of, the Engineer. The Contractor shall be responsible for the entire work until completed and accepted by the Owner.

Unless otherwise expressly provided, the means and methods of construction shall be such as the Contractor may choose, subject, however, to the approval of the Engineer. Such approval, or the Engineer's failure to exercise his right to reject, shall not create a cause of action for damages.

The Contractor shall assume all risks and responsibility and shall complete the work in whatever material and under whatever conditions he may encounter or create, without extra cost to the Owner.

No plea of ignorance or misunderstanding of conditions that exist or that may hereafter exist, or of conditions or difficulties that may be encountered in the execution of the work under this contract, as a result of failure to make the necessary examinations and investigations, will be accepted as an excuse for any failure or omission on the part of a Contractor to fulfill in every detail all of the requirements of the contract documents, or will be accepted as a basis for any claims whatsoever for extra compensation or an extension of time.

The Contractor acknowledges that the Owner does not guarantee that all pipes, ducts, utilities and other underground structures are shown on the plans, and that the information given is intended only as a guide to the Contractor. The Contractor shall not claim damages and shall not be entitled to payment because of any omission or faulty location on the plans of any pipes, ducts, utilities or other underground structures.

The Contractor shall do all work and pay all costs of cutting, protecting, supporting, maintaining, relocating and restoring all surface, subsurface or overhead structures, and all other property, including pipes, conduits, ducts, tubes, chambers, and appurtenances, public or private, in the vicinity of the work (except such which by law, franchise, permit contract, consent or agreement the owner thereof is required to protect, support, maintain, relocate or restore), repairing the same if damaged and restoring to their original conditions all areas disturbed. He shall not claim or be entitled to any damages for delay or otherwise by reason of such required work, and he hereby assumes all risks in connection therewith.

2.2 THE OWNER

The Owner, in addition to those matters expressly made subject to its determination, direction or approval in this contract, shall have the power:

- (1) To determine finally any and all questions in relation to this contract and its performance, which determination shall be final and conclusive upon the Contractor;
- (2) To modify or change this contract so as to require the performance of extra work, or the omission of contract work, or both, whenever it deems it in the public interest to do so;
- (3) To suspend the whole or any part of the work or terminate the entire project whenever, in its judgment, such suspension or termination is required
 - (a) in the interest of the Owner generally, or
 - (b) to coordinate the work of the various Contractors engaged in this project, or

- (c) to expedite the completion of the entire project even though the completion of this particular Contract may be thereby delayed, without compensation to the Contractor for such suspension other than extending the time for the completion of the work, as much as it may have been, in the opinion of the Engineer, delayed by such suspension;
- (4) If before the final completion of all the work contemplated herein, it shall be deemed necessary by the Owner to take over, use, occupy or operate any part of the completed or partly completed work, the Owner shall have the right to do so and the Contractor will not, in any way, interfere with or object to the use, occupation or operation of such work by the Owner after receipt of notice in writing from the Board Director that such or part thereof will be used by the Owner on and after the date specified in such notice.

2.3 ENGINEER'S AUTHORITY

- (1) The Engineer, in addition to those matters elsewhere herein expressly made subject to his determination, direction or approval, shall have the power, subject to review by the Owner:
 - a. To inspect the performance of the work;
 - b. To determine the amount, kind, quality, sequence, and location of the work to be paid for hereunder;
 - c. To determine all questions in relation to the work, to interpret the drawings, specifications, and addenda;
 - d. To make minor changes in the work as he deems necessary, provided such changes do not result in a net increase in the cost to the Owner or to the Contractor of the work to be done under the contract;
 - e. To amplify the plans, add explanatory information and furnish additional specifications and drawings consistent with the intent of the contract documents.
 - f. To determine how the work of this contract shall be coordinated with the work of other Contractors engaged simultaneously on this project, including the power to suspend any part of the work.
- (2) The foregoing enumeration shall not imply any limitation upon the power of the Engineer, for it is the intent of this contract that all of the work shall be subject to his determination and approval, except where the determination or approval of someone other than the Engineer is expressly called for herein.

All orders of the Engineer requiring the Contractor to perform work as contract work shall be promptly obeyed by the Contractor.

- (3) The Engineer will not be responsible for the construction means, controls, techniques, sequences, procedures or construction safety.
- (4) The Engineer shall promptly make decisions relating to interpretation of the plans and specifications.

ARTICLE 3: INTERPRETATION OF CONTRACT DOCUMENTS

3.1 CONFLICTING PLANS AND SPECIFICATIONS

The plans and specifications are intended to complement each other and any detail or item shown on one, but not the other, shall be assumed to be shown on both and shall be binding as if called for by all. While the plans and specifications are assumed to be complete in all major items and details, it is also assumed that the Contractor is competent and expert in his field; therefore, no effort has been made to show or to specify each and every detail or item required for a complete installation.

In the case of conflicting information within the plans and specifications as to the type of materials or workmanship to be provided, the Contractor agrees that he will accept the decision of the Engineer as to which was intended or which is in the best interest of the Owner.

In the event that any provision in any of the following parts of this Contract conflicts with any provision in any other of the following parts, the provision in the part first enumerated below shall govern over any other part which follows numerically, except as may be otherwise specifically stated. Said parts are the following:

1. Addenda
2. Special Conditions for Contract
3. General Conditions for Contract
4. Detail Specifications
5. Contract Drawings

The Contractor shall verify field conditions, including measurements and other conditions, before the start of construction. Any errors, inconsistencies or omissions shall be brought to the Engineer's attention for resolution.

3.2 SHOP DRAWINGS

Where the nature of the work of the Contract makes it necessary, or where so required by the Engineer, the Contractor shall submit scale and full size shop drawings of the work for review by the Engineer. The shop drawings shall be complete in every detail

and show any and all other necessary information in accordance with usual trade practice as particularly required for any special purposes.

The Contractor shall thoroughly check all shop drawings of the various trades for measurements, sizes of members, materials and details to make sure that they conform to the intent of the plans and specifications and for any and all other contract requirements. Drawings found to be inaccurate or otherwise in error shall be made correct. Shop drawings prepared by or under the direction of the Contractor shall be checked for accuracy and contract requirements by the Contractor before being forwarded to the Engineer. Shop drawings not so checked and noted will be returned to the Contractor without being examined by the Engineer. All measurements shall be verified at the building and/or structures.

Shop drawings shall be either catalog cuts or drawings showing construction details. The details required will vary but should include dimensions, sizes, type of material, finish, fabrication notes, special care or handling requirements, supplier or vendor name, contract, item number, name of company supplying drawing, date, revision and other information to identify and evaluate the item described.

The Engineer shall promptly review submitted shop drawings as an aid to the Contractor but review of drawings by the Engineer shall not relieve the Contractor of his responsibility for the proper performance of the work without additional cost to the Owner, whether or not the work was installed in accordance with drawings reviewed by the Engineer. Shop drawings will be reviewed for design and general arrangement only.

Four (4) sets of shop drawings shall be submitted.

3.3 MATERIALS

All materials, equipment and articles (products) incorporated into the permanent work, which will become the property of the Owner, shall be new unless specifically stated or shown otherwise in the contract documents. The word "new" shall not operate to exclude recycled raw materials used in the manufacture of previously unused, i.e. new, materials, equipment and articles (products) for this contract, provided that such items comply with all other contract requirements.

All materials, equipment and articles (products) which are specified by brand name (i.e., manufacturer's or supplier's name or trade name and catalog or model number or name) shall be deemed to have the words "or equal" inserted in each instance. The intent is not to limit competition but to establish a standard of quality which the Engineer has determined is necessary. The Contractor may use any product equal to that named in the contract documents provided 1) that the Contractor has given timely notice of his intent (in accordance with the submittal and scheduling requirements of this contract) and 2) that the Engineer approves the proposed alternate.

The Engineer may establish criteria for product approval and shall determine whether a proposed product is to be approved.

The Contractor shall have the burden of proving at his own cost and expense, to the satisfaction of the Engineer, that the proposed product is equal to that named in the contract documents. Items offered by some manufacturers or suppliers may require changes in the contract plans or drawings. The Contractor shall bear the cost and expense of preparing and providing detailed drawings showing all changes, if any, from details shown in the contract documents, for structures, pipes, seals, controls or other devices required to insure a complete, satisfactory and operating installation. Such detailed drawings shall be subject to the Engineer's approval as to conformance with the over-all project requirements.

The Contractor shall supply the product named 1) if the Engineer determines that the Contractor's proposed product is not equal to the product named in the contract documents or 2) if the Contractor fails to comply with the provisions of this article. The Contractor shall have and make no claim for the extension of time or for damages because 1) the Engineer requires a reasonable period of time to consider a product proposed by the Contractor or 2) because the Engineer does not approve the Contractor's proposed product.

Where optional materials or methods are specified, or where "or equal" submissions are approved, the Contractor shall make all adjustments necessary to accommodate the option he selects.

3.4 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees and include the cost thereof in his bid. He shall defend all suits or claims for infringement of any patent rights and shall save harmless the Owner from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer is specified and the Contractor properly acquires all royalties and license fees at no additional cost to the Owner.

ARTICLE 4: PERFORMANCE OF THE CONTRACT

4.1 RESPONSIBILITY FOR DAMAGE

The Contractor shall faithfully perform and complete all of the work required by the Contract, and has full responsibility for the following risks:

- (1) Loss or damage, direct or indirect, to the work including the building or structure in which the work is being performed, or any other construction in progress whether being performed by any other Contractor or the Owner, or to any plant, equipment, tools, materials or property furnished, used, installed or received by the Engineer under this contract or any other

contract. The Contractor shall bear all such risk of loss or damage, until all of the work covered by the Contract has been finally accepted. In the event of such loss or damage, the Contractor shall forthwith repair, replace, and make good any such loss or damage at the direction of the Engineer without additional cost to the Owner.

- (2) Injury to persons (including death resulting there from), or damage to property caused by an occurrence arising out of the performance of this Contract for which the Contractor may be legally liable under the laws of torts.
- (3) The Contractor shall not be responsible for damages resulting from willful acts of Owner's employees or from negligence resulting solely from acts or omissions of the Owner, its officers or employees. Nothing herein shall vest in third parties any right of action beyond such as may legally exist irrespective of this article.
- (4) The Contractor shall indemnify and save harmless the Owner, its officers, employees and agents, from suits, actions, damages, and costs of every name and description relating to the performance of this Contract during its prosecution and until the acceptance thereof, and the Owner may retain such moneys from the amount due the Contractor as may be necessary to satisfy any claim for damages recovered against the Owner. The Contractor's obligations under this paragraph shall not be deemed waived by the failure of the Owner to retain the whole or any part of such moneys due the Contractor, nor shall such obligation be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the Contractor, Subcontractor or the Owner.
- (5) The Contractor shall provide written notice to the Engineer within three (3) business days of any loss, damage or injury arising out of the Contractor's performance of the Contract.
- (6) No claim whatsoever shall be made by the Contractor against any officer, agent, or employee of the Town, for, on account of, or by reason of anything done, or omitted to be done, in connection with this contract.

4.2 CLAIM FOR DAMAGES BY CONTRACTOR

If the Contractor shall claim compensation for any damage sustained, other than for extra or disputed work by reason of any act or omission of the Owner, its agents or of any persons, he shall, within five (5) days after sustaining such damage, make and deliver to the Engineer a written statement of the nature of the damage sustained and of the basis of the claim against the Owner. If on or before the fifteenth of the month succeeding that in which any damage is alleged to have been sustained, the Contractor shall fail to make and deliver to the Engineer an itemized, verified statement of the

details and amount of such damages claimed, it is hereby stipulated that all claims for such compensation shall be forfeited and invalidated and the Contractor shall not be entitled to payment on account of such claims.

4.3 DISPUTES

The Contractor specifically agrees to submit in writing, in the first instance, any dispute relating to the performance of this Contract to the Engineer, who shall reduce his decision to writing and furnish a copy thereof to the Contractor. The Contractor must request such decision in writing no more than fifteen days after he knew or ought to have known of the facts which are the basis of the dispute.

The decision of the Engineer shall be final and conclusive unless within twenty days from the date of receipt of such copy the Contractor serves upon the Board a written appeal. Upon appeal, the decision of the Board or its duly authorized representative shall be final and conclusive unless the decision is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal.

Pending final determination of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract, including the work being disputed, in accordance with the Engineer's decision. Nothing in this Contract shall be construed as making final the decision of any administrative official upon a question of law.

4.4 COORDINATION OF SEPARATE CONTRACTORS

The Owner may award other contracts related to the work. In that event, the Contractor shall coordinate his work with the work of other Contractors in such manner as the Owner may direct. Each Contractor shall control and coordinate the work of his Subcontractors, if any. The Owner shall approve or require the modification of the work schedules of all Contractors to the end that the project may be progressed as expeditiously as the case permits.

If any part of the work depends for proper execution or results upon the work of any other Contractor, the Contractor shall inspect and promptly report in writing to the Engineer any defects in such work. The Contractor's failure to inspect and report shall constitute an acceptance of the other Contractor's work as fit and proper for the reception of the work of this contract.

The Owner shall issue appropriate directions and take such other measures to coordinate and progress the work as may be reserved to the Owner in the contract, and which an ordinarily reasonable project owner in similar circumstances would be expected to take. However, the Owner shall not be liable for mere errors in judgments

as to the best course of action to adopt among the alternatives available in any given instance.

The award of more than one contract for the project requires sequential or otherwise interrelated Contractor operations, and may involve inherent delays in the progress of any individual Contractor's work. Accordingly, the Owner cannot guarantee the unimpeded operations of any Contractor. The Contractor acknowledges these conditions, and understands that he shall bear the risk of all ordinary delays caused by the presence or operations of other Contractors engaged upon the project, and ordinary delays attendant upon any Owner approved construction schedule.

The Owner shall not be liable for ordinary delays in any case nor for extraordinary delays which occur by reason of any Contractor's failure to comply with directions of the Owner, or because of the neglect, failure of inability of any Contractor to perform his work efficiently, or the failure of a supplier to supply or a Subcontractor to perform.

Any claim for extraordinary delay caused by an allegedly unreasonable or arbitrary act, or failure to act, by the Owner in the exercise of its responsibility for supervision and coordination of the work, shall be waived, released, and discharged unless the Contractor whose work is impeded or delayed thereby, shall give notice in writing to the Board as promptly as possible and in sufficient time to permit the Board to investigate and formulate appropriate instructions.

The neglect or refusal of a Contractor to comply with directions issued by the Owner pursuant to its responsibility for supervision of the work shall constitute a failure to progress the work diligently in accordance with Contract requirements and shall justify withholding payments otherwise due, or termination of the Contract.

The Contractor shall indemnify the Owner for damages recovered against the Owner by another Contractor to the extent that any such claim or judgment is the proximate result of the Contractor's failure to progress the work in accordance with Contract requirements.

4.5 CONTRACTOR'S SUPERVISION

The Contractor shall designate, in writing, a competent supervisor for the work to represent the Contractor at the site at all times with authority to act for him and who can communicate effectively with the Owner's representative. All directions given the Contractor's representative shall be as binding as if given to the Contractor. The work may be suspended by the Engineer in whole or in part, if the Contractor has no such representative on site. The representative shall keep on site copies of the plans and specifications and shall have full authority to supply material and labor as required.

Should the Engineer deem any employees of the Contractor incompetent or negligent, or otherwise not qualified by reason of experience, or for any cause unfit for their duty, the Contractor shall dismiss them and they shall not again be employed on the work.

4.6 PERMITS AND COMPLIANCE

The Contractor shall obtain, maintain and pay for all other permits and licenses legally required and shall give all notices, pay all fees and comply with all laws, rules and regulations applicable to the work at no additional cost to the Owner.

4.7 BOUNDARIES

The Contractor and all Subcontractors shall confine their equipment, apparatus, and the storage of materials and supplies of his workmen to limits indicated by law, ordinance, permits or directions of the Engineer. The Contractor shall be responsible for setting all grades, elevations and horizontal and vertical alignment required to layout all work called for on the plans and drawings.

4.8 REFUSE AND DEBRIS

The Contractor shall at all times keep the refuse and debris at the job site to a minimum, and at the completion of the contract shall remove all debris, waste and rubbish, tools, equipment, surplus supplies and materials, temporary structures, etc, and leave all areas "broom" or "rake" clean. The interiors of buildings shall be cleaned as stated in the Specifications and General Conditions.

4.9 SUBCONTRACTORS AND SUPPLIERS

Before any part of the Contract shall be sublet or material purchased, the Contractor shall submit to the Engineer in writing the name of each proposed Subcontractor and supplier and obtain the Engineer's written consent to such Subcontractor and supplier. The names shall be submitted in ample time to permit acceptance or rejection of each proposed Subcontractor and supplier by the Engineer without causing delay in the work of the Project.

The Contractor's use of Subcontractors and suppliers shall not diminish the Contractor's obligations to complete the work in accordance with the Contract. The Contractor shall control and coordinate the work of his Subcontractors.

The Contractor shall be responsible for informing his Subcontractors and suppliers of all the terms, conditions and requirements of the contract documents.

In making payment to his Subcontractors, the Contractor shall comply with the provisions of New York State General Municipal Law § 106.b. Nothing contained in this Contract shall create any contractual relationship between any Subcontractor and the Owner.

4.10 CONTRACTOR'S WORK REQUIREMENTS

The Contractor shall do all the work and furnish at his own cost and expense, all labor, supervision, machinery, equipment, facilities, tools, transportation, supplies, materials, insurance, permits, certificates, tests, guarantees, protection of equipment and property and life during construction, and all other things whether or not explicitly shown or mentioned, necessary and proper for or incidental to the completion of a workmanlike job, complete in every respect and detail, left ready and in perfect condition for the Owner's use.

All work performed under this contract shall be according to the highest standards of the trades involved, and shall conform to the requirements of any utilities, and any and all Federal, State and local laws, codes, ordinances and statues as may be in effect at the time of bidding.

This shall not be construed as relieving the Contractor from complying with any of the requirements of the plans and specifications which may be in excess of the requirements mentioned herein.

ARTICLE 5: CHANGE IN THE WORK

5.1 PROCEDURE

One or more changes to the work within the general scope of this Contract may be ordered by Change Order. No written or oral instructions shall be construed as directing a change in the work unless in the form of a change order signed by the Owner and the Contractor. All change order work shall be executed in conformity with the terms and conditions of the contract documents unless otherwise provided in the change order.

The change order shall describe or enumerate the work to be performed or other changes that alter, add to or deduct from the contract work. The change order shall adjust the contract quantities and sum accordingly, and if applicable, state any change in the time for completion of the contract. If the Contractor disagrees with any element of the change order, he shall indicate his disagreement in writing on the face of the change order and nevertheless promptly proceed in accordance with the change order. If the Contractor disputes any item of the change order, he shall comply with Article 4.3.

If the Contractor is directed to perform work for which he believes he is entitled to a change order, he shall give the Engineer prompt written notice and await instructions before proceeding to execute such work. The Engineer may order the Contractor to execute the work as contract work. If the Contractor disputes this decision, he shall give notice pursuant to the dispute provisions of Article 4.3.

If the Contractor encounters a situation or work for which he believes he is entitled to a change order, he shall give the Engineer or inspector notice by

telephone or in person within one business day and shall await instructions before proceeding.

The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the work, this Contract as thus amended, the Contract Price and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the work included within or affected by the executed Change Order.

The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approvals are required by the Owner, the Engineer, and the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of, and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

5.2 CHANGE IN CONTRACT PRICE

Any change in the Contract Price resulting from a Change Order shall be determined by one the following methods:

- (1) By mutual agreement between the Owner and the Contractor as evidenced by the change in the Contract Price as set forth in the Change Order; or
- (2) By mutual agreement between the Owner and the Contractor as evidenced by the change in the Contract Price, together with any conditions or requirements relating thereto, being initialed by both parties and the Contractor's execution of the Change Order; or
- (3) If the extent or cost of the work is not determinable until after the change in the work is performed, the change order shall specify the method for determining

5.3 VALUE OF CHANGE ORDER

The value of a change order shall be determined by one of the following methods:

- (1) By lump sum or unit prices negotiated or established based on estimated cost plus fifteen percent (15%) as compensation for all other items of profit and cost or expense, including administration, overhead, superintendent, materials used in temporary structures and allowances made by the Contractor to the Subcontractors.
- (2) If no unit prices are set forth and if the parties cannot agree upon a lump sum, then by the sum of (a) and (b) below.
 - (a) The actual and reasonable net cost in money to the Contractor of

the materials and of the wages of applied labor required for such extra work (including net premium for workers' compensation Insurance, contributions pursuant to the State Unemployment Insurance Law, and withholding taxes pursuant to the Federal Social Security Act), plus fifteen percent (15%) as compensation for all other items of profit and cost or expense, including administration, overhead, superintendent, materials used in temporary structures and allowances made by the Contractor to the Subcontractors.

- (b) The actual and reasonable net cost in money to the Contractor of any equipment rental (based upon actual rental receipts or the Kelly Blue Book as applicable), plus fifteen percent (15%) as compensation for all other items of profit and cost or expense, including fuel usage.
- (c) The Contractor shall, upon request, furnish satisfactory proof of all labor performed, materials furnished and equipment used in the performance of extra work.

ARTICLE 6: TIME OF COMMENCEMENT, COMPLETION AND TERMINATION FOR CAUSE

6.1 TIME OF COMMENCEMENT AND COMPLETION

- (1) The Contractor must commence work on the day specified therefor in a Notice to Proceed signed by the Owner. Since TIME IS OF THE ESSENCE in this Contract, the Contractor shall thereafter prosecute the work diligently, using such means and methods of construction as will assure its full completion in accordance with the requirements of the Contract Documents not later than the specified date therefore, or on the date to which the time for completion may be extended.
- (2) Unless the date for completion is extended pursuant to the provisions of paragraph 6.2 below, the Contractor shall complete the work within the time allotted as stated in the Contract Agreement. The Engineer shall be the sole judge as to whether the work hereunder has been completed within the time stipulated.

6.2 EXTENSION OF TIME

It is mutually agreed that no extension beyond the date of completion fixed by the terms of the contract shall be effective unless consented to in writing by the Engineer. An application by the Contractor for extension of time must be in writing, setting forth in detail the reasons and causes of delay and the date upon which each such cause of delay began and ended, and must be submitted to the Engineer within five (5) days after the start of the alleged delay. If the Engineer should determine that the delay was not due to any act or omission on the part of the Contractor or was due to causes

beyond the control of the Contractor, the Contractor shall be entitled to an extension of time equal to the number of days actually delayed if such extension shall be required. If, however, the Engineer should determine that the delay was caused directly or indirectly by the act or conduct of the Contractor or any of his Subcontractors or suppliers, the Engineer may refuse to grant an extension of time and direct the Contractor to re-arrange his progress schedule so as to complete the work within the time set forth in the contract.

If the Owner deems it advisable and expedient to have the Contractor complete and finish the work after the expiration of the contract date of completion, and in order that the Owner's fiscal officer may be permitted to make payment to the Contractor for work performed beyond the completion date, the Owner will grant an extension of time necessary to complete the work, conditional upon the assessment and deduction of liquidated damages from the moneys which may become due hereunder.

In the event of delay for cause, the Contractor's sole remedy shall be the extension of time granted as hereinabove provided, and the Contractor shall have no right to, or cause of, action for damages or additional costs resulting from any such delay.

Time necessary for review by the Engineer of shop drawings and delays incurred by normal seasonal and weather conditions should be anticipated and are neither compensatory nor eligible for extensions of time.

6.3 LIQUIDATED DAMAGES UPON FAILURE TO COMPLETE

The Contractor is put on notice that *TIME IS OF THE ESSENCE* in this Contract and that there will be, on the part of the Town, considerable monetary damage in the event the Contractor should fail to complete the work within the time fixed for completion in the Notice to Proceed or within the time to which such completion may have been extended. However, it is impossible to determine with reasonable accuracy the precise amount of damage to the Town upon the Contractor's failure to complete the project as specified herein.

The amount stated in the Contract Agreement is hereby stipulated as the liquidated damages for each and every calendar day that the time consumed in completing the work exceeds the time allowed therefore. The amount stated shall in no event be considered as a penalty or otherwise than as the liquidated and adjusted damages of the Owner because of the said delay.

The stated sum per day for each day shall be deducted and retained out of the monies which may become due hereunder.

If the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes

the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable as liquidated damages.

Additionally, if the Contractor fails to achieve final completion within 30 days after the date of Substantial Completion, the Contractor shall pay the Owner the amount stated in the Contract Agreement as the liquidated damages for each and every calendar day of unexcused delay in achieving final completion beyond 30 days after the date of Substantial Completion. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, as estimated at or before the time of executing the Contract.

6.4 TERMINATION FOR CAUSE

If in the judgment of the Owner, the Contractor fails or refuses to prosecute the work in accordance with the Contract, or is failing to complete the work within the time provided by the Contract, the Owner may terminate the Contract by written notice. In such event, the Owner shall order the surety to complete the work. If the surety fails or refuses to complete the work in accordance with the contract provisions, including time of completion, the Owner may take over the work and prosecute it to completion by contract publicly let or otherwise, and may take possession of and utilize in completing the work, such of the Contractor's plant, materials, equipment, tools and supplies as may be on the site of the work. Whether or not the right to terminate is exercised, the Contractor and his surety shall be liable for any damage to the Owner resulting from his failure or refusal to complete the work in accordance with the Contract or his failure to complete the work within the time provided by the Contract.

If the Owner terminates the Contract, damages shall consist of liquidated damages, if any, until the work is physically completed, plus any increased costs occasioned the Owner in completing the work.

If the Owner does not terminate the Contract, the damages shall consist of liquidated damages, if any, until the work is physically completed.

The Contract shall not be so terminated nor the Contractor charged with resulting damage if:

- (1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Board in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of Subcontractors or suppliers arising from

unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or suppliers, and

- (2) The Contractor shall notify the Engineer in writing of the causes of delay within fifteen (15) days from when the Contractor knew or ought to have known of any such delay.

The Engineer will ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive.

If after notice of termination of the Contract, it is determined for any reason that the Contractor was not in default or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.

The rights and remedies of the Owner provided in this clause are in addition to any other rights and remedies provided by law or under this Contract; provided that damages for delay incurred by the Contractor shall be as specified in this article.

6.5 TERMINATION OF CONTRACTOR'S EMPLOYMENT FOR THE CONVENIENCE OF THE OWNER

The Owner may terminate this Contract whenever in its judgment the public interest so requires by delivering to the Contractor a notice of termination specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective. Upon receipt of the notice of termination, the Contractor shall act promptly to minimize the expenses resulting from such termination. The Owner shall pay the Contractor the sum of:

- (1) the costs actually incurred up to the effective date of such termination, plus
- (2) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the notice of termination of work under this Contract, which amounts shall be included in the cost on account of which payment is made under (1) above.
- (3) the rate of profit and overhead on (1) and (2) as prescribed by this Contract for change orders, provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been competed, no profit shall be included or allowed under this paragraph (3) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.

In no event shall the Contractor's compensation exceed the total Contract amount.

The detailed estimate or amount of progress payments made to the Contractor prior to the day termination was effective shall not be conclusive evidence of costs incurred, but progress payments shall be offset against any payment which the Owner makes to the Contractor as a result of such termination.

6.6 CONTRACTOR'S DEFAULT

The Contractor shall be declared in default if any of the following occur:

- (1) if the Contractor fails to begin work when notified to do so by the Owner, or
- (2) if the Contractor becomes insolvent, or
- (3) if a petition of bankruptcy is filed by or against the Contractor, or
- (4) if the work to be done under this contract shall be abandoned, or
- (5) if this contract or any part thereof shall be subcontracted without the consent of the Owner being first obtained in writing, or
- (6) if this contract or any right, moneys or claim thereunder shall be assigned by the Contractor otherwise than as herein specified, or
- (7) if, at any time, the Engineer shall be of the opinion that the conditions herein specified as to the rate of progress are not fulfilled, or
- (8) that the work or any part thereof is unnecessarily or unreasonably delayed, or
- (9) that the Contractor is not or has not been executing the contract in good faith, or
- (10) that the Contractor is violating any of the provisions of this contract;

The Owner, without prejudice to any other rights or remedy of said Owner, shall have the right to declare the Contractor in default and so notify the Contractor by a written notice, setting forth the ground or grounds upon which such default is declared and that the Contractor shall discontinue the work, either as to a portion of the same or the whole thereof. Upon receipt of the notice, the Contractor shall immediately discontinue all further operations on the work or such portion thereof, leaving untouched all plant, materials, equipment, tools and supplies.

6.7 SUSPENSION OF WORK

The Engineer may order the Contractor, in writing, to suspend, delay, or interrupt performance of all or any part of the work for a reasonable period of time as he, in his sole discretion, may determine. The order shall contain the reason or reasons for issuance which may include but shall not be limited to the following: latent field conditions, substantial program revisions, civil unrest, acts of God, failure to have a supervisor on site.

Upon receipt of a suspension order, the Contractor shall, as soon as practicable, cease performance of the work as ordered and take immediate affirmative measures to protect such work from loss or damage.

The Contractor specifically agrees that a suspension, interruption or delay of the performance of the work pursuant to this article shall not increase the cost of performance of the work of this Contract.

A suspension order issued by the Engineer pursuant to this article shall have a duration not to exceed thirty (30) calendar days. If the Contractor is not directed to resume performance of the work affected by said suspension order prior to the expiration of thirty (30) calendar days, the Contract shall be automatically terminated for the convenience of the Owner and the Contractor shall be reimbursed in accordance with the payment schedule.

6.8 TERMINATION BY THE CONTRACTOR

If the Owner repeatedly fails to perform its material obligations to the Contractor for a period of thirty (30) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Owner and the Engineer. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Section 6.5 above.

ARTICLE 7: INSPECTION AND ACCEPTANCE

7.1 INSPECTION

The Engineer or the Owner's representative will inspect and test the work at reasonable times at the site, unless the Engineer determines to make an inspection or test at the place of production, manufacture or shipment. Such inspection or test shall be conclusive as to whether the material and workmanship inspected or tested conforms to the requirements of the Contract. Such inspection or test shall not relieve the Contractor of responsibility for damages to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Engineer to reject the completed work.

7.2 CONTRACTOR'S OBLIGATION TO CORRECT DEFECTIVE WORK

The Contractor shall, without charge, promptly correct any work which the Engineer finds does not conform to the contract documents, unless in the public interest the Owner consents to accept such work with an appropriate adjustment in the Contract sum. The Contractor shall promptly remove rejected material from the premises.

If the Contractor does not promptly correct rejected work including the work of other Contractors destroyed or damaged by removal, replacement, or correction, the Owner may:

- (1) correct such work and charge the cost thereof to the Contractor; or
- (2) terminate the Contract in accordance with the section on termination in the General Conditions.

The Contractor shall furnish promptly and without additional charge all facilities, labor and material reasonably needed to perform in a safe and convenient manner such inspections and tests as the Engineer requires.

The Contractor shall promptly correct work rejected by the Engineer or failing to conform to the requirements of the contract documents, whether observed before or after substantial completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected work, including additional testing and inspections and compensation for the Engineer's services and expenses made necessary thereby.

7.3 PROGRESS REPORTS

The Contractor shall keep the Engineer informed of the progress of his work and particularly when he intends to cover work not yet inspected or tested. When the work is not progressed continuously, except for weekends and holidays, the Contractor shall notify the Engineer again each time before resuming work. Twenty-four hours notice shall be given. All inspection and tests by the Engineer shall be performed in a manner not to unreasonably delay the work. The Contractor shall be charged with any additional cost of inspection when the work is not ready for inspection by the Engineer at the time stated by the Contractor or agreed to by the Engineer and Contractor.

7.4 INSPECTION PRIOR TO ACCEPTANCE

Should the Engineer determine at any time before acceptance of the entire work to examine work already completed by removing, uncovering or testing the same, the Contractor shall, on request, promptly furnish all necessary facilities, labor and materials to conduct such inspection, examination or test. If such work is found to be defective or nonconforming in any material respect, the Contractor shall defray all the expenses of such examination and satisfactory reconstruction. If the work is found to meet the requirements of the contract documents, the Owner shall compensate the Contractor for

the additional services involved in such examination and reconstruction and if completion of the work has been delayed thereby, he shall, in addition, grant the Contractor a suitable extension of time. If the Contractor covers his work prior to allowing inspections and tests by the Engineer, the Contractor shall promptly uncover and make ready all such areas for inspections and tests, and the Contractor shall be liable for and charged with any and all additional associated costs.

No previous inspection or certificates of payment or final payment shall relieve the Contractor from the obligation to perform the work in accordance with the Contract Documents. In the event that the Contractor has in any way failed to comply with the Contract Documents, the final payment shall not act to relieve the Contractor of his responsibility to comply with the Contract Documents.

ARTICLE 8: PAYMENTS

8.1 PAYMENT

For the Contractor's complete performance of the work, the Owner will pay, and the Contractor agrees to accept, subject to the terms and conditions hereof, the total of the lump sum prices and the unit prices at which this Contract was awarded, plus the amount required to be paid for any extra work ordered by the Engineer under Article 5, less credit for any work omitted pursuant to Article 5.

8.2 PROGRESS PAYMENTS

- (1) The Owner will make monthly progress payments on account of this Contract, on or after the first (1st) of each month, whenever the monthly estimate of the Contractor, as approved by the Engineer, shows that the fair value of the work completed during the previous month exceeds one thousand dollars (\$1,000.00).
- (2) Payment will be in an amount equal to ninety-five percent (95%) of the value of the work completed less the aggregate of all previous payments.
- (3) Payment requests shall be made on a form approved by the Engineer and shall be submitted by the first business day of the month in which payment is scheduled to be made. Payment requests shall be approved, changed or rejected by the Engineer at least three (3) days prior to the date upon which payment is scheduled to be made.
- (4) When submitting payment requests, Contractor shall certify with each request that all Subcontractors, suppliers and laborers have been paid in full (less 5% retainage) up to the date of the request. No payments will be made by the Owner without this certification. Delays in payment due to disagreement between the Engineer and Contractor about a quantity shall

be borne by the Contractor. It is also the burden of the Contractor to obtain agreement from the Engineer or to be satisfied with his estimate.

- (5) All materials and work covered by progress payments shall become the property of the Owner; however, such payments made to the Contractor shall not be construed as acceptance by the Owner of any work or materials not in accordance with the Plans and Specifications.
- (6) No payment to the Contractor, nor utilization of the Project for any purpose by the Owner, nor any other act or omission by the Owner shall be interpreted or construed as an acceptance of any work of the Contractor that is not strictly in compliance with this Contract.
- (7) The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or the entire amount previously paid to the Contractor due to:
 - (a) The quality of a portion, or all, of the Contractor's work not being in accordance with the requirements of this Contract;
 - (b) The quantity of the Contractor's work not being as represented in the Contractor's Payment Request, or otherwise;
 - (c) The Contractor's rate of progress being such that, in the Owner's opinion, substantial or final completion, or both, may be inexcusably delayed;
 - (d) The Contractor's failure to use Contract funds, previously paid the Contractor by the Owner, to pay Contractor's project-related obligations including, but not limited to, payments to subcontractors, laborers and material and equipment suppliers;
 - (e) Claims made, or likely to be made against the Owner or its property;
 - (f) Loss caused by the Contractor;
 - (g) The Contractor's failure or refusal to perform any of its obligations to the Owner.
- (8) In the event that the Owner makes written demand upon the Contractor for amount previously paid by the Owner as contemplated in this paragraph, the Contractor shall promptly comply with such demand;
- (9) Payments by the Owner shall be made pursuant to the provisions of General Municipal Law Section 106-b, including interest payments as required by that section.

8.3 SUBSTANTIAL COMPLETION

- (1) When the work or major portions thereof are substantially completed, the Contractor may submit a request for payment of the remaining amount of the contract amount. Upon receipt of such request for payment, the Engineer shall make an inspection and identify all work that is incomplete or otherwise not ready for final acceptance. The Owner shall approve and promptly pay the remaining amount of the contract balance less two times the value of any remaining items to be completed (as identified in the Engineer's Certificate of Substantial Completion) and an amount necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged. The Certificate of Substantial Completion may also assign responsibilities for security, maintenance, damage to the work, insurance, etc. The Certificate shall fix the time within which the Contractor shall complete all items listed as being incomplete or otherwise not ready for final acceptance.
- (2) As the remaining items of work (as identified in the Engineer's Certificate of Substantial Completion) are satisfactorily completed or corrected, the Contractor may prepare a request for payment, but not more often than monthly, for any such work. The Owner shall pay as in paragraph 8.2.1. above.

8.4 FINAL PAYMENT

- (1) Within thirty (30) days after receiving written notice from the Contractor of completion of all of the work, and submission of satisfactory evidence of having repaired any and all damage resulting therefrom to public or privately owned properties but not a part of the work under this contract, the Engineer will cause a final inspection to be made for approval of all the work done under this contract. If such inspection confirms that the Project is complete in full accordance with this Contract, the Engineer will recommend to the Owner, with a copy to the Contractor, that the Contractor has performed all of his obligations under the Contract and that no further work is to be done. Upon receipt of the Engineer's recommendation of completion of all contract work, the Contractor may make a request for final payment per paragraph 8.4(2) below.
- (2) The Contractor's request for final payment shall include all of the following submittals:
 - (a) Affidavits and certificates of payment for labor, material and equipment
 - (b) Affidavits and certificates of payment for labor, material and equipment

- (c) AIA forms (or similar) G706 Contractor's Affidavit of Payment of Debts and Claims, G706A Contractors Affidavit of Release of Liens, and G707 Consent of Surety to Final Payment.
 - (d) Verified statements obtained by the Contractor from its subcontractors pursuant to Labor Law 220-a (1), attesting that the subcontractors have received and reviewed the schedule of wages and supplements, which statements shall also contain information on the amounts due and owing for wages and supplements from the Contractor, and also from subcontractors, all in accordance with the provisions of Labor Law section 220-a (2).
- (3) As a further condition precedent to receiving final payment, the Contractor shall furnish to the Owner, all product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor, or expressly required herein, as a part of or prior to Project closeout.
 - (4) Not later than thirty (30) days after receipt of the Engineer's recommendation for approval of the Contractor's request for Final Payment, the Owner will pay the Contractor the entire sum so found due there under. The Contractor is put on notice that, all prior payment having been based on estimates made solely to enable the Contractor to prosecute the work advantageously, the final payment will be subject to such corrections as may be found necessary to bring the total payments into agreement with the contract price, adjusted per change order(s) if applicable.
 - (5) After final acceptance of the work under this Contract and the Owner's payment of the final request for payment, the Engineer will recommend that the Owner can issue a Certificate of Completion to the Contractor for the work done under this Contract.

8.5 ACCEPTANCE OF FINAL PAYMENT

The acceptance by the Contractor or by anyone claiming by or through him of the final payment shall operate as and shall be a release to the Owner and every officer and agent thereof, from any and all claims and all liability to the Contractor for any thing done or furnished in connection with this work or project and for any act or neglect of the Owner or of any others relating to or affecting the work. No payment, however, final or otherwise shall operate to release the Contractor or his sureties from any obligations under this contract or the performance bond.

8.6 CONTRACT QUANTITIES

The quantities actually required to complete the contract work may be less or more than estimated, and, if so, no action for damages or for loss of profits shall accrue to the

Contractor by reason thereof. For unit price contracts, a change order may be prepared to bring the actual and estimated quantities and values into agreement.

8.7 MAINTENANCE AND GUARANTEE

The Contractor shall remedy all defects, paying the cost of any damage to other work resulting there from, which shall appear within a period of one year from the date of completion as evidenced by the Owner's Certificate of Completion. The Contractor shall, for this period, indemnify and hold harmless the Owner, its officers, and agents from any injury done to property or persons as direct or alleged result of imperfections in his work or any other claims, actions or proceedings and the Contractor shall immediately assume and take charge of the defense of such action or suits in like manner and to all intents and purposes as if said actions and suits had been brought directly against the Contractor.

The performance bond shall remain in full force and effect through the guarantee period unless a separate maintenance bond is provided.

If the Contractor shall fail to repair, replace, rebuild or restore such defective or damaged work promptly after receiving notice given by the Engineer not later than ten (10) days subsequent to the expiration of the one year period, the Owner shall have the right to have the work done by others and to deduct the cost thereof from the amount retained hereunder. The balance, if any, shall be returned to the Contractor at the end of the one year guarantee period without interest. If the amount so retained be insufficient to cover the cost of such work, the Contractor shall be liable to pay such deficiency on demand by the Owner.

8.8 NO ESTOPPEL

The Owner or any department, officer, agent, or employee thereof, shall not be bound, precluded, or estopped by any acceptance, return certificate or payment made or given under or in connection with this Contract by the Owner, at any time, either before or after final completion and acceptance of the work and payment therefor:

- (1) showing the true and correct classification amount, quality or character of the work done and materials furnished by the Contractor or any other person under this agreement, or from showing at any time that any such acceptance, return certificate or payment is untrue, incorrect, or improperly made in any particular, or that the work or any part thereof does not in fact conform to the requirements of the contract documents, or
- (2) from demanding and recovering from the Contractor any overpayment made to him or such damages as it may sustain by reason of his failure to comply with the requirements of the contract documents, or
- (3) both 1 and 2 above.

ARTICLE 9: BONDS AND INSURANCE

9.1 CONTRACT SECURITY

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

9.2 INSURANCE

Simultaneously with the execution of the contract, the Contractor shall provide at his own cost and expense, proof of the following insurance to the Owner, in the form of a Certificate of Insurance:

(Note: The insurance policy shall name as the insured the Contractor and the Town).

1. Claims under Worker's Compensation, disability benefits and other similar employee benefit acts;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;
3. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person.

Statutory Workers' Compensation coverage, in compliance with the Compensation Law of the State of New York.

The Contractor shall procure and maintain, at his own expense, during the contract time, liability insurance as hereinafter specified:

1. Automobile Liability - Every Contractor shall take out and maintain during the life of this contract Automobile Liability insurance on an occurrence basis covering all owned, non-owned, and hired vehicles with the limits of not less than:

Bodily Injury/Property Damage on a combined Single Limits Basis
of at least \$1,000,000 each occurrence
No Fault Benefits Statutory Benefits

2. Commercial General Liability - Every Contractor shall take out and maintain during the life of this contract, which includes the guarantee period, such Comprehensive General Liability insurance, on an

occurrence basis, to protect him from claims for damages for Bodily Injury and for Property Damage with limits not less than:

Bodily Injury and Property Damage \$2,000,000 per occurrence
\$3,000,000 aggregate
\$3,000,000 Products/Completed Operations Aggregate

The Town of Poughkeepsie should be covered as an additional insured on a primary and non-contributory basis including for products and completed operations. There should be a waiver of subrogation in favor of the Town of Poughkeepsie and hold harmless provisions in the contract in favor of the Town.

3. Catastrophe Excess Liability or Umbrella policies are acceptable in helping to fulfill the requirements, provided they do not contain restrictions or exclusions of coverages required under these specifications.
4. Owners/Contractors' Protective Liability - The General Liability Policy should be written to include Contractors' Protective Liability for Bodily Injury and Property Damage with limits not less than those specified above to protect the Contractor against claims arising from the operations of any Subcontractors which he employs on the project.
5. All risk builders risk insurance coverage for loss or damage to property for buildings and structures owned by the Board, which are under construction, renovation, remodeling or maintenance under this contract. The Owner must be listed as additional named insured.
6. Liability insurance for blasting commensurate with the nature and scope of the blasting which will be conducted on the project. The Owner must be listed as additional named insured on a primary and non contributory basis including products and completed operations. Limits should be no less than stated for the CGL above.

Prior to cancellation or material change in any policy, a thirty (30) day notice shall be given to the Town Clerk by registered mail, return receipt requested, at the address listed below:

Felicia Salvatore, Town Clerk
Town of Poughkeepsie
1 Overocker Road
Poughkeepsie, NY 12603

Upon receipt of such notice the Owner shall have the option to cancel the Agreement without further expense or liability to the Owner, or to require the Contractor to replace the cancelled insurance policy, or rectify any material change in the policy, so that the insurance coverage required is maintained continuously throughout the term of the

Agreement in form and substance acceptable to the Board. Failure of the Contractor to take out or to maintain, or the taking out or maintenance of any required insurance, shall not relieve the Contractor from any liability under the Contract, nor shall the insurance requirements be construed to conflict with the obligations of the Contractor concerning indemnification.

All property losses shall be made payable to and adjusted with the Owner.

All insurance policies referred to above shall be underwritten by companies authorized to do business in the State of New York and acceptable to the Owner.

In the event that claims in excess of these amounts are filed by reason of any operations under the Agreement, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the Contractor until such time as the Contractor shall furnish such additional security concerning such claims as may be determined by the Owner.

ARTICLE 10: MISCELLANEOUS PROVISIONS

10.1 COMPLIANCE WITH CODES AND LAWS

All work performed under this contract shall be according to the highest standards of the trades involved, and shall conform to the requirements of any utilities, and any and all federal, State and local laws, codes, ordinances and statutes as may be in effect at the time of bid opening.

This shall not be construed as relieving the Contractor from complying with any of the requirements of the plans and specifications which may be in excess of the requirements mentioned herein.

The organization or arrangement of the plans and specifications shall not operate to define or establish the work to be performed by any trade or Subcontractor.

10.2 SERVICE OF NOTICES

The Contractor hereby designated the business address specified in his bid as the place where all notices, directions or other communications to the Contractor may be delivered, or to which they may be mailed. Actual delivery of any such notice, direction or communication to the aforesaid place, or depositing it in a postpaid wrapper addressed thereto in any post-office box regularly maintained by the United States Postal Service, shall be conclusively deemed to be sufficient service thereof upon the Contractor as of the date of such delivery or deposit.

Such address may be changed at any time by an instrument in writing executed and acknowledged by the Contractor and delivered to and receipted for in writing by the Engineer.

Nothing herein contained shall, however, be deemed to preclude or render inoperative the service of any notice, direction or other communication upon the Contractor personally, or, if the Contractor be a corporation, upon any officer or director thereof.

10.3 LABOR STANDARDS

The Contractor and its Subcontractors shall comply with all local, State and federal rules, including, but not limited to the Occupational Safety and Health Act of 1970, the Contract Work Hours and Safety Standards Act, and the New York State Labor Law with respect to hours of work, posting of notices, deductions in wages, and apprenticeship training programs.

The Contractor and Subcontractors, if any, shall keep the following information records on the site of this public works project:

- a. Record of hours worked by each workman, laborer and mechanic on each day.
- b. Schedule of occupation or occupations at which each workman, laborer, and mechanic on the project is employed during each work day and week.
- c. Schedule of hourly wage rates paid to each workman, laborer, and mechanic for each occupation.
- d. Schedule of hours that each piece of major equipment is being actually operated each day.
- e. Preference in employment shall be shown to residents of the State of New York who have been residents for a least six (6) consecutive months immediately prior to the commencement of their employment. Each person so employed in the construction of public works shall furnish satisfactory proof of residence in accordance with the rule adopted by the Industrial Commissioner, and each Contractor and Subcontractor shall keep a list of his employees, stating whether they are residents of the State of New York, native born citizens or naturalized, and, in case of naturalization, the date thereof, and the name of the court in which granted.
- f. Payment of wages earned by employees upon public works shall be as covered by Section 220 and 220-D of the Labor Law.
- g. Insurance against accident for all persons employed shall be as provided by the Workers Compensation Laws of the State of New York.
- h. The Contractor shall comply with all requirements of the State Labor Law applicable to contracts on behalf of a municipality for the construction, alteration or repair of any public building or public work, including particularly, but without limitation of the foregoing, the provisions relating to hours and wages, discrimination on account of race or color and preference in employment to citizens of the State of New York.
- i. The Contractor shall indemnify and save harmless the Town from any claim alleging a violation of the labor laws of the State of New York, including but not limited to the Contractor's obligation to pay prevailing wage.
- j. Article 8, Section 220 of the Labor Law, as amended by Chapter 750 of the Laws of 1956, provides, among other things, that it shall be the duty of the fiscal officer to make a determination of the schedule of employed on public work projects.

The amount for supplements listed on the enclosed schedule (see Appendix A) does not necessarily include all types of prevailing supplements in the locality, and a future determination of the Industrial Commissioner may require the Contractor to provide additional supplements.

- k.. The Contract shall make provision for disability benefits, workers compensation, unemployment insurance and social security, as required by law.

10.4 RECORD-KEEPING REQUIREMENT

The Contractor shall establish and maintain complete and accurate books, records, payroll records, documents, accounts and other evidence directly pertinent to performance under this contract for a period of six (6) years following final payment or the termination of this contract, whichever is later, and any extensions thereto. The Engineer or any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to such books, records, documents, accounts and other evidential material during the contract term, extensions thereof and said six (6) year period thereafter for the purposes of inspection, auditing and copying. "Termination of this contract", as used in this clause, shall mean the later of completion of the work of the contract or the end date of the term stated in the contract.

10.5 NON-ASSIGNMENT CLAUSE

This contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, subcontracted or otherwise disposed of without the previous consent, in writing, of the Owner and any attempts to assign the contract without the Owner's written consent are null and void. The Contractor may assign its rights to receive payment with the Owner's prior written consent.

10.6 NON-COLLUSIVE BIDDING REQUIREMENTS

Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the Owner a Certification of Non-Collusion by Bidders on Contractor's behalf.

10.7 WAGE AND HOURS PROVISIONS

Neither Contractor's employees nor the employees of its Subcontractors may be required or permitted to work more than the number of hours or days, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its Subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

10.8 WORKERS' COMPENSATION BENEFITS.

This Contract shall be void and of no effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law. The Contractor agrees to defend, indemnify and hold harmless the Owner for any actions arising from injuries to the Contractor's employees, even if caused in whole or in part by Owner's negligence.

10.9 NONDISCRIMINATION REQUIREMENTS

The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The Contractor shall take affirmative action to insure that all employees are employed, and that employees are treated equally during employment, without regard to their race, creed, color, sex or national origin.

10.10 ARCHAEOLOGICAL SALVAGE

Whenever during the course of construction, historical objects are encountered, such objects shall not be moved or destroyed. Work shall be stopped and re-scheduled to avoid disturbing such areas and the Engineer shall be notified immediately. The Engineer will then contact Louise Basa, Technical Services, New York State Department of Environmental Conservation at 518-457-3811, who will issue instructional procedures which will govern continuation of work in the affected area.

XI SPECIAL CONDITIONS

Special Conditions

1.0 WILBUR BOULEVARD PUMP STATION

1. Generator – The generator is to be utilized for an existing pump station. The generator shall be a Kohler 125REOZJG Model or approved equal (ALTERNATE: Required if pump starts across line, a model 200REOZJF with the same options and accessories). Adequate documentation shall be provided with the bid to determine that the proposed Generator meets the specifications.
2. Delivery– The equipment is to be delivered to the Town of Poughkeepsie Highway Department. Contact Highway Supervisor Marc Pfeifer for specific location.
3. Shop Drawings- Shop drawings shall be provided for all products utilized in the work.
4. Stop Work – In the event the Town observes, during its inspection that these rules are not being followed, the Contractor will be ordered to stop the work until proper precautions are in place.
5. Inspections – The Town Engineer and/or the Highway Superintendent will be inspecting the work.
6. Work – It is the intention of this contract that the work shall include providing a generator/accessories (equipment only) as noted in the Technical Specifications and distributor start-up with batteries and connecting load test.
7. Payment – Payment shall be provided within thirty days after the Generator has been tested and that it has been determined to be operating properly.

2.0 SPRING STREET WATER SUPPLY BOOSTER STATION

1. Generator – The generator is to be utilized for an existing water supply booster station. The generator shall be a Kohler 30REOZK Model or approved equal. Adequate documentation shall be provided with the bid to determine that the proposed Generator meets the specifications.
2. Delivery– The equipment is to be delivered to the Town of Poughkeepsie Water Department. Contact Water Supervisor Keith Ballard for specific location.
3. Shop Drawings- Shop drawings shall be provided for all products utilized in the work.

4. Stop Work – In the event the Town observes, during its inspection that these rules are not being followed, the Contractor will be ordered to stop the work until proper precautions are in place.
5. Inspections – The Town Engineer and/or the Water Superintendent will be inspecting the work.
6. Work – It is the intention of this contract that the work shall include providing a generator/accessories (equipment only) as noted in the Technical Specifications and distributor start-up with batteries and connecting load test.
7. Payment – Payment shall be provided within thirty days after the Generator has been tested and that it has been determined to be operating properly.

XII TECHNICAL SPECIFICATIONS

SPECIFICATIONS

WILBUR BOULEVARD PUMP STATION GENERATOR

REQUIRED PERFORMANCE

Generator shall be capable of delivering 128KW / 160KVA, 277/480 Voltage, 192 AMP, 3 Phase

REQUIRED ITEMS

GENERATOR

Kohler 125REOZJG Model Generator Set or approved equal
(ALTERNATE: Required if pump starts across line, a model 200REOZJF with same options and accessories)
Kohler 125REOZJG Engine Model or approved equal
Diesel Fuel Type Consumption
Warranty 1 year

TRANSFER SWITCH

Kohler KSS-AMTC-0200S Automatic Transfer Switch
Type- Standard Transition, Specific Breaker Rate, 200A, 480V
3 Pole, 4 wire, Solid Neutral
NEMA 3R Enclosure
Warranty 1 year

ADDITIONAL FEATURES

Alternator type: Brushless, Permanent Magnet 4R13X
Cooling, Radiator 50C, 122F
Sound Enclosure, Crit Sil, 44"
Skid/Tank, 44", 298 Gallon Double Wall Subbase Tank
Flexible Fuel Lines
Inner Tank Leak Alarm
Air Intake, Standard Duty
Controller, DEC APM402800A, 3Ph
Control & Harness, 125 JD D3K
Block Heater
Battery Charger, 12V, 10A
Breaker 1 Right Components
LCB, 200A, JDP, Therm Mag, 80%
Mtg, LCB J-Frame, 175-225A 3 pole, 4S
Covers, 4S J-Box H/J-Frame LCB
Neutral, 600A. 4P
6 Gal Coolant
Lit Kit, General Maint, 125REOZJG

SPRING STREET WATER SUPPLY BOOSTER STATION GENERATOR

REQUIRED PERFORMANCE

Generator shall be capable of delivering 31KW / 39KVA, 120/208 Voltage, 108 AMP, 3 Phase

REQUIRED ITEMS

GENERATOR

Kohler 30REOZK Model Generator Set or approved equal
Kohler 30REOZK Engine Model or approved equal
Diesel Fuel Type Consumption
Warranty 1 year

TRANSFER SWITCH

Kohler KSS-ACTC-0200S Automatic Transfer Switch
Type- Specific Breaker Rate, 200A, 208V
3 Pole, 4 wire, Solid Neutral
NEMA 3R Enclosure
Warranty 1 year

ADDITIONAL FEATURES

Alternator type: Brushless, Permanent Magnet 4D8.3
Cooling, Radiator 50C, 122F
Skid/Tank, 80 Gallon Double Wall Subbase Tank
Air Intake, Heavy Duty w/ Restriction Ind
Controller, APM402
Sound Enclosure, Internal Silencer
Starting Aids, 700W, 110-120V
Battery Charger, Float, 90-120V, 12V-6A
Run Relay
Governor, Electronic
Flexible Fuel Lines
Inner Tank Leak Alarm
Block Heater
Breaker 1 Right Components
LCB, 110A, HDP, Therm Mag, 80%
Interrupt Rating, 18kA at 480V
5 Gal Coolant
Lit Kit, General Maint, 30REOZK