

SHIREMANSTOWN BOROUGH COUNCIL
SHIREMANSTOWN BOROUGH STORAGE AND MAINTENANCE BUILDING

Section 4
Contract 15609.655-1

GIBSON-THOMAS ENGINEERING CO., INC.**STANDARD CONTRACT PROVISIONS****TABLE OF CONTENTS**

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Standard Contract Provisions

A. GENERAL

1. Scope of Work

The Work to be done under the Contract, as shown on the Plans and Specifications, shall include the furnishing and complete installation of all Materials and any other necessary Work required for proper completion, operation and use of the facilities. All the equipment, Materials and labor that may be necessary to complete the Work and place it in satisfactory operation, implied or intended in the Plans and Specifications, shall be furnished and/or installed by Contractor without extra cost to the Owner.

The titles or headings of the various divisions, sections, paragraphs, subparagraphs or of Shop Drawings, and the Table of Contents and the indexes, as used in any of the Contract Documents are for convenience of reference only and are not intended to limit and shall not be construed as in any way limiting the application of the text.

2. Definitions

The written contract executed by the Contractor and the Owner covering the Work to be performed in the construction of the Project is referred to herein as the "Contract Agreement or the "Contract." The Contract includes all the Contract Documents attached to the Contract and are incorporated into the Contract by this reference. Wherever used in the Contract Documents, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

a. Addenda

Written or graphic instruments issued prior to the execution of the Contract Agreement that modify, clarify or interpret Contract Documents, Shop Drawings, Plans and Specifications, by additions, deletions, clarifications or corrections.

b. Bid

The offer or proposal for the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

c. Bidder

Any person, partnership, firm, corporation, limited liability company, or other business entity submitting a bid for the Work.

d. Bonds

Bid, Performance, Payment and Maintenance Bonds and other instruments of security furnished by the Contractor and its surety in accordance with the Contract Documents.

e. Change Order

A 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.

f. Contract Documents

The Contract, including the Public Advertisement, Instructions to Bidders, Proposal Form, Bid Bond, Contract Agreement, Payment Bond, Performance Bond, Notice of Award, Notice to Proceed, Change Order(s), Plans, Specifications, Shop Drawings and Addenda.

g. Contract Price

The total monies payable to the Contractor under the terms and conditions of the Contract Documents, sometimes also referred to herein as the Contract Amount.

h. Contract Time

The number of calendar days stated in the Contract Documents for the completion of the Work.

i. Contractor

The person, or persons, partnership, firm, corporation, limited liability company, or business entity with whom the Owner has executed the Contract Agreement, acting directly or through his, their or its agents or employees.

j. Engineer

The firm GIBSON-THOMAS ENGINEERING CO. INC., and its authorized representatives.

k. Field Order

A written order effecting a change in the Work not involving an adjustment in the Contract Price or an extension of the Contract Time issued by the Engineer to the Contractor during construction.

l. Lump Sum Price

The amount bid as a single item for the Work complete and ready to use.

m. Materials

Materials incorporated or to be incorporated in the Contract Work or used or to be used in the operation of the completed improvements.

n. Notice of Award

The written notice of the acceptance of the Bid from the Owner to the successful Bidder stating that, upon compliance by the apparent successful Bidder with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Contract Agreement.

o. Notice to Proceed

Written communication issued by the Owner to the Contractor authorizing Contractor to proceed with the Work and establishing the date of commencement of the Work.

p. Owner

A public or quasi-public body or authority, corporation, association, partnership or individual which is a party to the Contract Agreement and for whom the Work is to be performed.

q. Plans

The part of the Contract Documents that shows the characteristics and scope of the Work to be performed and which have been prepared or approved by the Engineer.

r. Project

The undertaking to be performed as described and provided in the Contract Documents.

s. Resident Project Representative

Any authorized representative of the Owner who is assigned to the project site or any part thereof, including the Engineer and the Engineer's authorized representative.

t. Proposal Form

Proposal Form means the form prepared by the Owner on which the Bidder is to submit or has submitted a proposal for the Work to be completed.

u. Shop Drawings

All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a Sub-Contractor, manufacturers, supplier or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.

v. Specifications

A part of the Contract Documents consisting of written descriptions of a technical nature of materials, equipment, construction, system, standards and workmanship.

w. Sub-Contractor

A person or persons, partnership, firm, corporation, limited liability company or other business entity having a direct Contract with the Contractor or with any other Sub-Contractor for the performance of the Work at the site.

x. Substantial Completion Date

That date as certified by the Engineer when the construction for the Project or a specified part thereof is sufficiently completed in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it is intended.

y. Supplier

Any person, supplier or organization, who supplied Materials or equipment for the Work, including that fabricated to a special design but who does not perform labor at the site.

z. Unit Price

Any price bid under the respective items of the Proposal Form, whether such price be per unit of measurement, per each or per lump sum.

aa. Work

All labor necessary to produce the construction required by the Contract Documents and furnish and install all Materials and equipment incorporated or to be incorporated in the Project.

bb. Written Notice

Any notice to any party to the Contract Agreement relative to any part of the Contract Agreement in writing and considered delivered and the service there completed, when posted by certified or registered mail to the said party at its last given address or delivered in person to said party or its authorized representative on the Work.

Wherever in the Contract Documents, the word "directed, required, permitted, ordered, designated, prescribed," or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation or prescription of the Owner or Engineer is intended; and, similarly the words "approved, acceptable, satisfactory," or words of like import shall mean approved by, acceptable to, suitable to, are satisfactory to the Owner or Engineer in each case. Wherever, in the Contract Documents, the words "supervision, or superintendence," or words of like import are used, it shall be understood that supervision or superintendence by the Contractor is intended.

B. CONTRACT AND CONTRACT DOCUMENTS

1. General

The Contract Documents comprise the following documents generally described in this Section B, including all additions, deletions and modifications incorporated therein, before the execution of the Contract Agreement.

2. Bidding Documents

Bidding Documents issued by the Owner to assist Bidders in preparing their proposals include:

a. Public Advertisement

b. Instruction to Bidders

c. Proposal Form

The offer of a Bidder to perform the Work described by the Contract Documents made out and submitted on the prescribed Proposal Form, properly signed and guaranteed.

d. Bid Security/Bid Bond

A cashier's check, certified check, cash, or Bidder's Bond shall accompany the Proposal Form submitted by the Bidder as a guaranty that the Bidder will enter into an agreement with the Owner for the construction of the Work if the Contract is awarded to bidder.

e. Addenda to Contract Documents

Any Addenda issued during the time of bidding or forming a part of the Contract Documents loaned to the Bidder for the preparation of its Proposal Form, shall be covered in the Proposal Form and shall be made a part of the Contract Documents. Receipt of each Addenda shall be acknowledged in the Proposal Form.

3. Contractual Documents

- a. The Contract Agreement covers the performance of the Work described in the Contract Documents, including all supplemental Addenda thereto and all general and special provisions pertaining to the Work or Materials therefor.

- b. Bonds

The Contractor shall, before the time of its execution of the Contract Agreement, furnish bonds in a form prescribed by the Owner and with a Surety company authorized to do business in the State where the Work is located, as follows:

- 1) Performance Bond in an amount equal to one hundred percent (100%) of the Contract Amount as a guarantee of good faith on the part of the Contractor to execute the Work in accordance with the terms of the Contract Agreement.
- 2) Labor and Material Payment Bond in an amount equal to one hundred percent (100%) of the Contract Amount as a guarantee of good faith on the part of the Contractor to make all payments for labor and material in connection with the Contract.

4. Standard Contract Provisions

The Standard Contract Provisions outline certain general responsibilities of the Owner and the Contractor (who are the parties to the Contract Agreement) and also those responsibilities delegated by the Owner to the Engineer who acts as the agent of the Owner.

5. Plans and Specifications

The intent of the Plans and Specifications is that the Contractor shall furnish all labor, materials, equipment, and transportation necessary for the proper execution of the Work, unless specifically noted otherwise. The Contractor shall do all the Work outlined in the Contract Documents and all incidental Work necessary to complete the Project in a substantial and acceptable manner and fully complete the Work or improvement, ready for use, occupancy and operation by the Owner.

Any discrepancies found between the Shop Drawings and Specifications and site conditions or any inconsistencies or ambiguities in the Shop Drawings or Specifications shall be immediately reported to the Engineer, who shall promptly correct such inconsistencies or ambiguities in writing. Any Work done by the Contractor after its discovery of such discrepancies, inconsistencies, or ambiguities, and before written direction by the Engineer, shall be done at the Contractor's risk.

Each requirement appearing in any one of the Contract Documents is as binding as though it were repeated or shown in every one of the Contract Documents.

In case of any discrepancy or conflict between or among two or more of said documents, except as otherwise ruled by the Engineer, figured dimensions shall control scaled dimensions, larger scale superseding smaller scale.

Specifications shall control plans, and, in general, a special or detail specification shall control a general or standard specification relative to the same subject. In any and all cases of discrepancy in figures, drawings or Specifications; the matter shall be submitted immediately by the Contractor to the Engineer for its decision. The most stringent requirement shall always apply.

6. Notice of Change of Address

It shall be the duty of each party to advise the other parties to the Contract Agreement by written notice as to any change in its business address until completion of the Contract.

7. Assignment of Contract

Neither the Contractor nor the Owner shall sublet, sell, transfer, assign or otherwise dispose of the Contract Agreement or any portion thereof, or of its right, title or interest therein by, or its obligations thereunder, without written consent of the other part.

8. Modification of Contract

The Contract Documents may be modified and changed from time to time by written order of the Owner, in a manner not materially affecting the substance thereof if such changes are necessary to carry out and complete more fully and perfectly the Work to be done and performed. The Contractor shall acknowledge, in writing, receipt of every such order.

If the changes and modifications increase the expense of the Work the increased expense shall be paid for by the Owner. If such changes and modifications diminish the expense of the Work, the amount of said diminution shall be credited to the Owner.

The additional payment or amount credited shall be on a basis previously agreed upon, in writing, by the Owner and the Contractor. No consequential loss of profit on Work not executed shall be paid to the Contractor. The amount of compensation to be paid to the Contractor for any changes and alterations, as so ordered, shall be determined:

- a. By such applicable unit prices, if any, as are set forth in the Contract Documents; or,
- b. If no such unit prices are so set forth, then a lump sum mutually agreed upon by the Owner and the Contractor; or,
- c. If no such unit prices are so set forth, and if the parties cannot agree upon a lump sum, the following shall apply:

Then by the actual net cost in money to the Contractor of the Materials and of the payroll cost of applied labor (including premiums for Workmen's Compensation Insurance) required for such changes and alterations, plus such rental for plant and equipment (other than small tools) required and approved for such changes and alterations, plus fifteen percent as compensation for all other items of profit and costs or expenses, including administration, overhead, superintendence, insurance (other than Workmen's Compensation Insurance), Materials used in temporary structures, allowances made by the Contractor to the Sub-Contractors, additional premiums upon the performance bond of the Contractor and the use of small tools.

The provisions hereof shall not affect the power of the Contractor to act in case of emergency, as herein provided.

9. Oral Agreements

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

C. OWNER'S RIGHTS AND RESPONSIBILITIES

1. Lands and Rights-of-Way

The Owner will furnish the necessary lands and rights-of-way as are required for the Contract Work, and all lawful authority that may be necessary for approved crossings or occupation of lands or railroads, upon which the Contract Work will be done. The Owner shall pay all costs or fees associated with the obtaining of all lands and rights of way, except for inspection fees levied by others. All property right-of-way surveys, unless otherwise specified shall be furnished by the Owner.

2. Permits

Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified in these documents.

3. Base Lines and Grades

The Owner, prior to the start of the Work, will furnish basic offset lines or points for structures and basic centerline data, if required, for pipelines and sewers or drains. A system of elevation benchmarks, or accurate points of elevation shall also be furnished by the Owner.

4. Owner's Right to Correct Deficiencies

Upon failure to perform the Work in accordance with the Contract Documents, and after five (5) days' written notice to the Contractor, the Owner may, without prejudice to any other remedy he may have, direct the Contractor not to correct the Work and the Owner may then correct such deficiencies in Work intended to become a permanent part of the Project.

5. Underground Structures

The Owner does not represent, warrant, or obligate itself that the location, number, size, character or, condition of any underground structures shown on the Contract Plans are correct. Information shown on the Contract Plans, as to such underground structures, is based on such information as has been obtained from records, surveys, and other sources to the maximum extent possible. The Bidder shall make its own independent investigations of these conditions, and no claim for extra compensation will be considered by reason of any error in its information. (Ref. Instructions to Bidders, Item 27.)

6. Owner's Right to Stop Work or Terminate Contract

The Owner shall have the authority to suspend the Work, wholly or in part, for such period or periods as Owner may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable to carrying out the provisions of the Contract, or to supplying materials meeting the requirements of the Contract Documents.

The Work, or any portion thereof may be suspended at any time by the Owner, provided that Owner gives the Contractor five (5) days' notice of suspension which shall set forth the date on which Work is to be resumed.

The Contractor shall resume the Work upon written notice from the Owner and within five (5) days after the date set forth in the notice of suspension. The Contractor shall be entitled to payment only for that portion of the Work completed.

Unless approved in writing by the Engineer, no payment for remobilization will be allowed the Contractor due to suspension of Work by the Owner, for any reason.

In addition, an immediate suspension of Work may be ordered by the Engineer or Owner if:

- a. the Contractor shall be adjudged bankrupt or make an assignment for the benefit of creditors; or,
- b. a receiver or liquidator shall be appointed for the Contractor, or for any of its property, and shall not be dismissed within twenty (20) days after such appointment, or the proceedings in connection therewith shall not be stayed on appeal within said twenty (20) days; or,
- c. the Contractor shall refuse or fail after notice or warning from the Engineer to supply enough properly skilled workmen or proper Materials; or,

- d. the Contractor shall refuse or fail to prosecute the Work within the period herein specified or duly authorized extension thereof), or shall fail to complete the Work within said period; or,
- e. the Contractor shall fail to make prompt payment to persons supplying labor or Materials for the Work; or
- f. the Contractor should fail to maintain the insurance required under the Contract Documents for the life of the Contract Work; or,
- g. the Contractor shall fail or refuse to regard laws, ordinances or the instructions of the Engineer or otherwise be guilty of a substantial violation of any provision of this Contract Agreement.
- h. the Contractor shall disregard the provisions of the Contract Documents relating to care and protection at public and private property and any public or private utilities serving same, as well as prompt restoration of disturbed areas.

Then, in any of such events, the Owner, without prejudice to any other rights or remedies it may have, may do the following:

- i. Order an immediate suspension of the Work. In this regard, the Inspector employed by the Owner or Owner's Engineer shall have the authority to order suspension, and which order shall be complied with by Contractor.

In the event that such suspension order is given, then Owner shall follow up the order by written notice to Contractor given by either the Engineer or the Solicitor of Owner within twenty-four (24) hours thereafter. In the event of such suspension, any Work performed by Contractor thereafter shall be at its own risk, and if Work is performed either

- 1) without the presence of an Inspector either employed by the Owner or its Engineer; or
- 2) otherwise not in accordance with any of the terms of this Contract, then such Work shall be automatically rejected by Owner as not being in accordance with the terms of this Contract, and Contractor shall not be entitled to compensation therefore and shall be responsible for removal and replacement of such Work.

The suspension permitted hereunder shall continue until the reason for the suspension has been cured by the Contractor to the satisfaction of the Engineer and the Owner; and Contractor shall honor such suspension and perform no further Work under this Contract until Contractor receives written notice that the Engineer is satisfied that such Work may continue. Contractor shall not be entitled to any compensation, damages, or payment by reason of delay or otherwise for a suspension so ordered under this paragraph.

- j. In addition to the right to suspend Work, Owner may also by ten (10) days written notice to Contractor terminate the Contract and any of Contractor's rights to proceed, as to the entire Work or (at the option of the Owner) as to any portion thereof, and may take possession of the Work and complete the Work by contract or otherwise, or may require Contractor's surety to complete the Work, as the Owner at its sole option may determine.
- k. In the event of suspension under paragraph (1) above or in the event of termination under paragraph (2) above, Contractor shall not be entitled to receive any further payment during either the period of the suspension, or until the Work is finished in the event of termination. In the event of termination, Contractor shall not be entitled to receive any payment if the unpaid balance of the compensation to be paid to Contractor exceeds the expense of so completing the Work (including compensation for additional managerial, administrative and inspection services and damages for delay). If such expense shall exceed such unpaid balance, the Contractor and its sureties shall be liable to the Owner for such excess.

If the right of the Contractor to proceed with the Work is so terminated, the Owner may take possession of, and utilize in completing the Work, such Materials, appliances, supplies, plant and equipment as may be on the site of the Work and necessary therefore.

If the Owner does not so terminate the right of the Contractor to proceed, the Contractor shall continue the Work. In addition, the Owner may choose to terminate any Contract due to changes in the scope of Work, project finances, quantity increases or decreases from bid amounts. In such cases, the Contractor will be paid only for Work performed to the date of termination, which must be a written declaration from the Owner or the Owner's representative.

D. CONTRACTOR'S RIGHTS AND RESPONSIBILITIES

1. General

All Work shall be done in strict accordance with the Contract Documents. Observations, construction reviews, tests, recommendations or approvals by the Engineer or persons other than the Contractor shall in no way relieve the Contractor of its obligation to complete all Work in accordance with the Contract Documents.

All Work shall be done under the direct supervision of the Contractor. The Contractor shall be responsible for construction means, methods, techniques and procedures and for providing a safe place for the performance of the Work by the Contractor, Sub-Contractors, Suppliers and their employees and for access, use, work or occupancy by all authorized persons, and the Contractor agrees that Engineer shall have no such responsibility.

2. Applicable Laws and Regulations

In all matters not otherwise specified, the Contractor shall be subject to the applicable provisions of all Acts of Congress of the United States and of the General Assembly of the Commonwealth of Pennsylvania, the rules and regulations of the Federal and State governments, the building code and other ordinances of the municipality or other local authority in which the Work is located, and the requirements imposed by any required permits. Whenever Federal and/or State grant funds or loans are involved in a project, the Contractor will be required to comply with, and otherwise be subject to, the regulations of all such funding agencies. Contractor shall be required to submit all forms and certifications requested by such agencies and shall cooperate fully with all representatives of such agencies and the Owner.

3. Permits, Licenses, and Certificates

The Contractor shall procure all permits and licenses such as, but not limited to, permits authorizing the moving of heavy equipment, except as otherwise indicated, and shall pay all charges and fees and give all notices necessary and incident to the proper and lawful prosecution of the Work. The Owner shall obtain and pay all road occupancy permit fees, except in Pennsylvania state highway right of way projects, the Contractor shall pay all PennDOT fees including inspection fees and bonding fees. The Contractor shall also obtain and supply to the Owner all certificates required to show that the Work has been performed in accordance with the building, plumbing, electrical or other codes, rules and regulations of local or other authorities, the Board of Fire Underwriters, or such other like bodies as the Specifications may require directly or by implications.

When the Work performed affects the property or facilities of public utility or other corporations or of private persons, the Contractor shall obtain from such corporations or persons, if required, written statements that the Work has been performed satisfactorily so far as their interests are affected and that all claims therefore have been settled by the Contractor and deliver such statements to the Owner.

When new construction is adjacent to or crosses highways, railroads, streets or utilities under the jurisdiction of State, County, City or other public agency, public utility or private entity, the Contractor shall secure written permission and/or necessary permits from the proper authority before executing such new construction, except road occupancy permits as described above. A copy of such authority's written permission must be filed with the Owner before any Work is done. The Contractor shall replace or repair all existing construction damaged during its performance of the Work. The Contractor will be required to furnish a written release from the proper authority before final acceptance of the Work.

4. Structures or Work in Navigable Streams

The Contractor shall secure permits from the United States Government for any necessary construction work or other activity relative to use of any navigable stream. Permits for permanent lines, structures or improvements will be obtained by the Owner. The Contractor shall place and maintain all signals required by the Federal Government and as otherwise ordered.

5. Inspection Charges, Etc., by Contractor

Unless otherwise specified, the Contractor will bear the cost of all inspection by railroads, utilities, municipalities, the Pennsylvania Department of Transportation, and other authorities having jurisdiction, other than the Owner. The Contractor shall include these costs in its bid and shall be held responsible for the payment thereof. This paragraph may be deleted by any instruction to the contrary included in the Specifications. The Contractor will also provide at its expense any special insurance, Blasting Bonds, etc., required by the authority having jurisdiction.

6. Project Signs

When ordered in the Specifications, each Contractor shall furnish and erect Project signs. The Contractor shall provide all other signs in accordance with detailed instructions as required when Federal and/or State grants are involved in the Project. The Contractor shall protect and maintain the signs in good condition throughout the life of the Project.

7. Contractor's Right to Stop Work or Terminate Contract

If the Work shall be stopped by order of the Owner or any public authority for a period of three (3) months, without act or default of the Contractor or any of its agents, servants, employees or Sub-Contractors, the Contractor may, upon ten (10) days' notice to the Owner, discontinue its performance of the Work and/or terminate the Contract, in which event the Owner shall pay the Contractor only for the Work performed.

8. Surveys

Based upon the information provided by the Owner, the Contractor shall develop and make all detailed surveys necessary for construction, including slope stakes, batter boards, stakes for pile locations and other working points, lines and elevations. The Contractor shall carefully preserve benchmarks, reference points and stakes, and, in the case of destruction thereof by the Contractor or resulting from its negligence, the Contractor shall be charged with the expense and damage resulting therefrom and shall be responsible for any mistakes that may be caused by the loss or disturbance of such benchmarks, reference points and stakes.

9. Lands by Contractor

Any land and access thereto not specifically shown to be furnished by the Owner that may be required for temporary construction facilities or for storage of Materials shall be provided by the Contractor with no liability cost or expense to the Owner. The Contractor shall confine its apparatus and storage to such additional areas.

10. Private and Public Property

In no case shall the Contractor remove fences or buildings or trespass in any way upon private property without first having entered into a written agreement with the owner of the property for such privileges and having filed a certified copy of same with the Owner. Such agreement shall contain a provision whereby the Contractor is given the right to remove or level down any unsightly pile or piles of material from excavation placed thereon by virtue of said agreement between the Contractor and the property owner.

Contractor shall be responsible for any damage to property due to extending embankment or cut beyond the limits indicated by the slope stakes. Contractor shall take all proper precautions to preserve all adjacent public and private property and shall protect all land and monuments and property markers until the same have been properly referenced

Where the construction operation necessarily interferes with access to adjoining private property, the Contractor, at its own expense, shall provide other suitable means to access.

11. Reports, Records, and Data

The Contractor and each of its Sub-Contractors shall submit to the Owner such schedules of quantities and costs, schedules, payrolls, reports, estimates, records and other data as the Owner may request, relative to the Work under this Contract. The Contractor shall at all times keep at the site of the Work at least one copy of the approved Plans and Specifications for use in the guidance of the Work and for reference purposes by the Engineer or Owner.

12. Approval of Materials and Sources of Supply

The Contractor shall furnish to the Owner for approval, immediately after the signing of the Contract Agreement, a complete statement of the origin, composition, manufacture and proposed sources of supply of all Materials or equipment required for use in this Work, whether supplied by himself or by any approved Sub-Contractor.

The Contractor shall submit, in six (6) copies, detailed information, literature, plans and such other data as required to permit an analysis of the proposed equipment and Materials.

Compliance with the Contract Documents shall be determined, and the Contractor notified relative thereto. No order shall be placed for any material or equipment by Contractor or Sub-Contractor until written approval has been given by the Engineer. Before any material may be shipped from an approved source of manufacture or supply, duplicate copies of the Contractor's formal orders shall be in the hands of the Owner.

The Contractor shall submit promptly to the Engineer six (6) copies of each shop setting drawing prepared in accordance with the schedule predetermined as aforesaid.

After examination of such drawings by the Engineer and the return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Engineer with six (6) corrected copies.

If requested by the Engineer, the Contractor must furnish additional copies. Regardless, the Contractor will nevertheless be responsible for the accuracy of such drawings and for their conformity to the Plans and Specifications unless Contractor notifies the Engineer in writing of any deviations at the time he furnishes such drawings.

13. Examination and Testing

All Materials and workmanship, if not otherwise stipulated, shall be subject to inspection, examination, and test by the Engineer and other authorized representatives of the Owner, at all times, before, during, or after preparation, during the progress of the Work, or after the Work is completed. The Contractor, upon request, shall furnish samples of any, and all Materials in such quantities as may be required properly to determine their quality and suitability for use in Work to be done under this Contract.

All required tests of Materials shall be paid for by the Contractor, unless otherwise indicated. The selection of bureaus, laboratories and/or agencies for the inspection and testing of supplies, Materials or equipment shall be subject to the approval of the Owner. Satisfactory documentary evidence that the Materials have passed the required inspection and tests must be furnished to the Owner.

14. Specified Brands of Materials

All Materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufactures, fabricator or processors, except as otherwise provided in the Contract Documents. Whenever a material, article or piece of equipment is identified on the Plans or in the Specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers and such other, it is intended to establish a standard for bidding; and, any material, article or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article or equipment so proposed is, in the opinion of the Engineer, of equal substance and function, and is submitted for approval in accordance with the Instruction to Bidders at least ten days before the Bid Opening. It shall not be purchased or installed by the Contractor without the Engineer's written approval.

If it is indicated in the Specifications that the Contractor may furnish or use a substitute that is equal to any material or equipment specified, and if the Contractor wishes to furnish or use a proposed substitute, it will, promptly submit the item at least ten (10) days before the bid opening by written application to the Engineer for approval of such a substitute certifying in writing that the proposed substitute will perform adequately the duties imposed by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified.

No substitute shall be ordered or installed without the written approval of the Engineer who shall be the judge of equality, in its sole and absolute discretion.

The cost of all tests and the expense of the Engineer in witnessing tests and modifying Plans to suit approved substitute equipment shall be borne by the Contractor.

Should it be necessary to modify the Work under this Contract or any other Contract to house or install the substitute equipment, it shall be the Contractor's responsibility to complete all arrangements, including payment therefore, in order that the substitute equipment may be properly incorporated into the overall Contract Work.

No claim for additional compensation shall be made against the Owner for any damages incurred while such tests are conducted, or the substitute equipment furnished to the Project.

15. Title to Materials

The Contractor or Sub-Contractor shall not furnish any material for the Work that is subject to a chattel mortgage or subject to conditions or interest retained by the seller. The material or equipment must be free of all encumbrances.

16. Patents, Royalties, and Licenses

The Contractor shall hold and save harmless the Owner and its officers, agents, servants and employees from liability of any nature or kind, including cost and expenses for or on account of any patent or unpatented invention, process, article or appliance manufactured or used in the performance of the Contract, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents. License and/or royalty fees for the use of a process, which is authorized, by the Owner must be reasonable and paid to the holder of the patent or its authorized licensees directly by the Owner and not by or through the Contractor.

If the Contractor uses any design, device or material covered by letters patent or copyright, it shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device or material. It is mutually agreed and understood, without exception, that the Contract Price shall include all royalties or costs arising from the use of such design, device or Materials in any way involved in the Work.

The Contractor and/or its sureties shall indemnify and save harmless the Owner from any and all claims for infringement by reason of the use of such right in connection with Work agreed to be performed under this Contract, and shall indemnify the Owner for any cost, expense or damage which it may be obligated to pay by reason of such infringement at any time during the prosecution of the Work or after completion of the Work.

17. Supervision by Contractor

The Contractor will supervise and direct the Work efficiently and with its best skill and attention. Contractor will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor will be responsible to see that the finished Work complies accurately with the Contract Documents.

The Contractor will keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to the Owner and Engineer, except under extraordinary circumstances.

The superintendent will be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor.

It is expressly understood that whenever the term "superintendence" or "supervision" are used in these Contract Documents, they shall mean the superintendence of supervision provided by the Contractor. Any visits to the site by the Engineer, its representatives, the Owner, its representatives, or the daily presence of the Resident Project Representative shall not be construed as superintendence or supervision of the Project. It is also expressly understood that all superintendence of supervision is provided by and is the sole responsibility of the Contractor.

The Contractor shall supply, at its own expense, all labor and Materials, scaffolds, transportation, runways, water, irons, connections, hoists, tools, structures, etc., of every kind and description, unless otherwise specified, that may be necessary for the completion of the Work.

The Contractor shall be responsible for the correlating and control of the various Sub-Contractor and its own work, so that no part will be left in an unfinished condition owing to disagreement between the various Sub-Contractors as to where the work of one begins and ends, with reference to the work of another.

18. Contractor Responsible Until Work Completed

The Contractor shall have charge of and be responsible for the entire Work until completed and accepted by the Owner. Contractor shall make no assignment of this Contract without the written consent of the Owner, which may be withheld in its sole and absolute discretion.

The Contractor shall give its personal supervision to the faithful prosecution of the Work; shall keep it under its own control; and Contractor shall have a competent representative or foreman on the Work, who shall have full authority to bring about the orderly and efficient prosecution of the same in accordance with the Contract Agreement and to supply Materials, tools, equipment and labor without delay. However, the Owner, upon request, will be permitted to use and/or operate all or a portion of the Project before final acceptance of same.

Neither the final certificate of payment nor any provision in the Contract Documents, no partial or entire occupancy of the premises by the Owner, shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship.

The Contractor shall remedy any defects in the Work and pay for any damage to other Work resulting therefrom, which shall appear within a period of two (2) years from the date of final acceptance of the Work unless a longer period is specified. The Owner will give notice of observed defects with reasonable promptness.

All loss or damage arising out of the nature of the Work, or any damage to the Work itself to be done under this Contract or from any unforeseen obstructions or difficulties which may be encountered in the prosecution of the same, or from the action of the elements, or from any cause or causes whatsoever, until the same shall have been finally accepted, shall be sustained and paid for by the Contractor.

19. Light, Heat, Power and Water

Unless expressly otherwise stated, the Contractor shall arrange for, supply, and maintain, at its own cost, all light, heat, power and ample water supply required for the proper prosecution and completion of the Contract.

When the nature of the Work is such that its prosecution interrupts or interferes with existing lighting (including navigation signals), heating, power or water facilities, unless otherwise expressly stated, the Contractor shall supply and maintain acceptable temporary facilities until the regular facilities again can function or until new facilities are in operation.

20. Sanitary Provisions

The Contractor shall provide and maintain such sanitary accommodations for the use of its employees and those of its Sub-Contractors as may be necessary to comply with the requirements and regulations of the local and State Departments of Health. It shall be the duty of the Contractor to see that these regulations are enforced. Contractor will be held responsible for damages due to failure to observe sanitary precautions.

21. Safety Provisions

In accordance with generally accepted construction practices, the Contractor shall be solely and completely responsible for conditions for the job site, including safety of all persons and property affected directly or indirectly by its operations during the performance of the Work. This requirement will apply continuously, twenty-four hours per day, until acceptance of the Work by the Owner and shall not be limited to normal working hours. The duty of the Engineer to conduct construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on or near the construction site.

The Contractor and Sub-Contractors shall comply with the U.S. Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (P.L. 91-596) and under Section 107 of the Contract Work Hours and Safety Standards Act (P.L. 91-54). In addition, the Contractor and Sub-Contractors shall comply with the regulations of any State and/or Federal agency having jurisdiction.

The Owner and/or Engineer will in no way be liable or accept liability for any defaults of the Contractor or the Contractor's Sub-Contractors of the said standards set out in said legislation or regulations.

22. Work During an Emergency

The Contractor shall perform any Work and shall furnish and install any Materials and equipment necessary during an emergency endangering life or property. In all cases Contractor shall notify the Owner of the emergency as soon as practicable, but Contractor shall not wait for instructions before proceeding to properly protect both life and property.

23. Warning Signs and Barricades

The Contractor shall provide adequate signs, barricades, red lights and watchmen and take all necessary precautions for the protection of the Work and the safety of the public. All barricades and obstructions shall be protected at night by suitable signal lights which shall be kept burning from sunset to sunrise. Barricades shall be of substantial construction and shall be painted such as to increase their visibility at night. Suitable warning signs shall be so placed and illuminated at night as to show in advance where construction, barricades or detours exist.

24. Public Convenience

The Contractor shall, at all times conduct its Work, so as to insure the least possible obstruction to traffic and inconvenience to the general public, and the residents in the vicinity of the Work, and to insure the protection of persons and property. No road or street shall be closed to the public except with the permission of the proper authorities. Fire hydrants on or adjacent to the Work shall be kept accessible to fire-fighting equipment at all times. Temporary provisions shall be made by the Contractor to insure inlets, drainage ditches and irrigation ditches which shall not be obstructed.

25. Protection, Support, and Maintenance of Structures

The Contractor shall so conduct its operations as not to damage existing structures or Work installed either by it or by other contractors or Sub-Contractors. In case of any damage resulting from Contractor's own operation, it shall completely repair or provide for the repair or replacement of all such damage at its own expense.

The Contractor shall maintain the service of, shore up, sling, support, protect and make good, all water pipes, gas pipes, service pipes, sewers and sewer connections, conduits, manholes, drains, vaults, building, tracks or other structures and substructures of municipalities and public utility companies, and all service lines and structures, including substructures of private abutting owners that are located within the lines of the improvements which may be liable to disturbance or injury during the progress of the Work.

Contractor shall furnish and place all necessary supports and shall supply all labor and Materials necessary to reconnect and restore to the condition existing at the time they were uncovered all such structures which become disturbed or damaged at Contractor's own expense.

26. Weather Conditions

If a temporary suspension of Work should occur during inclement weather, the Contractor shall protect carefully all Work and Materials under this Contract against damage or injury from the weather. If, in the opinion of the Engineer, damage results to either the Work or Materials by reason of failure on the part of the Contractor to protect its Work, such Materials or Work will be removed and replaced by and at the expense of the Contractor.

27. Protection Against Freezing

All concrete work during cold weather shall be performed in strict accordance with the Standard Specifications relating to concrete work. During the winter months, the footings of all walls, piers and foundations shall be banked with at least two feet of straw and covered over with sand or loam. This protection shall be maintained until all danger from freezing has passed.

28. Removal of Water

The Contractor shall at all times during the construction of the Work and at the completion for final inspection, provide and maintain ample means of equipment with which to promptly remove and properly dispose of all water entering the excavation or other parts of the Work, and keep said excavations dry until the structures to be built therein are completed.

No masonry shall be laid in water and water shall not be allowed to rise over masonry until the concrete or mortar has set at least twenty-four (24) hours.

All water pumped or drained from the Work hereunder shall be disposed of in a suitable manner without damage to adjacent property or to other Work under construction, and in accordance with the provisions of these Contract Documents. Such sewers as are built as a part of this Contract may be used for the removal of water, under conditions approved by the Engineer, but such drains or outlets shall be left in a clean and satisfactory condition at the expiration of the Contract.

29. Contractor to Provide Watchman

When the construction Work to be done under this Contract is in such proximity to important buildings, railroads, highways or other structures that they may be endangered by slips or blasting, the Contractor shall provide and place such watchmen as may be required for the safety of persons and property and, in addition, as may be ordered. No additional compensation will be allowed the Contractor for the services or cost of any such watchmen.

30. Fires, Signs, Loading, and Refuse

The Contractor shall promulgate and enforce rules to prevent, and it shall be its duty to prevent:

- a. the lighting of open fires in or near any structures;
- b. the erection on or near the Work of any sign, billboard or advertisement by the Contractor, or its Sub-Contractors, except by written order or permission;
- c. the loading of any part of a structure with a weight greater than it will safely bear;
- d. the leaving of any refuse on or in the vicinity of the Work which will attract mice, rats, or vermin.

31. Use of Premises and Removal of Debris

The Contractor expressly undertakes, at its own expense:

- a. to take every precaution against injuries to persons or damages to property;
- b. to store its apparatus, Materials, supplies and equipment in such orderly fashion at the site of the Work as will not unduly interfere with the progress of its Work or the Work of any other contractors;
- c. to place upon the Work, or any part thereof, only such loads as are consistent with the safety of that portion of the Work;
- d. to frequently clean up all refuse, rubbish, scrap materials, and debris caused by its operations, to the end that at all times the site of the Work shall present a neat, orderly and workmanlike appearance;
- e. before final payment, to remove all surplus material, false work, temporary structures, including foundations, thereof, plants of any description, and debris of every nature resulting from its operations, and to put the site in a neat, orderly condition;
- f. to affect all cutting, fitting or patching of its Work required to make the same to conform to the Plans and Specifications, and except with the consent of the Engineer, not to cut or otherwise alter the Work of any other Contractor.

32. Erosion and Siltation Prevention

In the execution of this Work the Contractor shall take suitable precautions to prevent erosion and siltation and any other pollution of the waters of the Commonwealth.

Improper construction practices such as the following are specifically prohibited: dumping of spoil material into the stream or on the banks thereof where it may wash or slide into the stream; excessive or unnecessary operation of equipment in the stream; pumping of silt-laden water from excavations into the stream; disposal of trees, brush and other debris into the stream; and altering the flow line of the stream.

Methods which shall be used to prevent erosion and resultant siltation are as follows:

- a. no trees may be removed from stream banks;
- b. topsoil will be stripped, stockpiled and protected;
- c. stone riprap will be placed on disturbed portions of stream banks at stream crossings in order to maintain the original alignment thereof;
- d. ditches will be backfilled as specified and brought to the original ground surface elevation, the top layers being from the stripped topsoil stockpile;
- e. all useable sod and landscaping materials will be replaced on the excavation areas, or a seeding of ryegrass made on the fertilized backfill areas.
- f. Critical Area Vegetation Stabilization

Critical areas are those in which cutting, filling and grading soils with heavy equipment often results in the exposure of soils and subsoils.

Certain conditions resulting from such exposure, such as acidity, low fertility, compaction, or dryness or wetness, which are unfavorable to plant growth, often prevail.

Excessively long slopes and steep grades are often encountered or created. Water disposal structures are normally subjected to hydraulic forces requiring both special establishment techniques and grasses that have high resistance to scouring. However, plants and techniques are available to provide both temporary and permanent protective cover on these difficult sites. These are as follows:

- g. Permanent Vegetation

For both sodding and seeding, there is a fairly wide choice of grasses, legumes and other plants for use on critical areas. The final choice of species should be determined by weighing such factors as adaptability, use, aesthetic requirements, a degree of maintenance that can be expected and other special considerations.

h. Diversions

A diversion consists of a channel or ditch and a ridge constructed across a sloping land surface on the contour, or with predetermined grades to intercept and divert surface run-off before it gains sufficient volume and velocity to create harmful erosion. The water is collected and conveyed laterally along the diversion at slow velocity and discharged into a protected area of outlet channel.

i. Bench Terraces

Bench terraces are relatively flat surfaces constructed on sloping land or embankments to planned dimensions and grades. Bench terraces are applied along the contour with the length and width controlled by the natural terrain and the required erosion limitations.

j. Sediment Basins

The construction of an earth fill type dam downstream from a development area serves to regulate runoff and trap sediment. The sediment can be removed mechanically as the storage space behind the dam becomes filled, or sufficient space may be built into the structure to provide storage for its useful life.

The whole structure can be removed after stability is reached in the development area or it can be retained and maintained to enhance the area. The suitable precautions used will depend on the many variables encountered during construction. The Engineer will determine the method or methods to use to prevent erosion and the resilient siltation. As the Work proceeds, the disturbed area shall promptly be graded in such a manner as to minimize erosion and shall be seeded with a type of vegetation approved by the Engineer as appropriate to the site.

All areas on which grading and final preparations prior to seeding are completed after October 15th will be well mulched and protected from erosion until such time in the spring of the year when effective seeding can be undertaken.

No areas of bare, un-vegetated or unpaved soil will be exposed for a period of time exceeding fifteen (15) calendar days.

The foregoing is a generalized summary of the measures to be taken for the prevention of erosion and sedimentation. They are described in greater detail in those divisions of the Standard and Detail Specifications pertaining to the Project and shall be followed to the fullest extent applicable.

In addition, the principles stated in the Soil Erosion and Sedimentation Control handbook issued by the Pennsylvania Department of Environmental Protection, and as set forth in the Erosion and Sedimentation Control Plan prepared and approved for the Project, shall hereby be made a part of the Contract Documents as the guide and standards for the techniques to be followed for the control of erosion and sedimentation.

33. Employment Requirements

a. Equal Employment Opportunity

- 1) The Contractor will be required to comply with the President's Executive Order 11246, Governor of Pennsylvania's Executive Order 1972-1 and all related laws, amendments and regulations of the Federal and State governments as related to equal employment opportunity.
- 2) The Contractor shall not discriminate against any applicant for employment, employee or any independent contractor or any other person because of race, color, religious creed, ancestry, national origin, age, or sex.
- 3) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, or sex.

Such affirmative action shall include, but is not limited to the following:

- (a) employment upgrading, demotion or transfer,
 - (b) recruitment or recruitment advertising,
 - (c) layoff or termination, rates of pay or other forms of compensation,
 - (d) selection for training.
- 4) The Contractor shall post in conspicuous places, available to employees, agents, applicants, for employment and other persons, notices setting forth the provisions of this non-discrimination clause.
 - 5) The Contractor shall in solicitations or advertisements placed by him or in its behalf state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex.
 - 6) The Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other Contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment. Similar notices shall be sent to every other source of recruitment utilized by the Contractor.
 - 7) It shall be no defense to a finding of a noncompliance with Executive Orders indicated in paragraph 6.33 A (1) above or any regulations issued pursuant to said Executive Orders of this nondiscrimination clause that the Contractor had delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations.

- 8) Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that the Contractor will be unable to meet its obligations under Executive Orders or any Regulations issued pursuant to said Executive Orders or this nondiscrimination clause, the Contractor shall then employ and fill vacancies through other employment procedures without regard to race, color, religious creed, ancestry, national origin, sex, or age taking affirmative action to obtain qualified minority group persons.
- 9) The Contractor shall comply with all rules, regulations and orders issued by Federal and State governments relating to law prohibiting discrimination in hiring or employment opportunities.

In the event of the Contractor's non-compliance with the non-discrimination clause of this Contract or with such rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further Contracts, and such other sanctions may be imposed and remedies invoked as provided by rule, regulation or order of Federal or state governments, or as otherwise provided by law.

- 10) The Contractor shall furnish all information and reports required by Federal and State governments and will permit access to its books, records and accounts by appropriate agencies, for purposes of investigation to ascertain compliance with provisions of Executive Orders indicated in paragraph 6.33 A (1) or any Regulations issued pursuant to said Executive Orders or this nondiscrimination clause.
- 11) The Contractor shall actively recruit minority Sub-Contractors or Sub-Contractors with substantial minority representation among their employees.
- 12) The Contractor shall include the provisions of Paragraphs 6.33 A (1) through 6.33 A (10) in every Sub-Contract or purchase order, so that such provisions will be binding upon each Sub-Contractor or vendor or other person.
- 13) The terms used in this nondiscrimination clause shall have the same meaning as in the Contract compliance regulations issued pursuant to Executive Order 1972-1 and Executive Order 11246.

b. Employment of Local Labor

It shall be the Contractor's responsibility, to the maximum extent practicable, to provide new job opportunities for the unemployed and under-employed in the area in which the Project is located and according to state law Pardons and Statutes 43 P.S. S 154. The Contractor shall insert a similar provision in each construction sub-contract for this Project.

c. Minimum Wage Rates

The minimum wage rates for each craft or classification of all workmen needed to perform this Contract during the anticipated term hereof shall be governed by either the "Davis Bacon Act" (40 U.S. Code 276 (a) or the "Pennsylvania Prevailing Wage Act" (43 P.S. 165-1 to 165-17).

The Contractor's attention is directed to these two statutes so that the applicable provisions of either of these Acts shall be strictly adhered to in the performance of this Contract.

Failure to adhere to the applicable provisions of these Acts shall be sufficient grounds for the Owner to declare this Contract in default or to terminate this Contract. The minimum wage rates applicable to all Contracts, as established and to the extent available, are available for review at the office of the Engineer by all prospective Bidders.

d. Pennsylvania Prevailing Wage Act

All Contracts in excess of \$25,000 that are not subject to the Walsh-Healey Act or the Davis-Bacon Act, shall be subject to the Pennsylvania Prevailing Wage Act.

Where minimum wage rates have been established by the Pennsylvania Department of Labor and Industry and also by the United States Secretary of Labor, the higher rate shall be applicable. For Contracts subject to the provisions of the Pennsylvania Prevailing Wage Act, the Prevailing Wage Determination shall become a part of the Contract and all of the provisions of said Act are included herein by reference.

The general prevailing minimum wage rates including contributions for employee benefits as shall have been determined by the Secretary of Labor and Industry must be paid to all workmen employed in the performance of the Contract. The Contractor shall pay no less than the wage rates as determined in the decision of the Secretary of Labor and Industry and shall comply with the conditions of the Pennsylvania Prevailing Wage Act, as amended, and the Regulations used pursuant thereto, to assure the full and proper payment of said rates.

All workmen shall be paid no less than such general prevailing minimum wage rates and such other provisions to assure payment thereof as heretofore set forth in these specifications.

These provisions shall apply to all Work performed on the Contract by the Contractor and to all Work performed on the Contract by all contractors. The Contractor shall insert in each of its Sub-Contracts all of the stipulations contained in these required provisions and such other stipulations as may be required.

No workmen may be employed on the public work except in accordance with the classifications set forth in the decision of the Secretary.

In the event that additional or different classifications are necessary, the procedure set forth in Section 7 of the Act shall be followed.

All workmen employed or working on the public work shall be paid unconditionally, regardless of whether any Contractual relationship exists or the nature of any Contractual relationship which may be alleged to exist between any Contractor, Sub-Contractor and workmen, not less than once a week without deduction or rebate, on any account, either directly or indirectly, except authorized deductions, the full amounts due at the time worked in the appropriate classifications.

Nothing in the Contract, the Act, or these Specifications shall prohibit the payment of more than the general prevailing minimum wage rates as determined by the Secretary, to any workmen on public work.

The Contractor and each Sub-Contractor shall post for the entire period of construction, the wage determination decisions of the Secretary, including the effective date of any changes thereof, in a prominent and easily accessible place or places at the site of the Work and at such place or places used by them to pay workmen their wages.

The posted notice of wage rates must contain the following information:

- 1) Name of Project
- 2) Name of public body for which it is being constructed
- 3) The crafts and classifications of workmen listed in the Secretary's general prevailing minimum wage determination for the particular Project.
- 4) The general prevailing minimum wage rates determined for each craft and classification and the effective date of any changes
- 5) A statement advising workmen that if they have been paid less than the general prevailing minimum wage rate for their job classification or that the Contractor and/or Sub-Contractor are not complying with the Act in any manner whatsoever, they may file a protest in writing with the Secretary of Labor and Industry within three months of the date of the occurrence, objecting to the payment to any Contractor to the extent of the amount or amounts due or to become due to them as wages for work performed on the public work project.

Any workmen paid less than the rate specified in the Contract shall have civil right of action for the difference between the wage paid and the wages stipulated in the Contract, which right of action must be exercised within six (6) months from the occurrence of the event creating such right.

The Contractor and all Sub-Contractors shall keep an accurate record showing the name, craft and/or classification, number of hours worked per day, and the actual hourly rate of wage paid (including employee benefits) to each workman employed by him in connection with the public work, and such record must include any deductions from each workman.

The record shall be preserved for two (2) years from the date of payment, and shall be open at all reasonable hours to the inspection of the Owner and to other authorized officials.

Apprentices shall be limited to such numbers as shall be in accordance with a bona fide apprenticeship program registered with and approved by the Pennsylvania Apprenticeship and Training Council, and only apprentices whose training and employment are in full compliance with the provisions of the Apprenticeship and Training Act approved July 14, 1961, (Act 304) and the Rules and Regulations issued pursuant thereto shall be employed on the public work project. Any workman using the tools of a craft who does not qualify as an apprentice within the provisions of this subsection shall be paid the rate predetermined for journeymen in that particular craft and/or classification.

Wages shall be paid without any deductions except authorized deductions. Employers not parties to a Contract requiring contributions for which the Secretary has determined to be included in the general prevailing minimum wage rate, shall pay the monetary equivalent thereof directly to the workmen.

Payment of compensation to workmen for work performed on public work on a lump-sum basis, or a piece work system, or a price certain for the completion of a certain amount of work, or the production of a certain result shall be deemed a violation of the Act and these Specifications, regardless of the average hourly earnings resulting therefrom.

Each Contractor and each Sub-Contractor shall file a statement each week and a final statement at the conclusion of the Work on the Contract with the Owner, under oath, and upon an approved form which will be supplied by the Owner, certifying that all workmen have been paid wages in strict conformity with the provisions of the Act, or if any wages remain unpaid to set forth the amount of wages due and owing of each workman respectively.

34. Date of Starting and Completing Work

The Contract Work shall be started immediately upon receipt of a written notice from the Owner and shall be continued in full force until completion, unless approval to suspend Work is granted by the Owner or unless delays occur due to unfavorable weather.

The Work shall be completed in the number of days after the date of Notice to Proceed as indicated in the Contract Documents. Time is of the essence in the performance of the Work.

Before filing its bid, the Bidder shall have made all arrangements to be fully equipped to expeditiously carry on all Work in case it is awarded a Contract and shall have made all arrangements to permit immediate transportation to the site of the Work of all equipment, Materials and other facilities required to execute the Work.

In scheduling its operations, the Contractor shall take into consideration all delays that may occur due to unfavorable weather; failure of public utilities or others to install, remove or adjust their structures when required; and the uncertainties prevailing on account of a national emergency in regard to obtaining critical materials and labor to complete the various portions of such Work in time.

35. Order of Work and Progress Schedule

Where the order of Work is stated in the Contract, the Contractor shall comply therewith unless given written permission to change such orders.

Where the order is not so stated, the Contractor, before starting the Work, shall submit to the Owner and Engineer a schedule setting forth the order in which Contractor will start and complete the various portions of the Work. Upon review and approval of said schedule by the Owner and Engineer, shall strictly conform thereto unless given written permission to depart therefrom.

Immediately after execution and delivery of the Contract, and before the first partial payment is made, the Contractor shall deliver to the Owner and Engineer an estimated construction progress schedule, including schedule of Shop Drawings, in a manner satisfactory to the Owner and Engineer, showing the proposed dates of commencement and completion of each of the various subdivisions of Work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. The schedule shall contain the starting and completion dates of the various stages of the Work, and with sufficient detail to understand the relationships of all associated tasks comprising the Work, including any milestones specified in the Contract Documents. Contractor shall update such progress schedule on a monthly basis, or as requested by the Owner or Engineer, and shall provide a copy of the progress schedule with each request for payment.

36. Prosecution of Work

The Contractor shall prosecute the Work diligently, so that it may be completed as promptly as conditions may permit in an economical manner within the Contract Time.

If the Work is not being prosecuted satisfactorily, in the judgment of the Owner, the Owner may after fifteen (15) days' written notice to the Contractor, declare the Contractor in default and notify the Contractor's Surety to proceed with the Work accordingly, or if he so desires, the Owner may cancel the Contract and pay to the Contractor the price of the Work actually completed as determined by the Engineer. Upon payment of such amount, all obligation of the Owner shall be deemed as fulfilled and terminated.

37. Competent Workman

The Contractor shall employ only competent and efficient laborers and first class mechanics or artisans for every kind of Work, including supervision. Whenever, in the opinion of the Owner, any man is unfit to perform his task or does his work contrary to directions, or conducts himself improperly, the Contractor shall remove him from the work immediately and not employ him again on the Project.

38. Sub-Contracting

The Contractor may utilize the services of qualified Sub-Contractors on those parts of the Work which, under normal Contracting practices, are performed by Sub-Contractors specializing in the particular class of Work. The Contractor shall not award any Work to any Sub-Contractor without prior written approval by the Owner, which approval will not be considered until the Contractor submits to the Owner a written statement concerning the proposed award to the Sub-Contractor, which statement shall contain such information as the Owner may require. Owner reserves the right, at its discretion, to approve or reject any Sub-Contractor or Supplier. The Contractor shall be as fully responsible to the Owner for the acts and omissions of its Sub-Contractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

The Contractor shall cause appropriate provisions to be inserted in all Sub-Contracts relative to the work to bind Sub-Contractors to the Contractor by terms of the Standard Contract Provisions and other Contract Documents, insofar as applicable to the Work of the Sub-Contractors, and to give the Contractor the same power as regards terminating any Sub-Contract that the Owner may exercise over the Contractor under any provision of the Contract Documents.

For convenience of reference and to facilitate the letting of Contracts and Sub-Contracts, the Specifications are separated into titled sections. Such separation shall not, however, operate to make the Owner or the Engineer an arbitrator to establish limits to the Contracts between Contractor and Sub-Contractor. Nothing contained in this Contract shall create any Contractual relation between any Sub-Contractor and the Owner.

39. Work by Others

The Owner may perform additional work related to the Project by itself, or it may let others direct contracts therefor which shall contain Standard Contract Provisions similar to these. The Contractor will afford the other contractors who are parties to such direct Contracts (or the Owner, if it is performing the additional work himself), reasonable opportunity for the introduction and storage of Materials and equipment and the execution of Work, and shall properly connect and coordinate its Work with theirs.

If any part of the Contractor's Work depends for proper execution or results upon the Work of any such other Contractor (or the Owner), the Contractor will inspect and promptly report to the Engineer in writing any defects or deficiencies in such Work that render it unsuitable for such proper execution and results.

Contractor's failure to so report shall constitute an acceptance of the other Work as fit and proper for the relationship of its Work except as to defects and deficiencies that may appear in the other Work after the execution of its Work.

The Contractor will do all cutting, fitting and patching of its Work that may be required to make its several parts come together properly and fit it to receive or be received by such other Work. The Contractor will not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the Engineer. If the performance of additional work by other contractors or the Owner is not noted in the Contract documents prior to the execution of the Contract, written notice thereof shall be given to the Contractor prior to starting any such additional work. If the Contractor believes that the performance of such additional work by the Owner or others involves it in additional expenses or entitles Contractor to an extension of the Contract Time, it may make a claim therefor and submit said claim to the Engineer for approval.

40. Cooperation of Trades

If, under this Contract, any part or parts of the Work are called for to be furnished or erected by trades or classifications of mechanics other than those directly employed by the Contractor, it is expressly understood that the Contractor shall sublet such Work or engage mechanics of such special trades to execute the same for him.

The arrangement of titles, headings, subheadings and interrelations of paragraphs and references of the Contract Documents are not intended to be such as will designate and describe in one place all work to be done by the one trade or classification of mechanics. The Owner shall not be brought into any dispute or controversy by reason of the form in which the Work is herein described, nor shall the manner of its presentation be construed as interference by the Owner with jurisdiction of other trade rules, regulations or arrangements.

41. Cooperation of Contractors

If, through acts of neglect on the part of the Contractor, any other Contractor or any Sub-Contractor shall suffer loss or damage on the Work, the Contractor agrees to settle with such other Contractor or Sub-Contractor by agreement or arbitration if such other Contractor or Sub-Contractors will so settle. If such other Contractor or Sub-Contractor shall assert any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the Contractor, who shall indemnify and save harmless the Owner and/or Engineer against any such claim. The Contractor shall coordinate its operations with those of other contractors. Cooperation will be required in the arrangement for the storage of Materials and in the detailed execution of the Work.

The Contractor, including its Sub-Contractors, shall keep informed of the progress and the detail work of other contractors and shall notify the Engineer immediately of lack of progress or defective workmanship on the part of other contractors.

Failure of Contractor to keep informed of the Work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by of the status of the Work as being satisfactory for proper coordination with its own Work.

42. Notice of Imperfect Work or Material

If any part of the Work is dependent for proper execution or appearance on the character or condition of the work of another contractor or contractors, the State, the county of a municipal or other local authority, the Contractor shall report to the Owner, in writing, any imperfections therein or any conditions that render it unsuitable for the reception of its Work. In case the Contractor proceeds without making such written report, Contractor shall be held to have accepted such work and the existing conditions and shall be responsible for any defects in its Work consequent thereon and shall not be relieved thereby of any of the obligations of the Contract or of any guarantee because of any such imperfections or conditions.

43. Insurance

In addition to the insurance requirements specified in the Instructions to Bidders, the following is applicable to all projects:

a. Builders' Risk "All Risk" Insurance

If any structures are included on this Project, the Contractor shall submit written evidence that it has obtained, for the period of the Contract, Builders' Risk, "All-Risk" completed. Value Insurance coverage upon the entire Project which is the subject of this Contract and including completed Work and Work in progress. Such insurance shall include as Additional Named Insured: The Owner and any other persons with an insurable interest designated by the Owner as an Additional Named Insured.

b. Deductible Clause

Such insurance may have a deductible clause, but the amount of deductible shall not exceed Two Hundred Fifty Dollars (\$250.00)

c. Indemnification

The Contractor shall indemnify and hold harmless the Owner and its agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the Work, providing that any such claim, damage, loss or expense is:

- 1) attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property including the loss of use resulting therefrom,
- 2) caused in whole or in part by any negligent act or omission of Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

In any and all claims against the Owner or any of its agents or employees by any employee of Contractor, Sub-Contractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under the foregoing paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Sub-Contractor under workmen's compensation acts, disability benefit acts or other employees' benefit acts.

E. PAYMENTS TO THE CONTRACTOR

1. Applicable Statutes

The terms of this Contract are under and subject to the provisions of the Commonwealth Procurement Code, Act 1998-57, 62 Pa. C.S.A. Section 101, et seq. (and hereinafter the "Act"). The Act also requires that all provisions of federal and state statutes dealing with environmental pollution and the preservation of public natural resources that may affect the Project are to be specifically set forth. In the event of conflict between the terms hereof and the Act, then the provisions hereof shall be deemed a waiver of the provisions of the Act to the extent legally permissible.

2. Detailed Breakdown of Contract Amount

a. Unit Prices

Where unit prices exist as the basis for payment under the Contract, such unit prices shall control.

In case where unit prices do not exist as the basis for payment under the Contract, or in the event that a portion of the Contract does not contain unit prices, then the Contractor shall, within ten (10) days of receipt of Notice of Award, submit a breakdown of the Contract amount showing the value assigned to each part of the Work, including an allowance for profit and overhead for review and approval by Engineer, and which breakdown shall include those items for which unit prices do not otherwise exist at the time of submittal.

Engineer may reject the proposed breakdown in whole or in part, and/or require additional detail or support. Contractor shall comply with Engineer's requests and re-submit its breakdown for further review and approval within five (5) days. Upon approval of the breakdown of the Contract amount by the Engineer, such breakdown shall be used as a basis for all requests for payments thereafter.

b. Cash Allowances

In the event "cash allowances" are stated in the Specifications, then the bidder shall include such cash allowances in its proposal. The Contractor shall purchase the allowed materials as directed by the Engineer. If the actual price for purchasing the allowed materials is more or less than the cash allowance, the Contract Price shall be adjusted accordingly upon invoice received. All adjustments shall be made on the basis of actual purchase price without additional charges for overhead, profit, insurance or any other incidental expenses.

In the event that the proposed purchase price is in excess of the cash allowance used by Contractor in its proposal, then such purchase price shall be permitted only in the event that Contractor produces satisfactory evidence to Engineer that the purchase price is reasonable under the circumstances.

c. Determination of Engineer as to Estimates

On all unit price items, the Engineer's determination as to the quantities of such unit price items shall be deemed final and binding. When the dimensions of the Plans have been exceeded without written order of the Owner, the dimensions of the Contract Plans shall be conclusively used in making all estimates as to payment and shall be used as the basis of all compensation due Contractor.

Any measurements or estimates made by the Engineer in this regard shall be final and conclusive evidence of the amount of acceptable Materials furnished, and of acceptable Work performed by the Contractor under and by virtue of this Contract and shall be taken as the full measure of compensation to be received by the Contractor hereunder.

3. Monthly Submittals

Invoices for periodic payments throughout the term of the Contract shall be made by the Contractor no more frequently than on a once a month basis, and shall be submitted on or before the 15th calendar day of each month or as otherwise determined by the Engineer for all Work for which payment is claimed for the period covered by such invoice.

All invoices shall be on forms approved by the Engineer. Until receipt of any invoice, on an approved form by Owner, Contractor shall have no rights to payments of any sums therefore.

All invoices shall be in accordance with unit prices as set forth above, and shall be subject to such retainage and other deductions as is hereinafter set forth.

4. Payments to Contractors

a. Prior to Substantial Completion

Payments shall be made after review of any invoice by the Engineer, which review shall include review of the progress schedule and value of the Work completed to the end of the period covered by the estimate, hereinafter "Billing Period" for purposes of application of the Act, and subject to the rights to withhold retainage and other deductions. Payment will be made within 45 days following approval of the invoice, and subject to the grace period permitted under the Act, as follows:

- 1) Until 50% of the Contract is completed, each payment shall be subject to retainage of 10% and (subject to Owner's withholding of payment for good faith claims as set forth hereafter) shall be in the amount of 90% of the value of the Work completed in the Contractor's estimate less the aggregate of previous payments.
- 2) After 50% of the Contract is completed, one-half of the amount previously retained shall be paid to the contractor provided the contractor is making satisfactory progress and there is no specific cause for greater withholding. Thereafter, each payment (subject to Owner's withholding of payment for good faith claims as set forth hereafter) shall be in the amount of 95% of the value of the Work completed in the Contractor's estimate less the aggregate of previous payments, and less any amounts withheld under the provisions of subparagraph 3) hereof.
- 3) When the Contract is 50% completed, one-half of the amount retained by the Owner pursuant to subparagraph 1) above, shall be paid to the Contractor with the first payment made after 50% of the Contract is completed, and which shall be subject to Owner's right to withhold payment for good faith claims as set forth hereafter.

b. Substantial Completion

Upon substantial completion of the Contract, the Engineer shall make a final inspection within thirty (30) days of receipt of the Contractor's request for final inspection and application for final payment. If the Work is substantially completed in the opinion of the Engineer, the Engineer shall issue a certificate of completion and a final certificate for payment and which certificate shall constitute final acceptance of the Work. Any retainage shall be paid within thirty (30) days from the date of final acceptance of the Work except for those amounts that are held on account of good faith claims as set forth hereafter. If the Engineer determines that the Work is not substantially completed due to any of the deficiency items identified in Section 5 below, the Engineer shall identify them for the Contractor.

Notwithstanding the above, Contractor shall not be entitled to such final payment, nor shall a certificate of completion be issued or final acceptance of the Work deemed to have occurred until and unless the "deficiency items" referred to hereafter have been completed in a manner satisfactory to the Engineer.

In the event that the amount being withheld by Owner is insufficient to complete the Contract and/or reimburse the Owner on account of any damages to which Owner is otherwise entitled, including liquidated damages as otherwise set forth herein, Contractor shall remit such amount as may be required to compensate Owner within thirty (30) days after receipt of written notice to do so.

Final payment shall also be under and subject to the Owner having received all items listed hereafter at subparagraph 4c.

c. Additional Certifications Required

The following items shall also be submitted by the Contractor prior to Owner's obligation to make final payment:

- 1) A written statement in form satisfactory to the Owner and under seal by Contractor's surety that payment of the amount shown in the final certificate shall not relieve the surety of any obligations to the Owner as set forth in the surety's bonds.
- 2) An affidavit and such other evidence as may be requested by Owner that all labor, material, and indebtedness arising out of performance of the Contract has been paid, and that all other claims against the Contractor or against anyone who has supplied the Contractor with material or labor which become part of the contracted Work and arising out of the performance of the Contract either have been paid or that the Contractor has enforced such Public Liability and Property Damage insurance as will fully protect Contractor, Owner and its subcontractors from any such claims as may be pending or that may thereafter arise.
- 3) A maintenance bond if otherwise required by the Contract.

d. Payment to Others on Account of Uncorrected Work

In the event that Owner otherwise exercises its right to withhold payment on account of good faith claims, and thereafter, Contractor fails to correct such Work within a reasonable time, which shall be a period not to exceed thirty (30) days after notice by Engineer to Contractor to correct such Work, then Owner may direct the contractor not to correct such deficiency items and thereafter deduct from the Contract such amount as may be required by Owner to compensate the Owner for the total cost of correcting such deficiency items by others, together with any damage or extra costs involved, including engineering or other professional fees.

e. Payment for Removal of Rejected Work

All costs of removal of all Materials or Work otherwise rejected by the Engineer, and the replacement thereof shall be at the sole cost and expense of the Contractor, together with the cost of replacing any work of other contractors either destroyed or damaged during such removal and replacement. In the event that Contractor does not remove or replace such Work within thirty (30) days after written notice by the Owner, then Owner may cause the removal and replacement of such Work and after ten (10) days written notice being given by the Owner of its intent to sell any remaining Materials, equipment or other matters of Contractor which may have been involved in the removal, Owner may sell such at auction or at private sale and pay the contractor the net proceeds therefrom after deducting all the costs and expenses incurred by the Owner as a result of such sale with no resulting liability to Owner.

f. Acceptance of Final Payment

The acceptance by Contractor of final payment shall be and shall operate as a full and complete release of Owner and Engineer of all claims and all liability of Owner and Engineer to the Contractor for all things done or furnished in connection with the contracted for Work and for every act or neglect or alleged neglect of the Owner, Engineer and others relating to or arising out of the Work under the Contract. Final payment (nor any other payment made by Owner to Contractor hereunder) shall not operate to release the Contractor or its sureties from any obligations under the Contract or any performance, payment or maintenance bond.

5. Owner's Withholding of Payment for Good Faith Claims

In addition to Owner's right to withhold payment on account of retainage as set forth above, Owner may also withhold payment for "deficiency items" under provisions of the Commonwealth Procurement Code, Act 1998-57, 62 Pa. C.S.A. Section 101 and Section 3934(b), et seq., from any request for payment. For purposes of the Contract, the term "deficiency items" shall mean any of the following.

a. Defective Work

Defective work; i.e., any Work performed by Contractor or anyone acting for or on behalf of Contractor or any material supplied to Contractor from any source which is not in accordance with the Plans or Specifications or in keeping with the standards of the industry, regardless of whatever payment had been made for same.

b. Third Party Claims

Evidence having been received by the Engineer that reflects the probable filing of claims by third parties against the Contractor which may adversely affect the Owner.

c. Failure to Pay Sub-Contractors

Evidence having been received by the Engineer of the failure of the Contractor to make timely payments as due to any sub-contractor, materialman, or any other person or entity supplying goods or services to Contractor, or failure of the Contractor to make timely payments due to its own employees.

d. Violation of Governmental Rules and Regulations

Engineer having received evidence indicating that the contractor may be in violation of any governmental statute, rule or directive which is governmental statute, rule or directive which is otherwise contained in this Contract or which may cause Owner to be in violation of any of its obligations, agreements, licenses or permits.

e. Violation of Act

The Engineer having received evidence that the Contractor is otherwise in violation of the Act.

f. Other Prime Contractor Claims

Evidence being received by the Engineer of the probable filing of a claim against the Owner by any other prime contractor, subcontractor or materialman occasioned by (i) the defective Work of Contractor, (ii) delays or other actions of the Contractor; or (iii) any other claim resulting from Contractor activity.

g. Third Party Damage

Evidence having been received by the Engineer of Contractor of anyone acting for or on behalf of Contractor having committed damage to another contractor, or an individual whether or not related to the Contract, or any property either private or public, real or personal resulting from such activities.

h. Uncorrected Work or Removal of Rejected Work

Any payments made for or on behalf of Owner on account of those items listed above in Paragraphs 4 d, and 4 e.

i. Liquidated Damages

Any deduction on account of liquidated damages as otherwise set forth in Section 7 hereof.

j. Engineer Disputes

Any dispute arising between the Contractor and the Engineer concerning subparagraphs a through i above.

- k. Notwithstanding the provisions of 62 Pa. C.S.A Section 3934(b), the time for notification of the Contractor of the deficiency item shall be thirty (30) days from the date of receipt of the application for payment rather than fifteen (15) days as otherwise set forth in the statute.

6. Extent to Which Owner Shall Have Right to Withhold Payment on Account of Good Faith Claims

a. Application of Act

In the event that the Act is hereinafter deemed mandatory, then Owner's right to withhold payment from Contractor for a deficiency item shall be subject to the notice provisions of the Commonwealth Procurement Code, Act 1998-57, 62 Pa. C.S.A. Section 101, et seq.

To the extent that the provisions of the Act are not deemed mandatory, then if the Owner determines to withhold payment from the Contractor for a deficiency item, it shall notify the Contractor of the deficiency item within thirty (30) days from the date that the invoice is received.

An Owner's failure to notify a Contractor for a deficiency item shall not be deemed a waiver of Owner's right to withhold such payment from subsequent payment requests in the event where Owner neither knows nor should have known of the existence of the deficiency item at the time of receipt of the earlier payment request.

b. Amount of Withholding for Deficiency Items

The amount of payment to which the Owner may withhold for any deficiency item shall be an amount estimated by the Engineer to be 150% of the cost of correction of such deficiency item, except that in the event that the deficiency item is substantial enough to place the Contractor in default of this Agreement if not corrected, then Owner's right to withhold payment shall be as to the entire amount contained in the payment shall be as to the entire amount contained in the payment request and all subsequent payment requests until and unless the deficiency item is corrected to the satisfaction of the Engineer.

7. Liquidated Damages

a. Time for Completion

The time in which the Contract and the Work thereunder is to be completed shall be as stated in the Specifications, or as is otherwise set forth in the Contract Provisions.

b. Amount of Damages

Should the successful Contractor fail to complete the Work within the time specified in the Notice to Proceed, the Contractor agrees that the Owner may deduct and retain out of the monies that may be due, or may become due to him under the Contract, an amount equivalent to that sum, if any stated in the Specifications, for each day, including Sundays and legal holidays, that the Work in part or as a whole remains incomplete after the time of completion, which sum shall not be considered as a penalty, but as a sum mutually agreed upon as the ascertained damages suffered by the Owner because of the delay. This deduction shall be made on the monthly estimates after the expiration of the Contract Time. In addition to the liquidated damages provided hereunder, the Contractor agrees to pay to the Owner, the cost of additional full or part time inspection beyond the Project completion date until final completion.

c. Non-Waiver Provisions

Permitting the Contractor to continue and finish the Work, or any part of it, after the time fixed for its completion, in part or as a whole, shall in no way operate as a waiver on the part of the Owner of its rights under the Contract. However, the Owner, upon recommendation of the Engineer, at its discretion, may waive the liquidated damages otherwise permitted hereunder if the delay is by reason of causes over which the Contractor has no control.

8. Change Orders Reduction in Contract Amount or Claims for Extra Compensation

a. Agreed-to Reductions

In the event of changes in the field or otherwise result in reduced Work to be performed, then Owner shall be entitled to reduction in the Contract amount based upon the unit prices.

b. Extra Work

The basis of payment for all extra Work shall be as is described in Section B "Contract and Contract Documents" Item 8. Any claims for extra compensation over and above the amount agreed upon in the Contract on account of any alterations or changes, or for any extra Work, shall be as follows:

- 1) Any extra Work requested by the Owner shall be made only pursuant written Change Order signed by both Contractor and Owner prior to the commencement of such Work, and shall contain therein a detailed breakdown of the compensation to be paid Contractor for such Work.
- 2) In all other instances, the Contractor before starting Work on any alteration or changes for which additional compensation will be claimed by Contractor, shall notify the Owner in writing of its intention to file such claim prior to the commencement of the Work.

- 3) Any claims for extra Work shall be filed in writing with the Owner by the Contractor having attached thereto a copy of the original order for such alterations or changes for the extra Work within thirty (30) days after completion of said changes or extra Work.
- 4) Should the Contractor fail either to (i) notify the Owner in advance under subparagraph 2) above, or to (ii) submit this claim in writing within thirty (30) days as required under subparagraph 3) above, then it will be conclusively presumed that Contractor does not have a claim for extra Work.
- 5) When the contract Work area is modified or changes in alignment of grade are directed or occur, no extra compensation shall be paid except for Materials required to effect the required change. Prices for such Materials shall be subject to the Owner's approval and to the other provisions of these Contract Documents.

9. Contractor's Guaranty

a. Two Year Period

The Contractor shall guaranty its Work, and shall remedy without cost to the Owner any defects which may develop therefrom during a period of two (2) years from the date determined by the Owner and Engineer. This date shall be based on the date of Substantial Completion, the date of Beneficial Occupancy, or the date of Final Payment, whichever is later and as issued by the Engineer.

b. Underground Tests

Notwithstanding the provisions of subparagraph a. above, the Guaranty Period shall not commence until the date that all underground facilities, pipes, manholes, etc., have passed any required tests.

c. Municipal Approvals

Notwithstanding the above, for surface restoration and reconstruction, the Guaranty Period shall not begin before the municipal officials of the municipality in which the Work was constructed is received by the Owner relieving the Contractor, Owner and Engineer from any responsibility for the condition of municipal property and improvement.

10. Non-Arbitration Clause

It is specifically understood and agreed by and between the parties that the Court of Common Pleas of Westmoreland County has sole and exclusive jurisdiction and venue over any dispute or litigation arising hereunder.

11. Miscellaneous

a. Substantial Completion

Substantial Completion shall be construction that is sufficiently completed in accordance with the Contract in order that the Engineer can certify the same as having been finally completed in accordance with the Plans and Specifications and all changes thereto as modified by Addenda or change orders and that the Work performed under the Contract can be used, occupied and operated for its intended use.

b. Subcontracting

The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof (hereinafter together "Subcontracting"), or its right, title or interest therein, without incorporating the obligations undertaken by the Contractor in the Contract and further, without first obtaining approval of the Engineer. In the event that subcontracting is permitted hereunder and is thereafter accomplished by Contractor, Contractor shall continue to be liable for all of the duties of Contractor hereunder.

c. Right to Interest

Any rights of Contractor to interest as otherwise set forth in 62PaC.S.A.3932(c) are hereby waived.

d. No Charge for Delay

Unless otherwise provided in the Contract Documents, the Contractor shall make no charge or claim whatsoever for any hindrance or delay in the progress of the Work or interference by Owner, except that Contractor may claim an extension of time if otherwise permitted under the Contract, for the completion of its Work. Where the Contractor is prevented from completing any part of the Work within the Contract Time due to delay beyond the control of Contractor, the Contract Time will be extended in an amount equal to time lost due to delays beyond the control of Contractor if a written claim is made to the Owner and Engineer within five (5) days of the occurrence of such delay. Such delays shall include fires, floods, epidemics, abnormal weather conditions, or acts of God. Delays attributable to and within the control of a Sub-Contractor or Supplier shall be deemed to be delays within the control of Contractor.

e. No Duty of Engineer

Neither Engineer's authority to act hereunder or elsewhere in the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of Engineer to Contractor, any Sub-Contractor, any manufacturer, fabricator, Supplier, distributor, or any other person or to any surety for or employee or agent of any of them.

12. Operation and Maintenance Manuals

The Contractor shall collect three (3) sets of catalog data, including instructions for operations and care of equipment, diagrams, drawings, etc., for all pieces of equipment furnished under this Contract. The data shall be bound in a notebook and suitably indexed. Upon conclusion of the Work, the two sets of notebooks shall be delivered to the Engineer who will submit them to the Authority prior to receipt of final payment.

13. As-Built Drawings

The Contractor shall keep a separate set of prints of the Contract Drawings on the job. Contractor shall neatly mark on the set any and all installation changes. This record set shall be kept up to date through the conclusion of the Contract and shall be delivered to the Engineer prior to final payment. The marking of this set shall show the plan location and elevation of all underground piping and utilities and shall also include buildings and treatment units. The set shall be marked as "As-Built" Drawings.