



**SARATOGA COUNTY DOCUMENT A201**  
**GENERAL CONDITIONS**

(For Projects where the Owner is Acting as Engineer or Architect)

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## **ARTICLE I – DEFINITIONS**

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

1. **Addenda** - Written or graphic instruments issued prior to the opening of Bids, which clarify, correct or change the Bidding Requirements or the Contract Documents.
2. **Agreement** - The written contract between **OWNER** and **CONTRACTOR** covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.
3. **Application for Payment** - The form which is to be used by **CONTRACTOR** in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. **Asbestos** - Any material that contains more than one percent asbestos.
5. **Bid** -The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
6. **Bidding Documents** -The advertisement or invitation to Bid, the Bid form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
7. **Bidding Requirements** -The advertisement or invitation to Bid and the Bid form.
8. **Bonds** -Performance and Payment bonds and other instruments of security.
9. **Change Order** - A document which is signed by **CONTRACTOR** and **OWNER** and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
10. **Contract Documents** - The **Owner/Contractor** Agreement, Addenda (which pertain to the Contract Documents). **CONTRACTOR's** Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award), Invitation to Bidders, Information to Bidders, Non-Collusive Bidding Certificate, the Notice to Proceed, the Bonds, these General Conditions, the Supplemental General Conditions, the Technical Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, and Field Orders issued on or after the Effective Date of the Agreement. Shop Drawings submittals approved pursuant to in **Article VI, paragraphs 18 & 19** and the reports and drawings referred to in **Article IV, paragraph 2** are not Contract Documents.
11. **Contract Price** - The moneys payable by **OWNER** to **CONTRACTOR** for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of **Article XI, paragraph 6** in the case of Unit Price Work).
12. **Contract Times** -The numbers of days or the dates stated in the Agreement: (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment.
13. **CONTRACTOR** - The person, firm or corporation with whom **OWNER** has entered into the Agreement.

14. **Defective** - An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to final payment (unless responsibility for the protection thereof has been assumed by **OWNER** at Substantial Completion in accordance with **Article XIV, paragraph 5 and 6**).
15. **Drawings** - The drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
16. **Effective Date of the Agreement** - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
17. **Field Order** - A written order which orders minor changes in the Work which does not involve a change in the Contract Price or the Contract Times.
18. **General Provisions** - Section 100 of the NYSDOT Standard Specifications.
19. **Hazardous Waste** - The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
20. **Laws or Regulations** - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
21. **Liens** - Liens, charges, security interests or encumbrances upon real property or personal property.
22. **Milestone** - A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
23. **Notice of Award** - The written notice by **OWNER** to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, **OWNER** will sign and deliver the Agreement.
24. **Notice to Proceed** - A written notice given by **OWNER** to **CONTRACTOR** fixing the date on which the Contract Times will commence to run and on which **CONTRACTOR** shall start to perform **CONTRACTOR's** obligations under the Contract Documents.
25. **OWNER** - The term "**OWNER**" means Saratoga County or its authorized representative.
26. **Partial Utilization** - Use by **OWNER** of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all Work.
27. **PCBs** - Polychlorinated biphenyls.
28. **Petroleum** -Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.
29. **Project** - The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

30. **Radioactive Material** - Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
31. **Resident Project Representative** - The authorized representative of **OWNER** who may be assigned to the site or any part thereof.
32. **Samples** - Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of Work will be judged.
33. **Shop Drawings** - All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for **CONTRACTOR** and submitted by **CONTRACTOR** to illustrate some portion of the Work.
34. **Specifications** - Those portions of the Contract Documents consisting of written technical requirements for materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
35. **Subcontractor** - An individual, firm or corporation having a direct contract with **CONTRACTOR** or with any other Subcontractor for the performance of a part of the Work at the site.
36. **Substantial Completion** - The Work (or a specified part thereof) has progressed to the point where, in the opinion of **OWNER** it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if no such certificate is issued, when the Work is complete and ready for final. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
37. **Supplementary Conditions** - The part of the Contract Documents which amends or supplements these General Conditions.
38. **Supplier** - A manufacturer, fabricator, supplier, distributor, materialmen or vendor having a direct contract with **CONTRACTOR** or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by **CONTRACTOR** or any Subcontractor.
39. **Underground Facilities** - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials; electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.
40. **Unit Price Work** - Work to be paid for on the basis of unit prices.
41. **Work** -The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

42. **Work Change Directive** - A written directive to **CONTRACTOR**, issued on or after the effective date of the Agreement and signed by **OWNER** ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in **Article IV, paragraph 4** or the emergencies under **Article VI, paragraph 17**. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times as provided in paragraph **Article X, paragraph 2**.
43. **Written Amendment** - A written amendment of the Contract Documents, signed by **OWNER** and **CONTRACTOR** on or after the Effective Date of the Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

## **ARTICLE II - PRELIMINARY MATTERS**

### **1. Execution of Contract:**

- a. Within 10 days after receipt of the Notification of Award to the **CONTRACTOR** from **OWNER**, **CONTRACTOR** shall deliver six (6) executed contracts with original signatures for the work to the **OWNER**. Execution of the Contract by the **CONTRACTOR** is a representation that the **CONTRACTOR** has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

### **2. Delivery of Bonds and Insurances:**

- a. When **CONTRACTOR** delivers the executed Agreements to the **OWNER**, **CONTRACTOR** shall simultaneously deliver to **OWNER** such Bonds and Insurances as **CONTRACTOR** may be required to furnish in accordance with **Article V**.

### **3. Copies of Documents:**

- a. **OWNER** shall furnish to **CONTRACTOR** up to four (4) copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

### **4. Commencement of Contract Times; Notice to Proceed:**

- a. The Contract Times will commence to run on the 30<sup>th</sup> day after the Effective Date of the Agreement, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the 60<sup>th</sup> day after the day of Bid opening or the 30<sup>th</sup> day after the Effective Date of the Agreement, whichever date is earlier.

### **5. Starting the Work:**

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

## 6. Before Starting Construction:

- a. Before undertaking each part of the Work, **CONTRACTOR** shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. **CONTRACTOR** shall promptly report in writing to **OWNER** any conflict, error, ambiguity or discrepancy which **CONTRACTOR** may discover and shall obtain a written interpretation or clarification from **OWNER** before proceeding with any Work affected thereby; however, **CONTRACTOR** shall not be liable to **OWNER** for the failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless **CONTRACTOR** knew or reasonably should have known thereof.
- b. Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements). **CONTRACTOR** shall submit to **OWNER** for review:
  - i. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents.
  - ii. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal;
  - iii. a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work. The schedule of values for unit price contracts is the itemized unit price bid submitted at the time of bid by the **CONTRACTOR**.
- c. Before any Work at the site is started. **CONTRACTOR** shall deliver to **OWNER**, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which **CONTRACTOR** and **OWNER** respectively are required to purchase and maintain in accordance with **Article V, paragraphs 2, 3 and 4**.

## 7. Preconstruction Conference:

- a. Within 20 days after the Notice to Proceed is issued, but before any Work at the site is started, a conference attended by **CONTRACTOR**, **OWNER** and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in **Article VI, paragraphs 18 and 19** procedures for handling Shop Drawings and other submittals, processing Applications for Payment and maintaining required records.

## 8. Initially Acceptable Schedules:

- a. Unless otherwise provided in the Contract Documents, at least 10 days before submission of the first Application for Payment a conference attended by **CONTRACTOR**, and **OWNER** will be held to review for acceptability to **OWNER** as provided below the schedules submitted in accordance with **Article II, paragraph 6**. **CONTRACTOR** shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to **CONTRACTOR** until the schedules are submitted to and acceptable to **OWNER** as provided below. The progress schedule will be acceptable to **OWNER** as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Times, but such acceptance will neither impose on **OWNER** responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve **CONTRACTOR** from **CONTRACTOR's** full responsibility therefor. **CONTRACTOR's** schedule

of Shop Drawing and Sample submissions will be acceptable to **OWNER** as providing a workable arrangement for reviewing and processing the required submittals. **CONTRACTOR's** schedule of values will be acceptable to **OWNER** as to form and substance.

#### 9. Job Meetings:

- a. The **CONTRACTOR** or his authorized representative shall attend all job meetings called by **OWNER**. Failure to be represented at any job meeting which is held at a mutually agreed upon time or for which three (3) days oral or written notice is given shall in no way relieve **CONTRACTOR** from abiding by any and all decisions made at such meeting.

### **ARTICLE III - CONTRACT DOCUMENTS: INTENT; REFERENCE TO STANDARDS; REPORTING AND RESOLVING DISCREPENCIES; AMENDING; REUSE**

#### 1. Intent:

- a. The Contract Documents comprise the entire agreement between **OWNER** and **CONTRACTOR** concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.
- b. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. Should any conflict be found in or between the drawings and specifications, the **CONTRACTOR** shall be deemed to have estimated on the basis of performing the work by the most expensive way. In case of such conflict, the drawings and specifications shall be construed or interpreted so as to secure the most substantial and complete performance of the work as is most consistent with its needs and requirements. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifications and interpretations of the Contract Documents shall be issued by the **OWNER**.

#### 2. Reference to Standards and Specifications of Technical Societies; Reporting and Resolving Discrepancies:

- a. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
- b. If, during the performance of the Work, **CONTRACTOR** discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in **Article VI, paragraph 8**, **CONTRACTOR** shall report it to **OWNER** in writing at once, and, **CONTRACTOR** shall not proceed with the Work affected thereby (except in an emergency as authorized by **Article VI, paragraph 17**) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in **Article III, paragraph 3**; provided, however, that **CONTRACTOR** shall not be liable to **OWNER** for failure to report any such conflict, error, ambiguity or discrepancy unless **CONTRACTOR** knew or reasonably should have known thereof.

- c. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in **Article III, paragraph 3**, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:
  - i. the provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
  - ii. the provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
- d. No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of **OWNER or CONTRACTOR** or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to **OWNER** or its agents or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of any provision of the Contract Documents.
- e. Whenever in the Contract Documents the terms “as ordered,” “as directed,” “as required,” “as allowed,” “as approved” or terms of like effect or import are used, or the adjectives “reasonable,” “suitable,” “acceptable,” “proper” or “satisfactory” or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of **OWNER** as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to **OWNER** any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of any provision of the Contract Documents.

### 3. Amending and Supplementing Contract Documents:

- a. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof, pursuant to **Article X**, in one or more of the following ways:
  - i. a formal Written Amendment,
  - ii. a Change Order or
  - iii. a Work Change Directive
- b. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:
  - i. a Field Order,
  - ii. **OWNER’s** approval of a Shop Drawing or sample, (pursuant to **Article VI, paragraph 18**), or
  - iii. **OWNER’s** written interpretation or clarification.

#### 4. Reuse of Documents:

- a. **CONTRACTOR**, and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with **OWNER** (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of **OWNER**, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of **OWNER** and specific written verification or adaption by **OWNER**.

### **ARTICLE IV - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; POSSIBLE CONTRACT DOCUMENTS CHANGE; PRICE AND TIME ADJUSTMENTS; UNDERGROUND FACILITIES; REFERENCE POINTS**

#### 1. Availability of Lands:

- a. **OWNER** shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of **CONTRACTOR**. Upon reasonable written request, **OWNER** shall furnish **CONTRACTOR** with a correct statement of record legal title and legal description of the lands upon which the Work is to be performed and **OWNER's** interest therein as necessary for giving notices of or filing a mechanic's lien against such lands in accordance with applicable Laws and Regulations. **OWNER** shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which **CONTRACTOR** will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by **OWNER**, unless otherwise provided in the Contract Documents. If **CONTRACTOR** and **OWNER** are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in **OWNER's** furnishing these lands, rights-of-way or easements, **CONTRACTOR** may make a claim therefor as provided in **Article XI, paragraph 2**. **CONTRACTOR** shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.
- b. The **CONTRACTOR** shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the **CONTRACTOR** with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the **OWNER** at once.

#### 2. Subsurface and Physical Conditions:

- a. Reports and Drawings: Reference is made to the Supplementary Conditions for identification of:
  - i. Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the site that have been utilized by **OWNER** in preparing the Contract Documents; and
  - ii. Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized by **OWNER** in preparing the Contract Documents.

**3. Limited Reliance on “Technical Data” by CONTRACTOR Authorized:**

- a. **CONTRACTOR** may rely upon the general accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data”, **CONTRACTOR** may not rely upon or make any claim against **OWNER**, with respect to:
  - i. the completeness of such reports and drawings for **CONTRACTOR’s** purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by **CONTRACTOR** and safety precautions and programs incident thereto, or
  - ii. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or
  - iii. any **CONTRACTOR** interpretation of or conclusion drawn from any “technical data” or any such data, interpretations, opinions or information.

**4. Notice of Differing Subsurface or Physical Conditions:**

- a. If the **CONTRACTOR** believes that any subsurface or physical condition at or contiguous to the site that is uncovered or revealed either:
  - i. is of such a nature as to establish that any “technical data” on which **CONTRACTOR** is entitled to rely as provided in **Article IV, paragraph 3** is materially inaccurate, or
  - ii. is of such a nature as to require a change in the Contract Documents, or
  - iii. differs materially from that shown or indicated in the Contract Documents, or
  - iv. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then the **CONTRACTOR** shall promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as permitted by **Article VI, paragraph 17**), notify **OWNER** in writing about such condition, **CONTRACTOR** shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

**OWNER** will promptly review the pertinent conditions, determine the necessity of **OWNER’s** obtaining additional exploration or tests with respect thereto.

**5. Possible Contract Documents Change:**

- a. If **OWNER** concludes that a change in the Contract Documents is required as a result of a condition that meets one (1) or more of the categories in **Article IV, paragraph 4**, a Work Change Directive or a Change Order will be issued as provided in **Article X** to reflect and document the consequences of such change.

**6. Possible Price and Times Adjustments:**

- a. An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of such uncovered or revealed condition causes an increase or decrease in

**CONTRACTOR's** cost of, or time required for performance of, the Work; subject, however, to the following:

- i. such condition must meet any one (1) or more of the categories described in **Article IV, paragraph 4**:
- ii. a change in the Contract Documents pursuant to **Article IV, paragraph 4** will not be an automatic authorization of nor a condition precedent to entitlement to any such adjustment;
- iii. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of **Article XI, paragraph 6**; and
- iv. **CONTRACTOR** shall not be entitled to any adjustment in the Contract Price or Times if:
  - a. **CONTRACTOR** knew of the existence of such conditions at the time **CONTRACTOR** made a final commitment to **OWNER** in respect of Contract Price and Contract Times by the submission of a bid or becoming bound under a negotiated contract; or
  - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for **CONTRACTOR** prior to **CONTRACTOR's** making such final commitment; or
  - c. **CONTRACTOR** failed to give the written notice within the time and as required by **Article IV, paragraph c**.
- b. If **OWNER** and **CONTRACTOR** are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Price or Contract Times, a claim may be made therefor as provided in **Articles XI and XII**. However, **OWNER** shall not be liable to **CONTRACTOR** for any claims, costs, losses or damages sustained by **CONTRACTOR** on or in connection with any other project or anticipated project.

## 7. **Underground Facilities:**

- a. **Shown or Indicated:** The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to **OWNER** by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
  - i. **OWNER** shall not be responsible for the accuracy or completeness of any such information or data; and
  - ii. The cost of all of the following will be included in the Contract Price and **CONTRACTOR** shall have full responsibility for: (i) reviewing and checking all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents. (iii) coordination of the Work with the **OWNER'S** of such Underground Facilities during construction, and (iv) the safety and protection of all such Underground Facilities as provided in **Article VI, paragraph 14** and repairing any damage thereto resulting from the Work.
- b. **Not Shown or Indicated:** If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents. **CONTRACTOR** shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by **Article VI, paragraph 17**), identify the owner of such Underground Facility and give written notice to that owner and to **OWNER**.

**OWNER** will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the Underground Facility. If **OWNER** concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued as provided in **Article X** to reflect and document such consequences. During such time, **CONTRACTOR** shall be responsible for the safety and protection of such Underground Facility as provided in **Article VI, paragraph 14**. **CONTRACTOR** shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that **CONTRACTOR** did not know of any could not reasonably have been expected to be aware of or to have anticipated. If **OWNER** and **CONTRACTOR** are unable to agree on entitlement to or the amount or length of any such adjustment in Contract Price or Contract Times. **CONTRACTOR** may make a claim therefor as provided in **Article XI, paragraph 2**. However, **OWNER** shall not be liable to **CONTRACTOR** for any claims, costs, losses or damages incurred or sustained by **CONTRACTOR** on or in connection with any other project or anticipated project.

**8. Reference Points:**

- a. **OWNER** shall provide engineering surveys to establish reference points for construction which are necessary to enable **CONTRACTOR** to proceed with the Work. **CONTRACTOR** shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of **OWNER**. **CONTRACTOR** shall report to **OWNER** whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

**9. Asbestos, PCBs, Petroleum, Hazardous Waste, Lead or Radioactive Material:**

- a. **OWNER** shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste, Lead or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. **OWNER** shall not be responsible for any such materials brought to the site by **CONTRACTOR**, Subcontractor, Suppliers or anyone else for whom **CONTRACTOR** is responsible.
- b. **CONTRACTOR** shall immediately: (i) stop all Work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by **Article VI, paragraph 17**), and (i) notify **OWNER** (and thereafter confirm such notice in writing). **OWNER** shall promptly determine the necessity for **OWNER** to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. **CONTRACTOR** shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after **OWNER** has obtained any required permits related thereto and delivered to **CONTRACTOR** special written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely. If **OWNER** and **CONTRACTOR** cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by **CONTRACTOR** to be resumed, either party may make a claim therefor as provided in **Articles XI, paragraph 2**.
- c. If after receipt of such special written notice **CONTRACTOR** does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then **OWNER** may order such portion of the Work that is in connection with such hazardous condition or in such affected area to be deleted from the Work. If **OWNER** and **CONTRACTOR** cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract

Times as a result of deleting such portion of the Work, then either party may make a claim therefor as provided in **Article XI, paragraph 2**. **OWNER** may have such deleted portion of the Work performed by **OWNER's** own forces or others in accordance with **Article VII, paragraph 1**.

- d. To the fullest extent permitted by Laws and Regulations, **OWNER** shall indemnify and hold harmless **CONTRACTOR**, Subcontractors, and the officers, directors, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from such hazardous condition, provided that: (i) any such claim cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this **Article V, paragraph 9** shall obligate **OWNER** to indemnify any person or entity from and against the consequences of that person's or entity's own negligence.
- e. The provisions of **Article IV, paragraph 9d** are not intended to apply to Asbestos, PCBs, Petroleum, Hazardous Waste, Lead or Radioactive Material uncovered or revealed at the site.

## **ARTICLE V—BONDS AND INSURANCE**

### **1. Performance, Payment and Other Bonds:**

- a. Simultaneously with the delivery of executed agreements for the work the **CONTRACTOR** shall deliver to the **OWNER**, executed PERFORMANCE AND PAYMENT BONDS bearing the date of the contract, in an amount equal to 100% of the accepted bid issued by a corporate surety licensed to do business in the State of New York, and acceptable to the **OWNER** as follows:
- b. The Performance Bond shall be conditioned upon the faithful performance of the terms of the contract, per PERFORMANCE BOND FORM annexed hereto.
- c. The Payment Bond shall be conditioned upon the prompt payment of all indebtedness incurred by the **CONTRACTOR** or any of his Subcontractors for labor or material incident to this contract and shall meet all requirements of Section 12 of the Lien Law of the State of New York, per PAYMENT BOND FORM annexed hereto. This bond shall remain in effect at least until one (1) year after the date of final payment, except as otherwise provided by Laws or Regulations or the Contract documents.
- d. If the surety on any Bond furnished by **CONTRACTOR** is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of **Article V, paragraph 1**. **CONTRACTOR** shall within 10 days thereafter substitute another Bond and surety, both of which must be acceptable to **OWNER**.

### **2. CONTRACTOR's Liability Insurance:**

- a. General: The **CONTRACTOR** must maintain the insurance described in this Article during the period from the signing of the contract through the applicable date or dates required by this Article.
- b. Pre-filing: The **CONTRACTOR** shall not commence work under this Contract until he has filed with the **OWNER** triplicate copies of certificates as described in Paragraph D below.
- c. Subcontractor: The **CONTRACTOR** shall not permit any **SUBCONTRACTOR** to undertake any portion of his contract unless he has received from such **SUBCONTRACTOR** certificates verifying that the **SUBCONTRACTOR** has all forms of coverage as are required of the **CONTRACTOR** by this Article. Such certificates shall be issued to the **CONTRACTOR** and shall be in such form as shall be acceptable to the **CONTRACTOR**. Copies of such certificates shall be furnished to the **OWNER**, in triplicate.

d. Certificates: Triplicate copies of the certificates as referred to in Paragraph B above shall be filed with the **OWNER**. They shall be issued to the **OWNER**, be in such form as meets the approval of the **OWNER**, and shall include information on each policy as follows:

- Name and address of the insured.
- Job location and title for the contract.
- Policy number and expiration date.
- Issuance date of certificate.
- Types of coverage afforded.
- Limit of liability afforded for each type.
- Types of operations as are covered (classifications).
- Types of operations or of coverages as are excluded (other than as are in the printed wording of the standard policies).
- Verifications that not less than thirty (30) days written notice shall be sent to the **OWNER** at the address shown in the specifications in the event that:
  - The policy is to be canceled.
  - The coverage is to be reduced or changed.
  - The policy is not to be renewed.

a sample of an acceptable insurance certificate follows on the next page:

# SARATOGA COUNTY SAMPLE INSURANCE CERTIFICATE

ACORD. CERTIFICATE OF INSURANCE						
PRODUCER		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.				
<b>SAMPLE FORMAT</b>		COMPANIES AFFORDING COVERAGE				
<b>Please send certificate to:</b> <b>Saratoga County DPW</b> <b>3654 Galway Road</b> <b>Ballston Spa, NY 12020</b>		INSURED	COMPANY A			
			COMPANY B			
			COMPANY C			
			COMPANY D			
<b>COVERAGES:</b> THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS.						
<b>Liability Limits</b>	<b>TYPE OF INSURANCE</b>	<b>POLICY NUMBER</b>	<b>POLICY EFFECT.</b>	<b>POLICY EXP.</b>		<b>LIMITS</b>
<b>\$1,000,000 single limit coverage for liability and property damage</b>	GENERAL LIABILITY					GENERAL AGGREGATE \$ 3,000,000.00
	X Commercial General Liability					PRODUCTS-COMP/OP \$ 2,000,000.00
	Claims Made X Occur.					PERSONAL&ADV INJURY \$ 1,000,000.00
	Owners & Contractor's Prot.					EACH OCCURRENCE \$ 1,000,000.00
<b>Automobile Liability Automobile Liability coverage required if contract calls for any transportation services or use of an automobile.</b>	AUTO LIABILITY					FIRE DAMAGE \$ 50,000.00
	ANY AUTO					MED EXP. \$ 5,000.00
	ALL OWNED AUTOS					COMBINED SINGLE LIMIT
	SCHEDULED AUTOS					BODILY INJURY (PER PERSON)
	HIRED AUTOS					BODILY INJURY (PER ACCIDENT)
	NON-OWNED AUTO					PROPERTY DAMAGE
<b>Additional Insured Saratoga County is named as additional insured</b>	EXCESS LIABILITY					EACH OCCURRENCE
	Umbrella Form					AGGREGATE
	Other than Umbrella Form					STATUTORY LIMITS -
	WORKERS COMP. AND EMPLOYER'S LIABILITY					EACH ACCIDENT
<b>Certificate Holder County of Saratoga 40 McMaster Street Ballston Spa, NY 12020</b>						DISEASE POLICY LIMIT
	OTHER					DISEASE EACH EMP.
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS						
<b>Saratoga County is named as additional insured. List Other Additional Insureds as may be required.</b>						
<b>Cancellation Clause Shall assure 30 days written notice</b>	<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION:</b> Should any of the above described policies be				
	<b>SARATOGA COUNTY</b>	cancelled before the expiration date thereof, the insurance company will				
	<b>40 MCMASTER ST.</b>	endeavor to mail 30 days written notice to the certificate holder named to				
	<b>BALLSTON SPA, NY 12020</b>	the left, but failure to mail such notice shall impose no obligation or liability				
		of any kind upon the company, its agents or representatives.				
		<b>Authorized Representative</b>				

- e. By the filing of such Certificates, the **CONTRACTOR** authorizes the **OWNER** to make direct inquiry, from the insurance carrier and for the insurance carrier to make reply direct to the **OWNER** at any time in the event of any question as to coverage in force during the performance of this contract.
- f. Type of Coverage Required - The forms of coverage required of each **CONTRACTOR** shall, with the limits indicated, include:
  - i. Workman's Compensation Insurance as required by the laws of the State of New York.
  - ii. Comprehensive General Liability Insurance including:
    - Manufacturer's and Contractor's coverage on all premises and operations.
    - Elevators or Hoists, if any.
    - Contractor's Protective Liability.
    - Completed operations.
    - General aggregate limit \$3,000,000.
  - iii. Automobile Liability Insurance on: owned, non-owned, and hired vehicles.
    - Bodily Injury – As to each person - \$1,000,000; each accident - \$3,000,000
    - Property Damage – Each accident - \$1,000,000
  - iv. Protective Liability Insurance: Protective Liability Insurance for the **OWNER**, and their Agents. Such coverage shall continue for a period of no less than one (1) year from the date of final acceptance of all work under this contract.

**MINIMUM LIMITS**

<u>Bodily Injury Liability</u>		<u>Property Damage Liability</u>	
Each Person	Each Accident	Each Accident	Aggregate
\$1,000,000	\$3,000,000	\$1,000,000	\$1,000,000

NOTE: Where coverage is under classifications, as normally excluded XCU (explosion, collapse, or underground damage) **CONTRACTOR** must obtain coverage to eliminate such exclusions.

- g. Each of the above types of policies furnished with limits of not less than the indicated amounts and shall name the **OWNER** as additional insured and specifically insuring the contractual liability created by the hold harmless and indemnity provisions of this agreement. Such coverage shall continue for a period of no less than one (1) year from the date of final acceptance of all work under this contract.
- h. The policies of insurance so required by this **Article V, paragraph 2** to be purchased and maintained shall:
  - i. include contractual liability covering **CONTRACTOR's** indemnity obligations under **Article VI, paragraph 22**;
  - ii. remain in effect for a period of no less than one (1) year from the date of final acceptance and at all times thereafter when **CONTRACTOR** may be correcting, removing or replacing defective Work in accordance with **Article XIII** and;

- iii. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two (2) years after final payment (and **CONTRACTOR** shall furnish **OWNER** and each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued evidence satisfactory to **OWNER** and any such additional insured of continuation of such insurance at final payment and one year thereafter).

### 3. **Worker's Compensation Insurance:**

- a. This agreement shall be void and of no affect unless through the term of this Agreement **CONTRACTOR**, in compliance with the provisions of the Worker's Compensation Law, shall secure compensation for the benefit of and keep insured during the life of this Agreement such employees as are satisfied to be insured according to the law.

### 4. **OWNER's Liability Insurance:**

- a. In addition to the insurance required to be provided by **CONTRACTOR** under **Article V, paragraph 2**, **OWNER**, at **OWNER's** option, may purchase and maintain at **OWNER's** expense **OWNER's** own liability insurance as will protect **OWNER** against claims which may arise from operations under the Contract Documents.

### 5. **Property Insurance:**

- a. **CONTRACTOR** shall purchase and maintain property insurance upon the Work at the site in the amount of the full replacement costs thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
  - i. include the interests of **OWNER, CONTRACTOR**, Subcontractors and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
  - ii. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework and Work in transit and insure against at least the following perils fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions;
  - iii. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
  - iv. cover materials and equipment stored at the site or at another location that was agreed to in writing by **OWNER** prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment accepted by **OWNER**; and
  - v. be maintained in effect until final payment is made unless otherwise agreed to in writing by **OWNER** and **CONTRACTOR** with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.
- b. **OWNER** shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of **OWNER, CONTRACTOR**, Subcontractor, and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

- c. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by **OWNER** in accordance with **Article V, paragraph 4b** will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to **OWNER** and **CONTRACTOR** and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with **Article V, paragraph 5**.
- d. **OWNER** shall not be responsible for purchasing and maintaining any property insurance to protect the interests of **CONTRACTOR**, Subcontractors or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by **CONTRACTOR**, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- e. If **CONTRACTOR** requests in writing that other special insurance be included in the property insurance policies provided under **Article V, paragraph 2** or **Article V, paragraph 4**, **OWNER** shall, if possible, include such insurance, and the cost thereof will be charged to **CONTRACTOR** by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the site, **OWNER** shall in writing advise **CONTRACTOR** whether or not such other insurance has been procured by **OWNER**.

#### 6. Waiver of Rights:

- a. **OWNER** and **CONTRACTOR** intend that all policies purchased in accordance with **Article V, paragraph 2** and **Article V, paragraph 4**, will protect **OWNER**, **CONTRACTOR**, **Subcontractors**, and all other persons or entities identified in the Supplementary Conditions to be listed as insured or additional insured in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have not rights of recovery against any of the insured or additional insured thereunder. **OWNER** and **CONTRACTOR** waive all rights against each other and their respective officers, directors, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, and all other persons or entities identified in the Supplementary Conditions to be listed as insured or additional insured under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by **OWNER** as trustee or otherwise payable under any policy so issued.
- b. In addition, **OWNER** waives all rights against **CONTRACTOR**, Subcontractors, and the officers, directors, employees and agents of any of them, for:
  - i. loss due to business interruption, loss of use or other consequential loss extending beyond direct physical loss or damage to **OWNER's** property or the Work caused by, arising out of or resulting from fire or other peril, whether or not insured by **OWNER**; and
  - ii. loss or damage to the completed Project or part thereof caused by, arising out of or resulting from fire or other insured peril covered by any property insurance maintained on the completed Project or part thereof by **OWNER** during partial utilization pursuant to **Article XIV, paragraph 6**, after substantial completion pursuant to **Article XIV, paragraph 5** or after final payment pursuant to **Article XIV, paragraph 9**.
- c. Any insurance policy maintained by **OWNER** covering any loss, damage or consequential loss referred to in this **Article V, paragraph 4** shall contain provisions to the effect that in the event of payment of any such loss, damage or consequential loss the insurers will have no rights of recovery against any of **CONTRACTOR**, Subcontractor and the officers, directors, employees and agents of any of them.

## 7. Receipt and Application of Insurance Proceeds

- a. Any insured loss under the policies of insurance required by **Article V, paragraph 2** and **Article V, paragraph 4** will be adjusted with **OWNER** and made payable to **OWNER** as fiduciary for the insured, as their interests may appear, subject to the requirements of any applicable mortgage clause and of this **Article V, paragraph 6**. **OWNER** shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.
- b. **OWNER** as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence be made, **OWNER** as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, **OWNER** as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, **OWNER** as fiduciary shall give bond for the proper performance of such duties.

## 8. Acceptance of Bonds and Insurance; Option to Replace:

- a. If either party (**OWNER** or **CONTRACTOR**) has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with **Article V** on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by **Article II, paragraph 8**. **OWNER** and **CONTRACTOR** shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

## 9. Partial Utilization -Property Insurance:

- a. If **OWNER** finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with **Article XIV, paragraph 6**; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

## **ARTICLE VI - CONTRACTOR'S RESPONSIBILITIES**

### **1. Supervision and Superintendence:**

- a. **CONTRACTOR** shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. **CONTRACTOR** shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but **CONTRACTOR** shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated in and expressly required by the Contractor Documents. **CONTRACTOR** shall be responsible to see that the completed Work complies accurately with the Contract Documents.
- b. **CONTRACTOR** shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to **OWNER** except under extraordinary circumstances. The superintendent will be **CONTRACTOR's** representative at the site and shall have authority to act on behalf of **CONTRACTOR**. All communications to the superintendent shall be as binding as if given to **CONTRACTOR**.

### **2. Labor:**

- a. **CONTRACTOR** shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the Contract Documents. **CONTRACTOR** shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours and **CONTRACTOR** will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without the written consent of the NYS Department of Labor and **OWNER**.
- b. **CONTRACTOR** shall pay those minimum wage rates prevailing in the locality of the project in accordance with Labor Laws §§220 and 220d and shall provide statutory benefits for disability, worker's compensation, unemployment insurance and social security. In accordance with NYS Labor Law 220, the **CONTRACTOR** and each of his sub-contractors, shall submit a transcript of their original payroll records directly to the **OWNER** within 30 days after the issuance of its first payroll, and every 30 days thereafter. The **CONTRACTOR** and subcontractor shall subscribe and affirm on the transcript that it is true, under penalty of perjury. The County shall receive and maintain the payroll transcripts. The **CONTRACTOR's** original payroll and the County's transcript's shall be preserved for a period of three (3) years following the date of Final Completion of the related contract.

### **3. Non-Discrimination Requirements:**

- a. During the performance of the work, the **CONTRACTOR** agrees to conduct his operations in accordance with the requirements of Title VI of the Civil Rights Act of 1964 and or the Rehabilitation Act of 1973, as amended and Article 15 of the Executive Law of the State of New York. The contractor further agrees as follows:
- b. The **CONTRACTOR** will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status and will undertake programs or affirmative action to insure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference, but not be limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, or termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.

- c. If the **CONTRACTOR** is directed to do so by the contracting agency or the owner, the **CONTRACTOR** shall request each employment agency, labor union, or authorized representative of workers with which he has a collective bargaining or other agreement or understanding, to furnish him with a written statement that such employment agency, labor union or representative will not discriminate because of race, color, creed, national origin, sex, sexual orientation, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the **CONTRACTOR**'s obligations hereunder.
- d. The **CONTRACTOR** will state, in all solicitations or advertisements for employees placed by or on behalf of the **CONTRACTOR**, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, color, creed, national origin, sex, age, disability or marital status.
- e. The **CONTRACTOR** will comply with all the applicable provisions of Title VI of the Civil Rights Act of 1964 and Rehabilitation Act of 1973 as amended, and of Article 15 of the Executive Law of the State of New York and of rules, regulations and orders issued pursuant thereto and will furnish all information and reports required by said acts of such rules, regulations and orders, and will permit access to its books, records and accounts and to its premises by the **OWNER** for the purpose of ascertaining compliance with said acts and such rules, regulations and orders.
- f. If the **CONTRACTOR** does not comply with the equal opportunity provisions of this Agreement, with the applicable provisions of said acts, or with such rules, regulations or orders, this Agreement or any portion thereof, may be canceled, terminated, or suspended or payments thereon withheld, in accordance with the applicable provisions authorized in said acts, and such other sanctions may be imposed and remedies invoked as are provided in said acts or by rule, regulation or order issued pursuant thereto, or as otherwise provided by law.
- g. The **CONTRACTOR** will include the provisions of the above clauses and all applicable contract provisions promulgated pursuant to Title VI of the Civil Rights Act of 1964 and Rehabilitation Act of 1973, as amended in every non-exempt subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work force. The **CONTRACTOR** will take such action in enforcing such provisions of such subcontract or purchase order as the **OWNER** may direct, including sanctions or remedies for non-compliance. If the **CONTRACTOR** becomes involved in or is threatened with litigation with a sub-contractor or vendor as a result of such direction, the **CONTRACTOR** shall promptly so notify the Attorney General, requesting him to intervene.
- h. The **CONTRACTOR** shall file, and to cause each of its sub-contractors to file, such periodic compliance reports as the Commissioner of Human Rights may prescribe by rule or regulation or as required by the **OWNER**. The **CONTRACTOR** shall keep and maintain such records pertaining to its employment practices as the Commissioner of Human Rights may prescribe by rule or regulation or as required by the **OWNER** and shall cause its subcontractors to keep and maintain such records

#### 4. **Materials and Equipment:**

- a. Unless otherwise specified in the General Requirements **CONTRACTOR** shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.
- b. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of **OWNER**. If required by **OWNER**, **CONTRACTOR** shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and

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

- c. No materials or supplies for the work shall be purchased by the **CONTRACTOR** or by any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The **CONTRACTOR** warrants that he has good title to all materials and supplies used by him in the work, or re-sold to the owner pursuant to this contract document, free from all liens, claims or encumbrances.
- d. The apparent silence of the specifications as to any detail or the apparent omission from them of a detailed description concerning any work to be done and materials to be furnished shall be regarded as meaning that only the best general practice is to prevail and that only material and workmanship of first quality are to be used, and all interpretations of this specification shall be made upon this basis.
- e. Manufacturer's identification shall be inconspicuous, but where nameplates contain information relative to characteristics or maintenance, they shall be clearly visible and located for easy access.
- f. Materials shall be delivered in manufacturer's original sealed containers with complete identification of contents and manufacturer, and kept sealed in original containers until used. Labels shall not be removed until materials have been installed and inspected.
- g. Whenever the contract documents require delivery by the **CONTRACTOR** of any materials, equipment, or other items, the term delivery shall be deemed to include unloading and storing with proper protection where directed.
- h. All work shall be executed in a thorough, substantial, and workmanlike manner, and in complete accordance with the manufacturer's most recent recommendations unless otherwise specified or permitted by the **OWNER**. Sufficient competent workmen, foremen, and superintendents shall be employed at all times to permit the work to be pursued with diligence until completion.
- i. Materials shall be applied or installed under proper climatic conditions when they may be affected by temperature, moisture, humidity, or dust.
- j. As defined by federal and state laws, no materials incorporated into the project work shall contain asbestos.
- k. Title to all materials to be sold by the **CONTRACTOR** to the owner pursuant to the provisions of this contract shall vest in the owner upon their installation and incorporation into the project and payment therefore. Such materials then become the sole property of the owner, subject to the right of the **OWNER** to reject the same within a reasonable period for failure to conform to the provisions of the contract documents.
- l. The **CONTRACTOR**, at the request of the **OWNER**, shall furnish the **OWNER** confirmatory bills of sale and other instruments as may be required by it, properly executed, confirming to the owner title to such materials free of encumbrances. The **CONTRACTOR**, when requested, shall mark or otherwise identify all such materials as the property of the **OWNER**. In the event that after title has passed to the **OWNER** any such materials are rejected as being defective or not complying with the contract documents or otherwise unsatisfactory, title to said materials upon such rejection shall revert to the **CONTRACTOR**.
- m. All materials and work covered by partial payments made shall thereupon become the sole property of the owner, but this provision shall not be construed as relieving the **CONTRACTOR** from sole responsibility for the care and protection of materials and work upon which payments have been made

or the restoration of any damaged work, or as a waiver of the right of the Owner to require fulfillment of all the terms of the Contract.

5. **Warranty:**

- a. The **CONTRACTOR** warrants to the **OWNER** that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The **CONTRACTOR's** warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the **CONTRACTOR**, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the **OWNER**, the Contract shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

6. **Progress Schedule:**

- a. **CONTRACTOR** shall adhere to the progress schedule established in accordance with **Article II, paragraph 6b** as it may be adjusted from time to time as provided below:
  - i. **CONTRACTOR** shall submit to **OWNER** for acceptance (to the extent indicated in **Article II, paragraph 6b**) proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.
  - ii. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of **Article XII, paragraph 1**. Such adjustments may only be made by a Change Order or Written Amendment in accordance with **Article X**.

7. **Substitutes and "Or-Equal" Items:**

- a. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent or "or-equal" item or no substitution is permitted, other items of material or equipment of other Suppliers may be accepted by **OWNER** under the following circumstances:
  - i. "Or-Equal": If in **OWNER's** sole discretion an item of material or equipment proposed by **CONTRACTOR** is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by **OWNER** as an "or-equal" item, in which case review and approval of the proposed item may, in **OWNER's** sole discretion, be accomplished without compliance with some or all of the requirements for acceptance of proposed substitute items.
  - ii. Substitute Items: If in the **OWNER's** sole discretion an item of material or equipment proposed by **CONTRACTOR** does not qualify as an "or-equal" item under **Article VI, paragraph 7**, it will be considered a proposed substitute item. **CONTRACTOR** shall submit sufficient information as provided below to allow **OWNER** to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. The procedure for review by the **OWNER** will include the following as supplemented in the General Requirements and as **OWNER** may decide is appropriate under the circumstances. Requests for review of proposed

substitute items of material or equipment will not be accepted by **OWNER** from anyone other than **CONTRACTOR**. If **CONTRACTOR** wishes to furnish or use a substitute item of material or equipment, **CONTRACTOR** shall first make written application to **OWNER** for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified and be suited to the same use as the specified. The application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice **CONTRACTOR'S** achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with **OWNER** for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by **OWNER** in evaluating the proposed substitute. **OWNER** may require **CONTRACTOR** to furnish additional data about the proposed substitute.

- b. **CONTRACTOR's** Expense: All data to be provided by **CONTRACTOR** in support of any proposed "or-equal" or substitute item will be at **CONTRACTOR's** expense.
- c. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, **CONTRACTOR** may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to **OWNER**. **CONTRACTOR** shall submit sufficient information to allow **OWNER**, in **OWNER's** sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by **OWNER** will be similar to that provided in **Article VI, paragraph 7**.
- d. **OWNER's** Evaluation: **OWNER** will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to **Article VI, paragraph 7 and Article VI, paragraph 19**. **OWNER** will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized without **OWNER'S** prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. **OWNER** may require **CONTRACTOR** to furnish at **CONTRACTOR's** expense a special performance guarantee or other surety with respect to any "or-equal" or substitute.

#### 8. Concerning Subcontractors, Suppliers and Others:

- a. **CONTRACTOR** shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to **OWNER** as indicated in **Article VI, paragraph 8b**), whether initially or as a substitute, against whom **OWNER** may have reasonable objection. **CONTRACTOR** shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom **CONTRACTOR** has reasonable objection.
- b. Unless otherwise stated in the Contract Documents or the bidding requirements, the **CONTRACTOR**, as soon as practicable after award of the Contract, shall furnish in writing to the **OWNER** the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The **OWNER** will promptly reply to the **CONTRACTOR** in writing stating whether or not the **OWNER**, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the **OWNER** to reply promptly shall constitute notice of no reasonable objection.

- c. **CONTRACTOR** shall be fully responsible to **OWNER** for all acts and omissions of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with **CONTRACTOR** just as **CONTRACTOR** is responsible for **CONTRACTOR's** own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between **OWNER** and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of **OWNER** to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.
- d. **CONTRACTOR** shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with **CONTRACTOR**. **CONTRACTOR** shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with the **OWNER** through **CONTRACTOR**.
- e. The divisions and sections of the Specifications and the identifications of any Drawings shall not control **CONTRACTOR** in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- f. All Work performed for **CONTRACTOR** by a Subcontractor or Supplier will be pursuant to an appropriate agreement between **CONTRACTOR** and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of **OWNER**. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in **Article V, paragraph 4**, the agreements between the **CONTRACTOR** and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against **OWNER, CONTRACTOR**, and all other additional insureds for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, **CONTRACTOR** will obtain the same.
- g. The **CONTRACTOR** agrees that he will indemnify and save the **OWNER** harmless from all claims growing out of the lawful demands of subcontractors, laborers, workman, mechanics, materialmen and furnishers of machinery and parts thereof, equipment, power tools and all supplies, including commissary, incurred in the furtherance of this contract. The **CONTRACTOR** shall, at the **OWNER's** request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the **CONTRACTOR** fails to do so, the **OWNER** may, after having served written notice on the said **CONTRACTOR**, either pay unpaid bills, of which the **OWNER** has written notice, direct, or withhold from the **CONTRACTOR's** unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the **CONTRACTOR** shall be resumed in accordance with the terms of this contract, but in no event shall the provisions of the sentence be construed to impose any obligation upon the Owner to either the **CONTRACTOR** or his surety.
- h. In paying any unpaid bills of the **CONTRACTOR**, the **OWNER** shall be deemed the agent of the **CONTRACTOR**, and any payment so made by the **OWNER** shall be considered as a payment made under the contract by the **OWNER** to the **CONTRACTOR** and the **OWNER** shall not be liable to the **CONTRACTOR** for any such payment made in good faith.
- i. Each subcontract agreement for a portion of the Work is assigned by the **CONTRACTOR** to the **OWNER** provided that:

- i. assignment is effective only after termination of the Contract by the **OWNER** for cause and only for those subcontract agreements which the **OWNER** accepts by notifying the Subcontractor in writing; and
- ii. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

If the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted.

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

#### 9. Permits:

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

#### 10. Laws and Regulations:

- a. **CONTRACTOR** shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, **OWNER** shall be responsible for monitoring **CONTRACTOR's** compliance with any Laws or Regulations.
- b. If **CONTRACTOR** performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, **CONTRACTOR** shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom; however, it shall not be **CONTRACTOR's** primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve **CONTRACTOR** of **CONTRACTOR's** obligations under **Article III, paragraph 3b**.

#### 11. Taxes:

- a. The **OWNER** represents that it is exempt from payment of federal, state and local taxes, as well as Sales and Compensating Use Taxes of the State of New York.

## 12. Use of Premises:

- a. **CONTRACTOR** shall confine construction equipment, the storage of materials and equipment and the operations or workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. **CONTRACTOR** shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, **CONTRACTOR** shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. **CONTRACTOR** shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless **OWNER** and anyone directly or indirectly employed by any from and against all claims, costs, losses and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against **OWNER** or any other party indemnified hereunder to the extent caused by or based upon **CONTRACTOR's** performance of the Work.
- b. During the progress of the Work, **CONTRACTOR** shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work **CONTRACTOR** shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. **CONTRACTOR** shall leave the site clean and ready for occupancy by **OWNER** at Substantial Completion of the Work. **CONTRACTOR** shall restore to original condition all property not designated for alteration by the Contract Documents.
- c. All excavated material shall become the property of the **CONTRACTOR**. He shall remove it from the working areas as works proceeds. If the **CONTRACTOR** desires to deposit this surplus material upon private property, he shall first obtain written permission from such property owner or owners.
- d. The **CONTRACTOR** shall apply calcium chloride and/or water as directed by the **OWNER** to prevent undesirable dust conditions that may arise. Application and materials for this work shall conform to NYSDOT or FHWA specifications. Payment for this work is to be included in the various items of the contract.
- e. **CONTRACTOR** shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall **CONTRACTOR** subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

## 13. Record Documents:

- a. **CONTRACTOR** shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to **OWNER** for reference. Upon completion of the work, these record documents, Samples and Shop Drawings will be delivered to **OWNER**.
- b. **CONTRACTOR** shall keep all necessary records, books, diaries etc. of the performance of the Work in accordance with the Law and accepted construction and business practices. They shall be available to the **OWNER**, the New York State Department of Labor and all other interested parties as dictated by Law, and shall be maintained by **CONTRACTOR** for three years following the final acceptance of the Work. In case any records are not so available, any items not supported by reason of the unavailability of such records shall be disallowed and payment has already been made, the **CONTRACTOR** shall refund to **OWNER** any amounts so disallowed.

#### 14. Safety and Protection:

- a. **CONTRACTOR** shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. **CONTRACTOR** shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
  - i. all persons on the Work site or who may be affected by the Work:
  - ii. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
  - iii. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.
- b. **CONTRACTOR** shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. **CONTRACTOR** shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in **Article VI, paragraph 20b or Article VI, paragraph 20c** caused, directly or indirectly, in whole or in part, by **CONTRACTOR**, any subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by **CONTRACTOR** (except damage of loss attributable to the fault of Drawings or Specifications or to the acts or omissions of **OWNER**, or anyone employed by **OWNER** or anyone for whose acts **OWNER** may be liable, and not attributable, directly or indirectly in whole or in part, to the fault or negligence of **CONTRACTOR** or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). **CONTRACTOR's** duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed.

#### 15. Safety Representative:

- a. **CONTRACTOR** shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### 16. Hazard Communication Programs:

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

#### 17. Emergencies:

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

emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action.

- b. The **CONTRACTOR** shall provide the **OWNER** with the names and telephone numbers of at least two (2) employees of the firm who can be reached 24 hours a day. This will enable the Owner to contact the **CONTRACTOR** any time that an emergency might arise involving the Contract's operations or responsibilities.

#### 18. Shop Drawings and Samples:

- a. **CONTRACTOR** shall submit Shop Drawings to **OWNER** for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see **Article II, paragraphs 6 & 8**). All submittals will be identified as **OWNER** may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show **OWNER** the materials and equipment **CONTRACTOR** proposes to provide and to enable **OWNER** to review the information for the limited purposes required by **Article VI, paragraph 18**.
- b. **CONTRACTOR** shall also submit Samples to **OWNER** for review and approval in accordance with said accepted schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog number and the use for which intended and otherwise as **OWNER** may require to enable **OWNER** to review the submittal for the limited purposes required by **Article VI, paragraph 18**. The numbers of each Sample to be submitted will be as specified in the Specification.

#### 19. Submittal Procedures:

- a. Before submitting each Shop Drawing or Sample. **CONTRACTOR** shall have determined and verified:
  - i. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto.
  - ii. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work, and
  - iii. all information relative to **CONTRACTOR's** sole responsibilities in respect of means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto.
- b. **CONTRACTOR** shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the **CONTRACTOR** Documents.
- c. Each submittal will bear a stamp or specific written indication that **CONTRACTOR** has satisfied **CONTRACTOR's** obligations under the Contract Documents with respect to **CONTRACTOR's** review and approval of that submittal.
- d. At the time of each submission, **CONTRACTOR** shall give **OWNER** specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to **OWNER** for review and approval of each such variation.

- e. **OWNER** will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by **OWNER** as required by **Article II, paragraphs 6 & 8**. **OWNER's** review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. **OWNER's** review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. **CONTRACTOR** shall make corrections required by **OWNER**, and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. **CONTRACTOR** shall direct specific attention in writing to revisions other than the corrections called for by **OWNER** on previous submittals.
- f. **OWNER's** review and approval of Shop Drawings or Samples shall not relieve **CONTRACTOR** from responsibility for any variation from the requirements of the Contract Documents unless **CONTRACTOR** has in writing called **OWNER's** attention to each such variation at the time of submission as required by **Article VI, paragraph 19** and **OWNER** has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by **OWNER** relieve **CONTRACTOR** from responsibility for complying with the requirements of **Article VI, paragraph 19**.
- g. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submissions accepted by **OWNER** as required by **Article II, paragraph 6 & 8**, any related Work performed prior to **OWNER's** review and approval of the pertinent submittal will be at the sole expense and responsibility of **CONTRACTOR**.

20. **Continuing the Work:**

- a. **CONTRACTOR** shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with **OWNER**. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by **Article XV, paragraph 3** or as **OWNER** and **CONTRACTOR** may otherwise agree in writing.

21. **CONTRACTOR's General Warranty and Guarantee:**

- a. **CONTRACTOR** warrants and guarantees to **OWNER**, that all Work will be in accordance with the Contract Documents and will not be defective. **CONTRACTOR's** warranty and guarantee hereunder excludes defects or damage caused by:
  - i. abuse, modification or improper maintenance or operation by persons other than **CONTRACTOR**, Subcontractors or Suppliers; or
  - ii. normal wear and tear under normal usage.
- b. **CONTRACTOR's** obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of **CONTRACTOR's** obligation to perform the Work in accordance with the Contract Documents:
  - i. Observations by **OWNER**:
  - ii. recommendation of any progress or final payment by **OWNER**:

- iii. the issuance of a certificate of Substantial Completion or any payment by **OWNER** to **CONTRACTOR** under the Contract Documents:
- iv. use or occupancy of the Work or any part thereof by **OWNER**:
- v. any acceptance by **OWNER** or any failure to do so:
- vi. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by **OWNER** pursuant to **Article VI, paragraph 19f**:
- vii. any inspection, test or approval by others; or
- viii. any correction of defective Work by **OWNER**.

## 22. Indemnification:

- a. To the fullest extent permitted by Laws and Regulations, **CONTRACTOR** shall indemnify and hold harmless **OWNER**, employees, agents and other consultants of **OWNER** from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom , and (ii) is caused in whole or in part by any negligent act or omission of **CONTRACTOR**, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.
- b. In any and all claims against **OWNER** or any **OWNER's** consultants, agents, or employees by any employee (or the survivor or personal representatives of such employee) of **CONTRACTOR**, and Subcontractor, and Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under **Article VI, paragraph 22** shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for **CONTRACTOR** or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

## 23. Survival of Obligations:

- a. All representations, indemnification's, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

## **ARTICLE VII - OTHER WORK**

### **1. Related Work at Site:**

- a. **OWNER** may perform other work related to the Project at the site by **OWNER's** own forces, or let other direct contracts therefor which shall contain General Conditions similar to these, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then: (i) written notice thereof will be given to **CONTRACTOR** prior to starting any such other work, and (ii) **CONTRACTOR** may make a claim therefor as provided in **Articles XI and XII** if **CONTRACTOR** believes that such performance will involve additional expense to **CONTRACTOR** or requires additional time and the parties are unable to agree as to the amount or extent thereof.
- b. **CONTRACTOR** shall afford each other **CONTRACTOR** who is a party to such a direct contract and each utility owner (and **OWNER**, if **OWNER** is performing the additional work with **OWNER's** employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, **CONTRACTOR** shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. **CONTRACTOR** shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of **OWNER** and the others whose work will be affected. The duties and responsibilities of **CONTRACTOR** under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of **CONTRACTOR** in said direct contracts between **OWNER** and such utility owners and other contractors.
- c. The proper execution or results of any part of **CONTRACTOR's** Work depends upon work performed by others under this **Article VII**. **CONTRACTOR** shall inspect such other work and promptly report to **OWNER** in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of **CONTRACTOR's** Work. **CONTRACTOR's** failure so to report will constitute an acceptance of such other work as fit and proper for integration with **CONTRACTOR's** Work except for latent or non-apparent defects and deficiencies in such other work.

### **2. Coordination:**

- a. If **OWNER** contracts with others for the performance of other work on the Project at the site, the following will be set forth in Supplementary Conditions:
  - i. the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;
  - ii. the specific matters to be covered by such authority and responsibility will be itemized; and
  - iii. the extent of such authority and responsibilities will be provided.
- b. Unless otherwise provided in the Supplementary Conditions, **OWNER** shall have sole authority and responsibility in respect of such coordination.

## **ARTICLE VIII - OWNER'S RESPONSIBILITIES**

1. **OWNER** shall furnish the data required of **OWNER** under the Contract Documents promptly and shall make payments to **CONTRACTOR** promptly when they are due as provided in **Article XIV**.

2. **OWNER's** duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in **Article IV, Paragraphs 1, 2, and 3** and refers to **OWNER's** identifying and making available to **CONTRACTOR** copies of reports of explorations and tests of subsurface conditions at the site and drawings of physical conditions in existing structures at or contiguous to the site that have been utilized by **OWNER** in preparing the Contract Documents.
3. **OWNER's** responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in **Article V, paragraphs 3 & 4**.
4. **OWNER** is obligated to execute Change Orders as indicated in **Article X**.
5. **OWNER's** responsibility in respect of certain inspections, tests and approvals is set forth in **Article XIII**.
6. In connection with **OWNER's** right to stop Work or suspend Work, see **Article XV, paragraph 2**. **Article XV, paragraph 2** deals with **OWNER's** right to terminate services of **CONTRACTOR** under certain circumstances.
7. The **OWNER** shall not supervise, direct or have control or authority over, nor be responsible for, **CONTRACTOR's** means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto, or for any failure of **CONTRACTOR** to comply with Laws and Regulations applicable to the furnishing or performance of the Work. **OWNER** will not be responsible for **CONTRACTOR's** failure to perform or furnish the Work in accordance with the Contract Documents.
8. **OWNER'S** responsibility in respect of undisclosed Asbestos. PCB's, Petroleum, Hazardous Waste, Lead or Radioactive Materials uncovered or revealed at the site is set forth in **Article IV, paragraph 9**.
9. If and to the extent **OWNER** has agreed to furnish **CONTRACTOR** reasonable evidence that financial arrangements have been made to satisfy **OWNER's** obligations under the Contract Documents, **OWNER's** responsibility in respect thereof will be as set forth in the Supplementary Conditions.

## **ARTICLE IX - DISPUTES**

### **1. Decision on Disputes:**

- a. **OWNER** will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder, Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under **Articles XI and XII** in respect of changes in the Contract Price at Contract Times will be referred initially to **OWNER** in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the **CLAIMANT** to **OWNER** promptly (but in no event later than 30 days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to **OWNER** within 60 days after the start of such occurrence or event unless **OWNER** allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The **OWNER** shall submit any response to the **CONTRACTOR** within 30 days after receipt of the **CONTRACTOR's** last submittal (unless **OWNER** allows additional time). **OWNER** will render a formal decision in writing within 30 days after receipt of the **CONTRACTOR's** submittal, if any, in accordance with this paragraph. **OWNER's** written decision on such claim, dispute or other matter will be final and binding **CONTRACTOR** unless: (i) an appeal from **OWNER's** decision is taken within the time limits and in accordance with any "Dispute Resolution Agreement," entered into between **OWNER** and **CONTRACTOR**, or (ii) if no such Dispute Regulation Agreement has been entered into, a written notice of intention to appeal from **OWNER's** written decision is delivered by **CONTRACTOR** to the **OWNER** within 30 days after the date of such decision and a formal proceeding

is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to such claims, dispute or other matter in accordance with applicable Laws and Regulations within 60 days of the date of such decision, unless otherwise agreed in writing by **OWNER** and **CONTRACTOR**.

- b. When functioning as interpreter and judge under **Article IX**, **OWNER** will not show partiality to **OWNER** or to **CONTRACTOR** and will not be liable in connection with any interpretation or decision rendered in good faith such capacity. The rendering of a decision by **OWNER** pursuant to **Article IX** with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in **Article XIV, paragraph 9**) will be a condition precedent to any exercise by **OWNER** or **CONTRACTOR** of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter pursuant to **Article XVI**.
- c. **OWNER** will not supervise, direct, control or have authority over or be responsible for **CONTRACTOR's** means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of **CONTRACTOR** to comply with Laws and Regulations applicable to the furnishing or performance of the Work. **OWNER** will not be responsible for **CONTRACTOR's** failure to perform or furnish the Work in accordance with the Contract Documents.
- d. **OWNER** will not be responsible for the acts or omissions of **CONTRACTOR** or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.
- e. **OWNER's** review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspections, tests and approvals and other documentation required to be delivered by paragraph **Article XIV, paragraph 8** will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.
- f. The limitations upon authority and responsibility set forth in this paragraph shall also apply to **OWNER's** Consultants. Resident Project Representative and assistants.

## **ARTICLE X - CHANGES IN THE WORK**

1. Without invalidating the Agreement and without notice to any surety, **OWNER** may, at any time or from time to time, order additions, deletions or revisions in the Work. Such additions, deletions or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change Directive.
2. Upon receipt of any such document, **CONTRACTOR** shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
3. If **OWNER** and **CONTRACTOR** are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of a Work Change Directive, a claim may be made therefor as provided in **Article XI or Article XII**.

4. **CONTRACTOR** shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in **Article III, paragraph 3** except in the case of an emergency as provided in **Article VI, paragraph 17** or in the case of uncovering Work as provided in **Article XIII, paragraph 4**.
5. **OWNER and CONTRACTOR** shall execute appropriate Change Orders (or Written Amendments) covering:
  - a. changes in the Work which are (i) ordered by **OWNER** pursuant to **Article X, paragraph 1**, (ii) required because of acceptance of defective Work under **Article XIII, paragraph 8** or correcting defective Work under **Article XIII, paragraph 6** or (iii) agreed to by the parties:
  - b. changes in the Contract Price or Contract Times which are agreed to by the parties; and
  - c. provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal. **CONTRACTOR** shall carry on the Work and adhere to the progress schedule as provided in **Article VI, paragraph 6**.
6. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be **CONTRACTOR's** responsibility, and the amount of each applicable Bond will be adjusted accordingly.

## **ARTICLE XI - CHANGE OF CONTRACT PRICE**

### **1. Contract Price Constitutes Total Compensation:**

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

### **2. Claims for Adjustment:**

- a. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the claim to the other party promptly (but in no event later than 30 days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within 60 days after the start of such occurrence or event and shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event. All claims for adjustments in the Contract Price shall be determined by **OWNER** in accordance with **Article XI, paragraph 3** if **OWNER** and **CONTRACTOR** cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this **Article XI, paragraph 2**.

### **3. Determination of Change Order Value:**

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

- i. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of **Article XI, paragraph 6**):
- ii. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with **Article XI, paragraph 6**):
- iii. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under **Article XI, paragraph 6**, on the basis of the Cost of the Work (determined as provided in **Article XI, paragraph 4**) plus a **CONTRACTOR's** fee for overhead and profit (determined as provided in **Article XI, paragraph 4**).

#### 4. Cost of the Work:

- a. The term Cost of the Work means the sum of all costs necessarily incurred and paid by **CONTRACTOR** in the proper performance of the Work. Except as otherwise may be agreed to in writing by **OWNER**, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in **Article XI, paragraph 4b**:
  - i. Payroll costs for employees in the direct employ of **CONTRACTOR** in the performance of the Work under schedules of job classifications agreed upon by **OWNER** and **CONTRACTOR**. Such employees shall include without limitation superintendents, foremen and other personnel employed full-time at the site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by **OWNER**.
  - ii. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to **CONTRACTOR** unless **OWNER** deposits funds with **CONTRACTOR** with which to make payments, in which case the cash discounts shall accrue to **OWNER**. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to **OWNER**, and **CONTRACTOR** shall make provisions so that they may be obtained.
  - iii. Payments made by **CONTRACTOR** to the Subcontractors for Work performed or furnished by Subcontractors. If required by **OWNER**, **CONTRACTOR** shall obtain competitive bids from subcontractors acceptable to **OWNER** and **CONTRACTOR** and shall deliver such bids to **OWNER** who will then determine which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as **CONTRACTOR's** Cost of the Work and fee as provided in **Article XI, paragraph 4**. All subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.
  - iv. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.

- v. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel and subsistence expenses of **CONTRACTOR's** employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of **CONTRACTOR**.
  - c. Rentals of all construction equipment and machinery and the parts thereof whether rented from **CONTRACTOR** or others in accordance with rental agreements approved by **OWNER**, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof—all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
  - d. Sales, consumer, use or similar taxes related to the Work, and for which **CONTRACTOR** is liable, imposed by Laws and Regulations.
  - e. Deposits lost for causes other than negligence of **CONTRACTOR**, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by **CONTRACTOR** in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by **OWNER** in accordance with **Article V, paragraph 4**), provided they have resulted from causes other than the negligence of **CONTRACTOR**, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of **OWNER**. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining **CONTRACTOR's** fee. If, however, any such loss or damage requires reconstruction and **CONTRACTOR** is placed in charge thereof, **CONTRACTOR** shall be paid for services a fee proportionate to that stated in **Article XI, paragraph 4c**.
  - g. The cost of utilities, fuel and sanitary facilities at the site.
  - h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
  - i. Cost of premiums for additional Bonds and insurance required because of changes in the Work.
- b. The term Cost of the Work shall not include any of the following:
  - i. Payroll costs and other compensation of **CONTRACTOR's** officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by **CONTRACTOR** whether at the site or in **CONTRACTOR's** principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to or specifically covered by **Article XI, paragraph 4a** all of which are to be considered administrative costs covered by the **CONTRACTOR'S** fee.

- ii. Expenses of **CONTRACTOR's** principal and branch offices other than **CONTRACTOR's** office at the site.
  - iii. Any part of **CONTRACTOR's** capital expenses, including interest on **CONTRACTOR's** capital employed for the Work and charges against **CONTRACTOR** for delinquent payments.
  - iv. Cost of premiums for all Bonds and for all insurance whether or not **CONTRACTOR** is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by **Article XI, paragraph 4a** above).
  - v. Costs due to the negligence of **CONTRACTOR**, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials of equipment wrongly supplied and making good any damage to property.
  - vi. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in **Article XI, paragraph 4**.
- c. The **CONTRACTOR's** fee allowed to **CONTRACTOR** for overhead and profit shall be determined as follows:
- i. a mutually acceptable fixed fee; or
  - ii. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under **Article XI, paragraphs 4a.i and 4a.ii**, the **CONTRACTOR's** fee shall be fifteen percent;
    - b. for costs incurred under **Article XI, paragraph 4a.iii**, the **CONTRACTOR's** fee shall be five percent;
    - c. where one or more tiers of subcontractors are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of **Article XI, paragraphs 4a.i, 4a.ii, 4a.iii and 4c.ii** is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of fifteen percent of the costs incurred by such Subcontractor under **Article XI, paragraphs 4a.i and 4a.ii** and that any higher tier Subcontractor and **CONTRACTOR** will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
    - d. no fee shall be payable on the basis of costs itemized under **Article XI, paragraphs 4a.iv, 4a.v and 4b**;
    - e. the amount of credit to be allowed by **CONTRACTOR** to **OWNER** for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in **CONTRACTOR's** fee by an amount equal to five percent of such net decrease; and
    - f. when both additions and credits are involved in any one change, the adjustment in **CONTRACTOR's** fee shall be computed on the basis of the net change in accordance with **Article XI, paragraphs 4c.ii.a and 4c.ii.e**, inclusive.
    - g. Whenever the cost of any Work is to be determined pursuant to **Article XI, paragraphs 4a and 4b**, **CONTRACTOR** will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to **OWNER** an itemized cost breakdown together with supporting data.

## 5. Cash Allowances:

- a. It is understood that **CONTRACTOR** has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to **OWNER**. **CONTRACTOR** agrees that:
  - i. the allowances include the cost to **CONTRACTOR** (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and
  - ii. **CONTRACTOR's** costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances and no demand for additional payment on account of any of the foregoing will be valid.
- b. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due **CONTRACTOR** on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

## 6. Unit Price Work:

- a. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by **CONTRACTOR** will be made by **OWNER**.
- b. Each unit price will be deemed to include an amount considered by **CONTRACTOR** to be adequate to cover **CONTRACTOR's** overhead and profit for each separately identified item.
- c. **OWNER** or **CONTRACTOR** may make a claim for an adjustment in the Contract Price in accordance with **Article XI, paragraph 2** if:
  - i. the quantity of any item of Unit Price Work performed by **CONTRACTOR** differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  - ii. there is no corresponding adjustment with respect to any other item of Work; and
  - iii. if **CONTRACTOR** believes that **CONTRACTOR** is entitled to an increase in Contract Price as a result of having incurred additional expense or **OWNER** believes that **OWNER** is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

## ARTICLE XII - CHANGE OF CONTRACT TIMES

1. The Contract Times (or Milestones) may be changed by a Change Order or a Written Amendment. Any claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice delivered by the party making the claim to the other promptly (but in no event later than 30 days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within 60 days after such occurrence (unless **OWNER** allows

an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Times (or Milestones) shall be determined by **OWNER** in accordance with **Article IX, paragraph 6** if **OWNER** and **CONTRACTOR** cannot otherwise agree. No claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this **Article XII, paragraph 1**.

2. All time limits stated in the Contract Documents are of the essence of the Agreement.
3. Where **CONTRACTOR** is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of **CONTRACTOR**, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefor as provided in **Article XII, paragraph 1**. Delays beyond the control of **CONTRACTOR** shall include, but not be limited to, acts or neglect by **OWNER**, acts or neglect of utility owners or other contractors performing other work as contemplated by **Article VII**, fires, floods, epidemics, abnormal weather conditions or acts of God. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of **CONTRACTOR**.
4. Where **CONTRACTOR** is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both **OWNER** and **CONTRACTOR**, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be **CONTRACTOR's** sole and exclusive remedy for such delay. In no event shall **OWNER** be liable to **CONTRACTOR**, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of **CONTRACTOR**, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work as contemplated by **Article VII**.

### **ARTICLE XIII - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

#### **1. Notice of Defects:**

- a. Prompt notice of all defective Work of which **OWNER** has actual knowledge will be given to **CONTRACTOR**. All defective Work may be rejected, corrected or accepted as provided in this **Article XIII**.

#### **2. Access to Work:**

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

#### **3. Tests and Inspections:**

- a. **CONTRACTOR** shall give **OWNER** timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

- b. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the **CONTRACTOR** shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the **OWNER**, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The **CONTRACTOR** shall give the **OWNER** timely notice of when and where tests and inspections are to be made so the **OWNER** may observe such procedures. The **OWNER** shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.
- c. If the **OWNER** or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under **Article XIII, paragraph 3b**, the **OWNER**, will instruct the **CONTRACTOR** to make arrangements for such additional testing, inspection or approval by an entity acceptable to the **OWNER**, and the **CONTRACTOR** shall give timely notice to the **OWNER** of when and where tests and inspections are to be made so the **OWNER** may observe such procedures. The **OWNER** shall bear such costs except as provided in **Article XIII, paragraph 3b**.
- d. If such procedures for testing, inspection or approval under **Article XIII, paragraph 3b** reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the **CONTRACTOR** shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the **OWNER's** expenses.
- e. As otherwise specifically provided in the Contract Documents.
- f. If Laws or Regulations of any public body having jurisdiction require any work (or part thereof) specifically to be inspected, tested or approved by an employer or other representative of such public body, **CONTRACTOR** shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish **OWNER** the required certificates of inspection, or approval. **CONTRACTOR** shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for **OWNER's** acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to **CONTRACTOR's** purchase thereof for incorporation in the Work.
- g. If any Work (or the work of others) that is to be inspected, tested or approved is covered by **CONTRACTOR** without written concurrence of **OWNER**, it must, if requested by **OWNER**, be uncovered for observation.
- h. Uncovering Work as provided in **Article XIII, paragraph 4** shall be at **CONTRACTOR's** expense unless **CONTRACTOR** has given **OWNER** timely notice of **CONTRACTOR's** intention to cover the same and **OWNER** has not acted with reasonable promptness in response to such notice.

#### 4. Uncovering Work:

- a. If any Work is covered contrary to the written request of **OWNER**, it must, if requested by **OWNER**, be uncovered for **OWNER's** observation and replaced at **CONTRACTOR's** expense.
- b. If the work has been covered in accordance with **Article XIII, paragraphs 3g & 3h**, and if **OWNER** considers it necessary or advisable that covered work be observed by **OWNER** or inspected or tested by others, **CONTRACTOR**, at **OWNER's** request, shall uncover, expose or otherwise make available for observation, inspection or testing as **OWNER** may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, **CONTRACTOR** shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or

reconstruction (including but not limited to all costs of repair or replacement of work of others); and **OWNER** shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in **Article XI**. If, however, such Work is not found to be defective, **CONTRACTOR** shall be allowed an increase in the Contract Price or an extension of the Contract Times (or milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, **CONTRACTOR** may make a claim therefor as provided in **Articles XI and XII**.

**5. OWNER May Stop the Work:**

- a. If the Work is defective, or **CONTRACTOR** fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, **OWNER** may order **CONTRACTOR** to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right or **OWNER** to stop the Work shall not give rise to any duty on the part of **OWNER** to exercise this right for the benefit of **CONTRACTOR** or any surety or other party.

**6. Correction or Removal of Defective Work:**

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

**7. Correction Period:**

- a. If within one (1) year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, **CONTRACTOR** shall promptly, without cost to **OWNER** and in accordance with **OWNER's** written instructions: (i) correct such defective Work, or, if it has been rejected by **OWNER**, remove it from the site and replace it with Work that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If **CONTRACTOR** does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage. **OWNER** may have the defective Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by **CONTRACTOR**.
- b. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.
- c. Where defective Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this **Article XIII, paragraph 2**, the correction period hereunder with respect to such Work will be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.

**8. Acceptance of Defective Work:**

- a. If, instead of requiring correction or removal and replacement of defective Work, **OWNER** prefers to accept it, **OWNER** may do so. **CONTRACTOR** shall pay all claims, costs, losses and damages

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

#### 9. **OWNER May Correct Defective Work:**

- a. If **CONTRACTOR** fails within a reasonable time after written notice to correct defective Work or to remove and replace rejected Work as required by **OWNER** in accordance with **Article XIII, paragraph 6**, or if **CONTRACTOR** fails to perform the Work in accordance with the Contract Documents, or if **CONTRACTOR** fails to comply with any other provision of the Contract Documents. **OWNER** may, after seven day's written notice to **CONTRACTOR**, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph **OWNER** shall proceed expeditiously. In connection with such corrective and remedial action, **OWNER** may exclude **CONTRACTOR** from all or part of the site, take possession of all or part of the Work, and suspend **CONTRACTOR's** services related thereto, take possession of **CONTRACTOR's** tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which **OWNER** has paid **CONTRACTOR** but which are stored elsewhere. **CONTRACTOR** shall allow **OWNER**, **OWNER's** representatives, agents and employees, **OWNER's** other contractors access to the site to enable **OWNER** to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by **OWNER** in exercising such rights and remedies will be charged against **CONTRACTOR** and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and **OWNER** shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, **OWNER** may make a claim therefor as provided in **Article XI**. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement or work of others destroyed or damaged by correction, removal or replacement of **CONTRACTOR's** defective Work. **CONTRACTOR** shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by **OWNER** of **OWNER's** rights and remedies hereunder.

### **ARTICLE XIV - PAYMENTS TO CONTRACTOR AND COMPLETION**

#### 1. **Schedule of Values:**

- a. The schedule of values established as provided in **Article II, paragraph 6** will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to **OWNER**. Progress payments on account of Unit Price Work will be based on the number of units completed.

#### 2. **Application for Progress Payments:**

- a. At least 20 days before the date established for each progress payment (but not more often than once a month), **CONTRACTOR** shall submit to **OWNER** for review four (4) original Saratoga County Applications and Certificates for Payment and four (4) original Saratoga County payment vouchers filled out and signed by **CONTRACTOR** covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. Unless otherwise agreed by all parties, no payment shall be made on account of materials and equipment delivered and suitably stored at the site until incorporated in the work. The **OWNER** shall retain five percent (5%) of each progress payment until substantial completion. The **OWNER** will endeavor to make payment to the **CONTRACTOR** within 30 days following the receipt of acceptable certificates of

payments and Saratoga County vouchers from the **CONTRACTOR** provided that all bonds and insurances required by **Article V** are in effect.

- b. Upon substantial completion, **OWNER** shall pay an amount sufficient to increase total payment to **CONTRACTOR** to 100 percent (100%) of the contract amount (including all change order adjustments) less 200 percent (200%) of **OWNERS** estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the Certificate of Substantial Completion.

3. **CONTRACTOR's Warranty of Title:**

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

4. **Review of Application for Progress Payment:**

- a. **OWNER** will, within 30 days after receipt of each Application for payment either indicate in writing a recommendation for payment and present the Application to **OWNER**, or return the Application to **CONTRACTOR** indicating in writing **OWNER's** reasons for refusing to make payment. In the latter case, **CONTRACTOR** may make the necessary corrections and resubmit the Application. Thirty (30) days after presentation of the Application for Payment to **OWNER**, the amount recommended will become due and when due will be paid by **OWNER** to **CONTRACTOR**.
- b. **OWNER** may refuse to pay the whole or any part of any payment if;
  - i. the Work is defective, or completed Work has been damaged requiring correction or replacement,
  - ii. the Contract Price has been reduced by Written Amendment or Change Order,
  - iii. **OWNER** has been required to correct defective Work or complete Work in accordance with **Article XIII, paragraph 2** or
  - iv. **OWNER** has actual knowledge of the occurrence of any of the events enumerated in **Article XV, paragraph 2**.
- c. **OWNER** may refuse to make payment of the full amount because:
  - i. claims have been made against **OWNER** on account of **CONTRACTORS** performance or furnishing of the Work.
  - ii. liens have been filed in connection with the Work, except where **CONTRACTOR** has delivered a specific Bond satisfactory to **OWNER** to secure the satisfaction and discharge of such Liens.
  - iii. there are other items entitling **OWNER** to a set-off against the amount recommended, or
  - iv. **OWNER** has actual knowledge of the occurrence of any of the events enumerated in **Article XV, paragraph 2**; but **OWNER** must give **CONTRACTOR** immediate written notice stating the reasons for such action and promptly pay **CONTRACTOR** the amount so withheld, or any adjustment thereto agree to by **OWNER** and **CONTRACTOR**, when **CONTRACTOR** corrects to **OWNER's** satisfaction the reasons for such action.

## 5. Substantial Completion:

- a. When the **CONTRACTOR** considers that the Work, or a portion thereof which the **OWNER** agrees to accept separately, is substantially complete, the **CONTRACTOR** shall prepare and submit to the **OWNER** a comprehensive list of items to be completed or corrected. The **CONTRACTOR** shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the **CONTRACTOR** to complete all Work in accordance with the Contract Documents. Upon receipt of the **CONTRACTOR'S** list, the **OWNER** will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the **OWNER'S** inspection discloses any item, whether or not included on the **CONTRACTOR'S** list, which is not in accordance with the requirements of the Contract Documents, the **CONTRACTOR** shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the **OWNER**. The **CONTRACTOR** shall then submit a request for another inspection by the **OWNER** to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the **OWNER** will prepare a Certificate of Substantial Completion which shall establish responsibilities of the **OWNER** and **CONTRACTOR** for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the **CONTRACTOR** shall finish all items on the list accompanying the Certificate. Warranties required by the Contract documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the **CONTRACTOR** for its written acceptance of responsibilities assigned to it in such Certificate.

## 6. Partial Utilization:

- a. Use by **OWNER** at **OWNER'S** option of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) **OWNER**, and **CONTRACTOR** agree constitutes a separately functioning and usable part of the Work that can be used by **OWNER** for its intended purpose without significant interference with **CONTRACTOR'S** performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:
- b. **OWNER** at any time may request **CONTRACTOR** in writing to permit **OWNER** to use any such part of the Work which **OWNER** believes to be ready for its intended use and substantially complete. If **CONTRACTOR** agrees that such part of the Work is substantially complete, **CONTRACTOR** will certify to **OWNER** that such part of the Work is substantially complete. Within a reasonable time after either such certification **OWNER** and **CONTRACTOR** shall make an inspection of that part of the Work to determine its status of completion. If **OWNER** does not consider that part of the Work to be substantially complete, **OWNER** will notify **CONTRACTOR** in writing giving the reasons therefore.
- c. No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of **Article V, paragraph 4** in respect of property insurance.

## 7. Final Inspection:

- a. Upon written notice from **CONTRACTOR** that the entire Work or an agreed portion thereof is complete. **OWNER** will make a final inspection and will notify **CONTRACTOR** in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. **CONTRACTOR** shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

## 8. Final Application for Payment:

- a. After **CONTRACTOR** has completed all corrections to the satisfaction of **OWNER** and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by **Article V, paragraph 2**, certificates of inspection, marked-up record documents (as provided in **Article VI, paragraph 13**) and other documents, **CONTRACTOR** may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by **Article V, paragraph 2**, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to **OWNER**) of all Liens arising out of or filed in connection with the Work. In lieu of such releases or waivers of Liens and as approved by **OWNER**, **CONTRACTOR** may furnish receipts or releases in full and an affidavit of **CONTRACTOR** that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which **OWNER** or **OWNER's** property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, **CONTRACTOR** may furnish a Bond or other collateral satisfactory to **OWNER** to indemnify **OWNER** against any Lien.

## 9. Final Payment and Acceptance:

- a. If, on the basis of **OWNER's** observation of the Work during construction and final inspection, and **OWNER's** review of the final Application for Payment and accompanying documentation as required by the Contract Documents. **OWNER** is satisfied that the Work has been completed and **CONTRACTOR's** other obligations under the Contract Documents have been fulfilled, **OWNER** will make final payment within 30 days otherwise, **OWNER** will return the Application to **CONTRACTOR**, indicating in writing the reasons for refusing to make final payment, in which case **CONTRACTOR** shall make necessary corrections and resubmit the Application. Thirty (30) days after the presentation to **OWNER** of the Application and accompanying documentation in appropriate form and substance and payment will become due and will be paid by **OWNER** to **CONTRACTOR**.
- b. If, through no fault of **CONTRACTOR**, final completion of the Work is significantly delayed **OWNER** shall, upon receipt of **CONTRACTOR's** final Application for Payment, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by **OWNER** for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in **Article V, paragraph 1**, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by **CONTRACTOR** to **OWNER** with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

## 10. Waiver of Claims:

- a. The making and acceptance of final payment will constitute:
- b. a waiver of all claims by **OWNER** against **CONTRACTOR**, except claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to **Article XIV, paragraph 7**, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from **CONTRACTOR's** continuing obligations under the Contract Document; and
- c. a waiver of all claims by **CONTRACTOR** against **OWNER** other than those previously made in writing and still unsettled.

## **ARTICLE XV - SUSPENSION OF WORK AND TERMINATION**

### **1. Owner May Suspend Work:**

- a. At any time and without cause, **OWNER** may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to **CONTRACTOR** which will fix the date on which Work will be resumed. **CONTRACTOR** shall resume the Work on the date so fixed. **CONTRACTOR** shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if **CONTRACTOR** makes an approved claim therefor as provided in **Articles XI and XII**.
- b. Notwithstanding the foregoing, if the **OWNER** is prevented or enjoined from proceeding with the Work by reason of litigation or governmental authority, the **CONTRACTOR** shall not be entitled to make or assert claim for damages or any adjustment in the Contract Price, but the time for completion of the work shall be extended to such reasonable time as the **OWNER** may determine will compensate for the time lost by such delay.

### **2. OWNER May Terminate:**

- a. Upon the occurrence of any one or more of the following events:
  - i. if **CONTRACTOR** abandons the work;
  - ii. if **CONTRACTOR** assigns or sublets this Contract;
  - iii. if **CONTRACTOR** persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under **Article II, paragraph 6** as adjusted from time to time pursuant to **Article VI, paragraph 6**);
  - iv. if **CONTRACTOR** unnecessarily or unreasonably delays the performance of this Contract;
  - v. if **CONTRACTOR** disregards Laws or Regulations of any public body having jurisdiction;
  - vi. if **CONTRACTOR** disregards the authority of **OWNER**; or
  - vii. if insolvency or bankruptcy proceedings are involuntarily commenced against the **CONTRACTOR**;  
or
  - viii. if **CONTRACTOR** otherwise violates in any substantial way any provisions of the Contract Documents;
- b. **OWNER** may, after giving **CONTRACTOR** (and the surety, if any,) seven (7) day's written notice and to the extent permitted by Laws and Regulations, terminate the services of **CONTRACTOR**, exclude **CONTRACTOR** from the site and take possession of the Work and of all **CONTRACTOR's** tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by **CONTRACTOR** (without liability to **CONTRACTOR** for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which **OWNER** has paid **CONTRACTOR** but which are stored elsewhere, and finish the Work as **OWNER** may deem expedient. In such case **CONTRACTOR** shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by **OWNER** arising out of or resulting from completing the Work such excess will be paid to

**CONTRACTOR.** If such claims, costs, losses and damages exceed such unpaid balance, **CONTRACTOR** shall pay the difference to **OWNER**.

- c. Where **CONTRACTOR's** services have been so terminated by **OWNER**, the termination will not affect any rights or remedies of **OWNER** against **CONTRACTOR** then existing or which may thereafter accrue. Any retention or payment of moneys due **CONTRACTOR** by **OWNER** will not release **CONTRACTOR** from liability.
- d. Upon seven (7) days written notice to **CONTRACTOR**, **OWNER** may, without cause and without prejudice to any other right or remedy of **OWNER**, elect to terminate the agreement. In such case, **CONTRACTOR** shall be paid without duplication of any items:
  - i. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work:
  - ii. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses:
  - iii. for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and
  - iv. for reasonable expenses directly attributable to termination.
- e. **CONTRACTOR** shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

**3. CONTRACTOR May Stop Work or Terminate:**

- a. If, through no act or fault of the **CONTRACTOR**, the Work is suspended for a period of more than 90 days by **OWNER** or under an order of court or other public authority, **OWNER** fails for 30 days to pay **CONTRACTOR** any sum finally determined to be due, then **CONTRACTOR** may, upon seven (7) days' written notice to **OWNER** and provided **OWNER** does not remedy such suspension or failure within that time, terminate the Agreement and recover from **OWNER** payment on the same terms as provided in **Article XV, paragraph 2d**. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if **OWNER** has failed for 30 days to pay **CONTRACTOR** any sum finally determined to be due, **CONTRACTOR** may upon seven (7) day's written notice to **OWNER** stop the Work until payment of all such amounts due **CONTRACTOR**, including interest thereon. The provisions of the **Article XV, paragraph 5** are not intended to preclude **CONTRACTOR** from making claim under **Article XI and XII** for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to **CONTRACTOR's** stopping Work as permitted by this paragraph.

**ARTICLE XVI - DISPUTE RESOLUTION**

- 1. If and to the extent that **OWNER** and **CONTRACTOR** have agreed on the method and procedure for resolving disputes between them that may arise under this Agreement, such dispute resolution method and procedure, if any, shall be as set forth in Exhibit, "Dispute Resolution Agreement," to be attached hereto and made a part hereof. If no such agreement on the method and procedure for resolving such disputes has been reached, and subject to the provisions of **Article IX, paragraph 6**, **OWNER** and **CONTRACTOR** may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

## **ARTICLE XVII - MISCELLANEOUS**

### **1. Giving Notice:**

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

### **2. Computation of Times:**

- a. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If that last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.
- b. A calendar day of 24 hours measured from midnight to the next midnight will constitute a day.

### **3. Notice of Claim:**

- a. Should **OWNER** or **CONTRACTOR** suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose act the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this **Article XVII, paragraph 3** shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

### **4. Cumulative Remedies:**

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

### **5. Professional Fees and Court Costs Included:**

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

### **6. Schedule of Values:**

- a. The schedule of values established as provided in **Article II, paragraph 6** will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to **OWNER**. Progress payments on account of Unit Price Work will be based on the number of units completed.

## 7. Bid Cannot be Based Upon Assumptions:

- a. The **CONTRACTOR** further agrees that its bid proposal is not based upon the assumption that any specifications, traffic restrictions, scheduling or phasing/staging requirements will be waived; that an extension of Contract Completion Date will be granted; a labor dispensation will be granted; that a substitution of non-approved products, alternative or claimed functional equivalents for Specified Construction Materials and Methods will be allowed; or that any Value Engineering Proposals will be approved.

## 8. Forms to be used for this Project

- a. The Saratoga County forms listed here shall be used for the work of this project. These forms, if not included in the project documents, are available for review and use from Saratoga County. Bidders and contractors shall make themselves aware of the form and content of these documents. These forms shall be deemed to be included in the contract documents as though they were bound herein.

- Invitation to Bidders
- Information for Bidders
- Form of Bid
- Bid Bond
- Contractor Reference Sheet
- Contractor's Qualification Statement
- Acknowledgment of Contractor
- Acknowledgment of Officer of Saratoga County Executing Contract
- Corporate Bid Resolution
- Non-Collusive Bidding Certificate
- Certification of Compliance with Iran Divestment Act
- Owner/Contractor Agreement
- Payment Bond
- Performance Bond
- Saratoga County Application and Certificate for Payment
- Saratoga County Voucher
- Construction Change Directive
- Certificate of Substantial Completion
- Contractor's Affidavit of Payments of Debts and Claims
- Affidavit of Payments to Subcontractors and Suppliers
- Consent of Surety to Reduction in/or Partial Release of Retainage
- Consent of Surety Company to Final Payment
- Contractor's Affidavit of Release of Liens
- Waiver of Liens – Subcontractor/Supplier
- Waiver of Liens – Contractor
- General Release-Contractor
- Indemnity and Insurance Agreement
- Release of Lien

**END OF GENERAL CONDITIONS**