

**CONTRACT DOCUMENTS
FOR**

**ANN ARBOR WASTEWATER TREATMENT PLANT
FACILITIES RENOVATIONS – STORAGE BUILDING DEMOLITION AND
IMPROVEMENTS PROJECT**



August, 2008

ITB NO. 3971

PUBLIC SERVICES AREA

WASTEWATER TREATMENT PLANT

**CITY OF ANN ARBOR
100 North Fifth Avenue
Ann Arbor, Michigan 48104**

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ADVERTISEMENT FOR
FOR THE
CITY OF ANN ARBOR, MICHIGAN

ITB NO. 3971

Sealed Bids will be received by the, Purchasing Division, Fifth Floor, City Hall, on or before **2:00 p.m., Friday, September 19, 2008** for construction of the Ann Arbor Wastewater Treatment Plant Facilities Renovations – Storage Building Demolition and Improvements Project. Bids will be publicly opened and read aloud at this time.

Work to be done includes the abatement of hazardous and nonhazardous wastes, stabilization of the east basement wall of the Storage Building, demolition of the existing Storage Building, the existing Sludge Reaeration Tank, the existing concrete retaining wall, demolition and abandonment of site pipes and utilities, relocation of site pipes and utilities, removal of Digester Tank #1 cover and appurtenances, removal of the digester tank contents, transportation, and disposal of wastes and demolition debris, filling of the Digester Tank No. 1 with soil, asphalt pavement, geotechnical instrumentation, site grading and restoration, installation of waste activated sludge piping and valves, re-feeding of several motor control centers, connections to existing facilities, miscellaneous site work, maintenance of plant operations during construction, coordination with Owner's operations, permitting, and all related work.

Bid drawings will be available starting August 25, 2008 and are available only from Dunn Blue Reprographics using one of the following methods:

- 1) Drawings and specifications can be ordered directly from Dunn Blue at the following two locations:
 - A. 2813 Boardwalk Street Ann Arbor , MI 48104 (734) 663-2471
 - B. 500 Griswold Street Detroit, MI 48226 (313) 961-4444

- 2) Drawings and specifications can be ordered from Dunn Blue by visiting their website and ordering documents on-line using their PlanWell Enterprise (Public Planroom) webpage:
 - A. Go to the Dunn Blue website at: <http://www.dunnblue.com/>
 - B. Click on the PlanWell Enterprise link on the upper right side of the page: https://order.e-arc.com/arcEOC/PWell_Main.asp?mem=72
 - C. Click on the link to the Public Planroom in the lower left corner of the PlanWell Enterprise webpage.
 - D. Enter the Public Planroom webpage and type "ITB #3971" in the search field and click on GO to locate the project.
 - E. View the Users Guide in the PlanWELL webpage or call 248-489-1999 for further assistance.

A fee per set of documents will be charged by Dunn Blue Reprographics. No refunds will be given for returned documents. Only full paper sets will be made available for bid purposes. Digital files and downloads are not available from Dunn Blue.

Alternatively, bid specifications (without drawings) may be downloaded from the BIDNET website (MITN).

Each Bid shall be accompanied by a certified check, or Bid Bond by a recognized surety, in the amount of 5% of the total of the bid price. A Bid, once submitted, becomes the property of the City. In the sole discretion of the City, the City reserves the right to allow a Bidder to reclaim submitted Bid documents provided the documents are requested and retrieved no later than 48 hours prior to the scheduled bid opening.

The successful Bidder will be required to furnish satisfactory performance and labor and material bonds in the amount of 100% of the bid price and satisfactory insurance coverage.

Precondition for entering into a contract with the City of Ann Arbor is compliance with Chapter 112 of Title IX of the Code of the City of Ann Arbor. The successful Bidder may also be required to comply with Chapter 23 of Title I of the Code of the City of Ann Arbor. Further information is outlined in the contract documents.

After the time of opening, no Bid may be withdrawn for a period of 60 days. The City reserves the right to accept any Bid, to reject any or all Bids, to waive irregularities and/or informalities in any Bid, and reserves its rights under the terms of the Instructions to Bidders regarding award of the Contract.

Any further information regarding the bid process may be obtained from the Purchasing Division, (734) 994-2719.

CITY OF ANN ARBOR, MICHIGAN

NOTICE OF PRE-BID CONFERENCE

A pre-bid conference for this project will be held on **Thursday, September 4, 2008 at 9:30 a.m.** in the Conference Room of the Ann Arbor Wastewater Treatment Plant, 49 Old Dixboro Rd., Ann Arbor, Michigan, (734) 971-4834

Attendance at this conference is mandatory. Administrative and technical questions regarding this project will be answered at this time. If any questions arise whose answers constitute modifications to the bid documents, an addendum will be issued by the City.

INSTRUCTIONS TO BIDDERS

1. General

Work to be done under this Contract is generally described through the Specifications and must be completed fully in accordance with the contract documents. All work to be done under this Contract is located in or near the City of Ann Arbor.

The City shall make available to all prospective Bidders, prior to receipt of the Bids, access to the area in which the work is to be performed. Advance notice should be given to the Administering Service Area/Unit in cases where access to the site must be arranged by the City.

Any Bid which does not conform fully with these instructions may be rejected.

2. Proposals

Bids must be submitted on the "Proposal Forms" and "Bid Forms" provided, without removal from the binder, with each blank properly filled in. Sealed Bids will be received by the City of Ann Arbor Purchasing Division, Fifth Floor, City Hall, Ann Arbor, Michigan, at the time stipulated in the Advertisement, promptly after which Bids will be publicly opened and read aloud. Each Bid must be enclosed in a sealed envelope, endorsed across one end:

ITB # 3971

Bid for: FACILITIES RENOVATIONS – STORAGE BUILDING DEMOLITION AND IMPROVEMENTS PROJECT

In addition to bid security and other documents required with the Bid, each Bid shall include a completed Bidder Qualifications Statement on the form included with the Bidding Documents.

The City reserves the right to reject any or all Bids, including without limitation the right to reject any or all nonconforming, non-responsive, unbalanced, or conditional Bids. The City further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsible. The City also reserves the right to waive any informality not involving price, time or changes in the Work.

The City reserves the right to reject any Bid not accompanied by specified documentation and Bid security.

The City reserves the right to reject any Bid that, in its sole discretion, is considered to be unbalanced or unreasonable as to the amount bid for any lump sum or unit price item.

In evaluating Bidders, the City will consider the qualifications of Bidders, whether or not their Bids comply with the prescribed requirements, the alternatives, if any, the lump sum and unit prices, and other data as may be requested in the Proposal and Bid Form or prior to the Notice of Award.

The City may consider the qualifications and experience of Subcontractors, Suppliers and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers and other individuals or entities must be submitted.

The City may conduct such investigations as City deems necessary to establish the responsibility, qualifications and financial ability of the Bidders to perform the Work in accordance with the Contract Documents. The City reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to the City's satisfaction.

If a Contract is to be awarded, the City will award the Contract to the lowest responsive and responsible Bidder who has neither been disqualified nor rejected pursuant to Article 13 of the Instructions to Bidders or this Article 2.

3. Bid Security

Each Bid must be accompanied by a certified check, or Bid Bond by a surety licensed and authorized to do business within the State of Michigan, in the amount of 5% of the total of the bid price.

4. Withdrawal of Bids

After the time of opening, no Bid may be withdrawn for the period of days specified in the Advertisement.

5. Contract Time

Time is of the essence in the performance of the work under this Contract. The available time for work under this Contract is indicated on page C-1, Article III of the Contract.

6. Liquidated Damages

A liquidated damages clause, as given on page C-2, Article III of the Contract, provides that the Contractor shall pay the City as liquidated damages, and not as a penalty, a sum certain per day for each and every day that the Contractor may be in default of completion of the specified work, within the time(s) stated in the Contract, or written extensions.

Liquidated damages clauses, as given in the General Conditions, provide further that the City shall be entitled to impose and recover liquidated damages for breach of the obligations under Chapter 112 of the City Code.

The liquidated damages are for the non-quantifiable aspects of any of the previously identified events and do not cover actual damages that can be shown or quantified nor are they intended to preclude recovery of actual damages in addition to the recovery of liquidated damages.

7. Human Rights Information

Section 5 of the General Conditions, beginning at page GC-3, outlines the requirements for fair employment practices under City of Ann Arbor Contracts. To establish compliance with this Ordinance, the Bidder must complete and return with its bid completed copies of the Human Rights Division Contract Compliance Forms (copy attached) or an acceptable equivalent.

8. Wage Requirements

Section 4 of the General Conditions, beginning at page GC-1, outlines the requirements for payment

of prevailing wages or of a "living wage" to employees providing service to the City under this contract. The successful Bidder must comply with all applicable requirements and may be required to provide documentary proof of compliance.

9. Major Subcontractors

The Bidder shall identify each major subcontractor it expects to engage for this Contract if the work to be subcontracted is 15% or more of the bid sum or over \$150,000, whichever is less. The Bidder also shall identify the work to be subcontracted to each major subcontractor.

10. Interpretations and Addenda

- 10.01 All questions about the meaning or intent of the Bidding Documents shall be submitted to Engineer in writing. To receive consideration, questions must be received by Engineer at least ten days prior to the date for the opening of Bids. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda by the City mailed or delivered to all parties recorded by the City as having received the Bidding Documents for receipt not later than three days prior to the date for the opening of Bids. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 10.02 Addenda may also be issued to clarify, correct or change the Bidding Documents as deemed advisable by City or Engineer. Such Addenda, if any, will be issued in the manner and within the time period stated in Paragraph 10.01.
- 10.03 All questions should be sent to Malcolm Pirnie, 645 Griswold Street, Suite 1950, Detroit, MI 48226, ATTN: Thomas Porter.

11. Substitute and "Or Equal" Items

- 11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or "or-equal" items. Whenever it is specified or described in the Bidding Documents that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the effective date of the Contract. The procedure for submittal of any such application by Contractor and consideration by Engineer is set forth in the General Conditions and Supplementary Conditions, which may be supplemented in the General Requirements (Division 1).
- 11.02 Refer to Section 01630 of the General Requirements for the period of time after the effective date of the Contract during which the Engineer will accept applications for substitute items of material or equipment.

12. Basis of Bids, Comparison of Bids

12.01 Series of Lump Sums

- A. Bidder shall submit its Bid on the basis of lump sum as set forth on the Bid Form.

B. For determination of the apparent low Bidder, Bids will be compared on the basis of the base bid.

12.02 Discrepancies between words and numerals will be resolved in favor of words. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

13. Disqualification of Bidders

13.01 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

PROPOSAL

City of Ann Arbor
Guy C. Larcom Municipal Building
Ann Arbor, Michigan 48107

Ladies and Gentlemen:

The undersigned, as Bidder, declares that this Bid is made in good faith, without fraud or collusion with any person or persons bidding on the same Contract; that this Bidder has carefully read and examined the bid documents, including Advertisement, Human Rights Division Contract Compliance Forms, Notice of Pre-Bid Conference, Instructions to Bidders, Proposal, Bid Forms, Bidder Qualifications Statement, Contract, Bond Forms, General Conditions, Supplementary Conditions, Specifications, all Addenda, and the Plans (also referred to as Drawings) and understands them. The Bidder declares that it conducted a full investigation at the site, and of the work proposed and is fully informed as to the nature of the work and the conditions relating to the work's performance. The Bidder also declares that it has extensive experience in successfully completing projects similar to this one.

The Bidder acknowledges that it has not received or relied upon any representations or warrants of any nature whatsoever from the City of Ann Arbor, its agents or employees, and that this Bid is based solely upon the Bidder's own independent business judgment.

The undersigned proposes to perform all work shown on the plans or described in the bid documents, including addenda issued, and to furnish all necessary machinery, tools, apparatus, and other means of construction to do all the work, furnish all the materials, and complete the work in strict accordance with all terms of the Contract of which this proposal is one part.

In accordance with these bid documents, and Addenda numbered _____, the undersigned, as Bidder, proposes to perform at the site in Ann Arbor, Michigan, all the work included herein for the amounts set forth in the Bid Forms.

The Bidder declares that it has become fully familiar with the liquidated damage clauses for completion times and for compliance with City Code Chapter 112, understands and agrees that the liquidated damages are for the non-quantifiable aspects of non-compliance and do not cover actual damages that may be shown and agrees that if awarded the Contract, all liquidated damage clauses form part of the Contract.

The Bidder declares that it has become fully familiar with the provisions of Chapter 14, Section 1:319 (Prevailing wages) and Chapter 23 (Living Wage) of the Code of the City of Ann Arbor and that it understands and agrees to comply, to the extent applicable to employees providing services to the City under this Contract, with the wage and reporting requirements stated in the City Code provisions cited. Bidder further agrees that the cited provisions of Chapter 14 and Chapter 23 form a part of this Contract.

The Bidder encloses a certified check or Bid Bond in the amount of 5% of the total of the Bid Price. The Bidder agrees both to contract for the work and to furnish the necessary Bonds and insurance documentation within 10 days after being notified of the award of the Contract.

If this Contract is awarded by the City and the Bidder fails to execute the Contract and furnish the required Bonds and insurance documentation within 10 days after being notified of the award of this Contract, then the Bidder shall be considered to have abandoned the Contract and the certified check or Bid Bond accompanying this Bid shall become due and payable to the City.

If the Bidder enters into the Contract in accordance with this Bid, or if this Bid is rejected, then the accompanying check or Bid Bond shall be returned to the Bidder.

In submitting this Bid, it is understood that the right is reserved by the City to reject any or all Bids, to waive irregularities and/or informalities in any Bid, and that the City reserves its rights described in the Instructions to Bidders regarding award of the Contract.

SIGNED THIS _____ DAY OF _____, 2008.

Bidder's Name

Official Address

Authorized Signature of Bidder

Telephone Number

(Print Name of Signer Above)

LEGAL STATUS OF BIDDER

(The Bidder shall fill out the appropriate form and strike out the other two.)

Bidder declares that it is:

* A corporation organized and doing business under the laws of the state of _____,
for whom _____, bearing the office title of _____,
whose signature is affixed to this proposal,
is authorized to execute contracts.

* A partnership, list all members and the street and mailing address of each:

Also identify the County and State where partnership papers are filed:

County of _____, State of _____

* An individual, whose signature with address, is affixed to this proposal: _____
(initial here)

BID FORM

Section 1 - Schedule of Prices

Base Bid

For the entire work outlined in these documents, complete as specified, using equipment and materials only of the type and manufacturers where specifically named.

TOTAL BASE BID:

_____ Dollars (\$ _____)

BID FORM

Section 2 - Major Subcontractors

For purposes of this contract, a Subcontractor is anyone (other than the Contractor) who performs work (other than or in addition to the furnishing of materials, plans or equipment) at or about the construction site, directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor), but shall not include any individual who furnishes merely the individual's own personal labor or services.

For the work outlined in these documents the Bidder expects to engage the following major subcontractors to perform the work identified:

<u>Subcontractor (Name and Address)</u>	<u>Work</u>	<u>Amount</u>
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If the Bidder does not expect to engage any major subcontractor, the Bidder **MUST** complete the following statement:

For the work outlined in the Bidding Documents, the Bidder does NOT expect to engage any major subcontractor to perform work under the Contract.

Signature of Authorized Representative of Bidder _____

BIDDER QUALIFICATIONS STATEMENT

(Completion of this statement is required in advance of consideration for award of Contract.)

SUBMITTED TO:

City of Ann Arbor
Guy C. Larcom Municipal Building
Ann Arbor, Michigan 48107

SUBMITTED FOR:

Ann Arbor Wastewater Treatment Plant
Facilities Renovations – Storage Building Demolition and Improvements
Ann Arbor, Michigan

SUBMITTED BY:

Name of Organization: _____
(Print or Type Name of Bidder)

Name of Individual: _____

Title: _____

Business Address: _____

Telephone No.: _____

Fax No.: _____

Gentlemen:

The undersigned certifies under oath the truth and correctness of all statements and of all answers to questions made hereinafter.

(Note: Attach additional sheets as required.)

1.0 Bidder's General Business Information

1.1 Check if:

Corporation Partnership Joint Venture Sole Proprietorship

If Corporation:

A. Date and State of Incorporation:

B. List of Executive Officers:

Name	Title
_____	_____
_____	_____
_____	_____

If Partnership:

A. Date and State of Organization:

B. Names of Current General Partners:

C. Type of Partnership

General Publicly Traded
 Limited Other (described): _____

If Joint Venture:

A. Date and State of Organization:

B. Name, Address and Form of Organization of Joint Venture Partners: (Indicate managing partner by an asterisk *):

If Sole Proprietorship:

A. Date and State of Organization:

B. Name and Address of Owner or Owners:

2.0 How many years has your organization been in business as a general contractor?

3.0 If your organizational structure has changed within the past five years, provide data as listed above in Item 1.0 for your previous organization.

4.0 We normally perform _____ percent of the work with our own forces. List work normally subcontracted.

5.0 Has any construction contract to which you have been a party been terminated by the owner; have you ever terminated work on a project prior to its completion for any

reason; has any surety which issued a performance bond on your behalf ever completed the work in its own name or financed such completion on your behalf; has any surety expended any monies in connection with a contract for which they furnished a bond on your behalf? If the answer to any portion of this question is "yes", furnish details of all such occurrences including name of owner, architect or engineer, and surety, and name and date of project.

- 6.0 Has any officer or partner of your organization ever been an officer or partner of another organization that had any construction contract terminated by the owner; terminated work on a project prior to its completion for any reason; had any surety which issued a performance bond complete the work in its own name or financed such completion; or had any surety expend any monies in connection with a contract for which they furnished a bond? If the answer to any portion of this question is "yes", furnish details of all such occurrences including name of owner, architect or engineer, and surety, and name and date of project.
- 7.0 In the last five years, has your organization, or any predecessor organization, failed to substantially complete a project in a timely manner? If the answer to this question is "yes", furnish details of all such occurrences including name of owner, architect or engineer, and surety, and name and date of project.
- 8.0 On Schedule A, attached, list name, location and description of project, owner, architect or engineer, contract price, percent complete and scheduled completion of the major construction projects your organization has in progress on this date. Provide name, address and telephone number of a reference for each project listed.
- 9.0 On Schedule B, attached, list name, location and description of project, owner, architect or engineer, contract price, date of completion and percent of work with your own forces of major projects of the same general nature as this project which your organization has completed in the past five years. Provide name, address and telephone number of a reference for each project listed.
- 10.0 On Schedule C, attached, list name and construction experience of the principal individuals of your organization directly involved in construction operations. Identify the individuals on this list who will be members of the project team for this Contract.
- 11.0 List the states and categories of construction in which your organization is legally qualified to do business.

12.0 Provide the following for your surety:

12.1 Surety Company: _____

12.2 Agent: _____

A. Address: _____

B. Telephone No.: _____

12.3 What is your approximate total bonding capacity?

- \$500,000 to \$2,000,000
- \$2,000,000 to \$5,000,000
- \$5,000,000 to \$10,000,000
- \$10,000,000 or more

13.0 Provide the following with respect to an accredited banking institution familiar with your organization.

13.1 Name of Bank: _____

13.2 Address: _____

13.3 Account Manager: _____

13.4 Telephone No.: _____

14.0 Provide the name, address and telephone number of an individual who represents a major equipment/material supplier whom the Owner may contact for a financial reference:

15.0 Not used.

16.0 Dated at _____, this _____
day of _____, 2008.

Bidder: _____
(Print or Type Name of Bidder)

By: _____

Title: _____

Attachments A, B and C

(Seal, if corporation)

------(Affidavit for Individual)-----

_____ being duly sworn, deposes and says that:
a) all of the foregoing qualification information is true, complete, and accurate.

------(Affidavit for Partnership)-----

_____ being duly sworn, deposes and says that:
a) he/she is a member of the partnership of _____;
b) he/she is familiar with the books of said partnership showing its financial condition; and
c) all of the foregoing qualification information is true, complete, and accurate.

------(Affidavit for Corporation)-----

_____ being duly sworn, deposes and says that: a) he/she is
_____ of _____;
(Full name of Corporation)
b) he/she is familiar with the books of said corporation showing its financial condition; and
c) that all of the foregoing qualification information is true, complete, and accurate.

----- (Acknowledgment) -----

_____ being duly sworn, deposes and says
that he/she is _____ of _____;
(Name of Bidder)
that he/she is duly authorized to make the foregoing affidavit and that he/she makes it on
behalf of
() himself/herself; () said partnership; () said corporation.

Sworn to before me this _____ day of _____, 20__, in the County of
_____, State of _____.

(Notary Public)

My commission expires _____

(Seal)

++ END OF BIDDER QUALIFICATIONS STATEMENT ++

ATTACHMENT A

**SCHEDULE A
PROJECTS IN PROGRESS**

<u>Name, Location and Description of Project</u>	<u>Owner</u>	<u>Architect or Engineer</u>	<u>Contract Price</u>	<u>Percent Complete</u>	<u>Scheduled Completion</u>	<u>Reference/Contract Include Address and Phone</u>
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**SCHEDULE B
PROJECTS COMPLETED**

<u>Name, Location and Description of Project</u>	<u>Owner</u>	<u>Architect or Engineer</u>	<u>Date Completed</u>	<u>Contract Price</u>	<u>Percent with Own Forces</u>	<u>Reference/Contract Include Address and Phone</u>
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**SCHEDULE C
PERSONNEL**

<u>Name</u>	<u>Position</u>	<u>Date Started With This Organization</u>	<u>Date Started In Construction</u>	<u>Prior Positions and Experience In Construction</u>
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CONTRACT

THIS AGREEMENT is made on the _____ day of _____, 200_, between the CITY OF ANN ARBOR, a Michigan Municipal Corporation, 100 N. Fifth Avenue, Ann Arbor, Michigan 48104 (City) and _____ (Contractor)

(An individual/partnership/corporation, include state of incorporation)

(Address)

Based upon the mutual promises below, the Contractor and the City agree as follows:

ARTICLE I - Scope of Work

The Contractor agrees to furnish all of the materials, equipment and labor necessary; and to abide by all the duties and responsibilities applicable to it for the project titled "Ann Arbor Wastewater Treatment Plant Facilities Renovations – Storage Building Demolition and Improvements" in accordance with the requirements and provisions of the following documents, including all written modifications incorporated into any of the documents, which are incorporated as part of this Contract:

Human Rights Division Contract	General Conditions
Compliance Forms	Supplementary Conditions
Living Wage Declaration of	Specifications
Compliance Forms	Plans (also called "Drawings")
(if applicable)	Addenda
Bid Forms	Notice to Proceed
Proposal	Change Orders
Contract	
Bonds	

ARTICLE II - Definitions

Administering Service Area/Unit means Public Services Area _____

Engineer means Malcolm Pirnie, Inc., 645 Griswold Street, Suite 1950, Detroit, Michigan 48226-4105 or other persons acting under the authorization of the Administrator/Manager of the Administering Service Area/Unit.

Project means: Ann Arbor Wastewater Treatment Plant Facilities Renovations – Storage Building Demolition and Improvements , Ann Arbor, Michigan, Bid No. _____

ARTICLE III - Time of Completion

- (A) The work to be completed under this Contract shall begin immediately after the Contractor's receipt of a fully executed Contract.
- (B) The entire work for this Contract shall be completed within 245 consecutive calendar days. Shorter completion times for certain portions of the work are

specified in the Detailed Specifications.

- (C) Failure to complete all the work within the time specified above, including any extension granted in writing by the City, shall obligate the Contractor to pay the City, as liquidated damages and not as a penalty, an amount equal to **\$1,500** for each calendar day of delay in the completion of all the work. If any liquidated damages are unpaid by the Contractor, the City shall be entitled to deduct these unpaid liquidated damages from the monies due the Contractor.

As an independent requirement, where the Specifications identify certain portions of the work to be completed within a shorter period of time and the Contractor fails to complete each portion within the shorter period specified for each portion, including any extension granted in writing by the City, the City is entitled to deduct from the monies due the Contractor, as liquidated damages and not as a penalty, the amount identified in the General Conditions as may be modified by the Supplementary Conditions, and Specifications, as appropriate, for each portion of the work not timely completed for each calendar day of delay in completion of each portion of the work.

The liquidated damages are for the non-quantifiable aspects of any of the previously identified events and do not cover actual damages that can be shown or quantified nor are they intended to preclude recovery of actual damages in addition to the recovery of liquidated damages.

Liquidated damages under this section are in addition to any liquidated damages due under Section 5 of the General Conditions.

ARTICLE IV - The Contract Sum

Lump Sum Contracts

- (A) The City shall pay to the Contractor, in current funds for the performance of the Contract, the lump sum price as given in the Bid Forms for the estimated total of:

_____ Dollars (\$_____)
- (B) The amount paid shall be equitably adjusted to cover changes in the work ordered by the City but not required by the contract documents. Increases or decreases shall be determined only by written agreement between the City and Contractor.

ARTICLE V - Assignment

This Contract may not be assigned or subcontracted without the written consent of the City.

ARTICLE VI - Choice of Law

This Contract shall be construed, governed, and enforced in accordance with the laws of the State of Michigan. By executing this Contract, the Contractor and the City agree to venue in a court of appropriate jurisdiction sitting within Washtenaw County for purposes of any action arising under this Contract.

Whenever possible, each provision of the contract will be interpreted in a manner as to be effective and valid under applicable law. The prohibition or invalidity, under applicable law, of any provision will not invalidate the remainder of the contract.

ARTICLE VII - Relationship of the Parties

The parties of the Contract agree that it is not a contract of employment but is a contract to accomplish a specific result. Contractor is an independent contractor performing services for the City. Nothing contained in this Contract shall be deemed to constitute any other relationship between the City and the Contractor.

Contractor certifies that it has no personal or financial interest in the project other than the compensation it is to receive under the Contract. Contractor certifies that it is not, and shall not become, overdue or in default to the City for any contract, debt, or any other obligation to the City including real or personal property taxes. City shall have the right to set off any such debt against compensation awarded for services under this agreement.

ARTICLE VIII - Notice

All notices given under this contract shall be in writing, and shall be by personal delivery or by certified mail with return receipt requested to the parties at their respective addresses as specified in the contract documents or other address the Contractor may specify in writing.

ARTICLE IX - Indemnification

To the fullest extent permitted by law, for loss not covered by insurance under this Contract, Contractor shall indemnify, defend and hold harmless the City, Engineer, and their officers, directors, partners, employees, agents, consultants, and subcontractors from all suits, claims, judgments and expenses (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) resulting or alleged to result, in whole or in part, from any act or omission, which is in any way connected or associated with this Contract, by the Contractor or anyone acting on the Contractor's behalf under this Contract. Contractor shall not be responsible to indemnify the City or Engineer for losses or damages caused by or resulting from the City's or Engineer's sole negligence.

ARTICLE X - Entire Agreement

This Contract represents the entire understanding between the City and the Contractor and it supersedes all prior representations or agreements whether written or oral. Neither party has relied on any prior representations in entering into this Contract. This Contract may be altered, amended or modified only by written amendment, including Change Orders, signed by the City and the Contractor.

FOR CONTRACTOR

By
Its: _____

FOR THE CITY OF ANN ARBOR

By _____
John Hieftje, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to substance

By _____
Roger W. Fraser, City Administrator

By _____
Sue F. McCormick,
Public Services Administrator

Approved as to form and content

By _____
Stephen K. Postema, City Attorney

PERFORMANCE BOND

(1) _____ of _____ (referred to as "Principal"), and _____, a corporation duly authorized to do business in the State of Michigan (referred to as "Surety"), are bound to the City of Ann Arbor, Michigan (referred to as "City"), for \$ _____, the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, by this bond.

(2) The Principal has entered a written contract with the City dated _____, 200__, for: _____ and this bond is given for that contract in compliance with Act No. 213 of the Michigan Public Acts of 1963, as amended, being MCL 129.201 et seq.

(3) Whenever the Principal is declared by the City to be in default under the contract, the Surety may promptly remedy the default or shall promptly:

(a) complete the contract in accordance with its terms and conditions; or

(b) obtain a bid or bids for submission to the City for completing the contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, arrange for a contract between such bidder and the City, and make available, as work progresses, sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which Surety may be liable hereunder, the amount set forth in paragraph 1.

(4) Surety shall have no obligation to the City if the Principal fully and promptly performs under the contract.

(5) Surety agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying it shall in any way affect its obligations on this bond, and waives notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work, or to the specifications.

SIGNED AND SEALED this _____ day of _____, 200__.

(Name of Surety Company)

(Name of Principal)

By

(Signature)

By

(Signature)

Its

(Title of Office)

Its

(Title of Office)

Name and address of agent:

Approved as to form:

Stephen K. Postema, City Attorney

LABOR AND MATERIAL BOND

(1) _____ of _____, (referred to as C "Principal"), and _____, a corporation duly authorized to do business in the State of Michigan, (referred to as "Surety"), are bound to the City of Ann Arbor, Michigan (referred to as "City"), for the use and benefit of claimants as defined in Act 213 of Michigan Public Acts of 1963, as amended, being MCL 129.201 et seq., in the amount of \$ _____, for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, by this bond.

(2) The Principal has entered a written contract with the City, dated _____, 200____, for _____; and this bond is given for that contract in compliance with Act No. 213 of the Michigan Public Acts of 1963 as amended;

(3) If the Principal fails to promptly and fully repay claimants for labor and material reasonably required under the contract, the Surety shall pay those claimants.

(4) Surety's obligations shall not exceed the amount stated in paragraph 1, and Surety shall have no obligation if the Principal promptly and fully pays the claimants.

SIGNED AND SEALED this _____ day of _____, 200____.

(Name of Surety Company)

(Name of Principal)

By
(Signature)

By
(Signature)

Its
(Title of Office)

Its
(Title of Office)

Approved as to form:

Name and address of agent:

Stephen K. Postema, City Attorney

GENERAL CONDITIONS

Section 1 - Execution, Correlation and Intent of Documents

The contract documents shall be signed in 2 copies by the City and the Contractor.

The contract documents are complementary and what is called for by any one shall be binding. The intention of the documents is to include all labor and materials, equipment and transportation necessary for the proper execution of the work. Materials or work described in words which so applied have a well-known technical or trade meaning have the meaning of those recognized standards.

In case of a conflict among the contract documents listed below in any requirement(s), the requirement(s) of the document listed first shall prevail over any conflicting requirement(s) of a document listed later.

(1) Addenda in reverse chronological order; (2) Detailed Specifications; (3) Standard Specifications; (4) Plans; (5) General Conditions; (6) Contract; (7) Bid Forms; (8) Bond Forms; (9) Proposal.

Section 2 - Order of Completion

The Contractor shall submit with each invoice, and at other times reasonably requested by the Engineer, schedules showing the order in which the Contractor proposes to carry on the work. They shall include the dates at which the Contractor will start the several parts of the work, the estimated dates of completion of the several parts, and important milestones within the several parts.

Section 3 - Familiarity with Work

The Bidder or its representative shall make personal investigations of the site of the work and of existing structures and shall determine to its own satisfaction the conditions to be encountered, the nature of the ground, the difficulties involved, and all other factors affecting the work proposed under this Contract. The Bidder to whom this Contract is awarded will not be entitled to any additional compensation unless conditions are clearly different from those which could reasonably have been anticipated by a person making diligent and thorough investigation of the site.

The Bidder shall immediately notify the City upon discovery, and in every case prior to submitting its Bid, of every error or omission in the bidding documents that would be identified by a reasonably competent, diligent Bidder. In no case will a Bidder be allowed the benefit of extra compensation or time to complete the work under this Contract for extra expenses or time spent as a result of the error or omission.

Section 4 - Wage Requirements

Under this Contract, the Contractor shall conform to Chapter 14 of Title I of the Code of the City of Ann Arbor as amended; which in part states "...that all craftsmen, mechanics and laborers employed directly on the site in connection with said improvements, including said employees of subcontractors, shall receive the prevailing wage for the corresponding classes of craftsmen, mechanics and laborers, as determined by statistics for the Ann Arbor area compiled by the United States Department of Labor. At the request of the City, any contractor or subcontractor shall provide satisfactory proof of compliance with the contract provisions required by the Section."

Where the Contract and the Ann Arbor City Ordinance are silent as to definitions of terms required in determining contract compliance with regard to prevailing wages, the definitions provided in the Davis-Bacon Act as amended (40 U.S.C. 278-a to 276-a-7) for the terms shall be used.

Further, to the extent that any employees of the Contractor providing services under this contract are not part of the class of craftsmen, mechanics and laborers who receive a prevailing wage in conformance with Section 1:319 of Chapter 14 of Title I of the Code of the City of Ann Arbor, the Contractor agrees to conform to Chapter 23 of Title I of the Code of the City of Ann Arbor, as amended, which in part states:

1:814. Applicability.

- (1) This Chapter shall apply to any person that is a contractor/vendor or grantee as defined in Section 1:813 that employs or contracts with five (5) or more individuals; provided, however, that this Chapter shall not apply to a non-profit contractor/vendor or non-profit grantee unless it employs or contracts with ten (10) or more individuals.
- (2) This Chapter shall apply to any grant, contract, or subcontract or other form of financial assistance awarded to or entered into with a contractor/vendor or grantee after the effective date of this Chapter and to the extension or renewal after the effective date of this Chapter of any grant, contract, or subcontract or other form of financial assistance with a contractor/vendor or grantee.

1:815. Living Wages Required.

- (1) Every contractor/vendor or grantee, as defined in Section 1:813, shall pay its covered employees a living wage as established in this Section.
 - (a) For a covered employer that provides employee health care to its employees, the living wage shall be \$10.85 an hour, or the adjusted amount hereafter established under Section 1:815(3).
 - (b) For a covered employer that does not provide health care to its employees, the living wage shall be \$12.56 a hour, or the adjusted amount hereafter established under Section 1:815(3).
- (2) In order to qualify to pay the living wage rate for covered employers providing employee health care under subsection 1:815(1)(a), a covered employer shall furnish proof of said health care coverage and payment therefor to the City Administrator or his/her designee.

- (3) The amount of the living wage established in this Section shall be adjusted upward no later than April 30, 2002, and every year thereafter by a percentage equal to the percentage increase, if any, in the federal poverty guidelines as published by the United States Department of Health and Human Services for the years 2001 and 2002. Subsequent annual adjustments shall be based upon the percentage increase, if any, in the United States Department of Health and Human Services poverty guidelines when comparing the prior calendar year's poverty guidelines to the present calendar year's guidelines. The applicable percentage amount will be converted to an amount in cents by multiplying the existing wage under Section 1.815(1)(b) by said percentage, rounding upward to the next cent, and adding this amount of cents to the existing living wage levels established under Sections 1:815(1)(a) and 1:815(1)(b). Prior to April 1 of each calendar year, the City will notify any covered employer of this adjustment by posting a written notice in a prominent place in City Hall, and, in the case of a covered employer that has provided an address of record to the City, by a written letter to each such covered employer.

Section 5 - Non-Discrimination

The Contractor agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to take affirmative action to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate any inequality based upon race, national origin or sex. The Contractor agrees to comply with the provisions of Section 9:161 of Chapter 112 of the Ann Arbor City Code and in particular the following excerpts:

9:161 NONDISCRIMINATION BY CITY CONTRACTORS

- (1) All contractors proposing to do business with the City of Ann Arbor shall satisfy the nondiscrimination administrative policy adopted by the City Administrator in accordance with the guidelines of this section. All contractors shall receive approval from the Director prior to entering into a contract with the City, unless specifically exempted by administrative policy. All City contractors shall take affirmative action to insure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate inequality based upon race, national origin or sex.
- (2) Each prospective contractor shall submit to the City data showing current total employment by occupational category, sex and minority group. If, after verifying this data, the Director concludes that it indicates total minority and female employment commensurate with their availability within the contractor's labor recruitment area, i.e., the area from which the contractor can reasonably be expected to recruit, said contractor shall be accepted by the Director as having fulfilled affirmative action requirements for a period of one year at which time the Director shall conduct another review. Other contractors shall develop an affirmative action program in conjunction with the Director. Said program shall include specific goals and timetables for the hiring and promotion of minorities and females. Said goals shall reflect the availability of minorities and females within the contractor's labor recruitment area. In the case of construction contractors, the Director shall use for employment verification the labor recruitment area of the Ann Arbor-Ypsilanti standard metropolitan statistical area. Construction contractors determined to be in compliance shall be accepted by the Director as having fulfilled affirmative action requirements for a period of six (6) months at which time the Director shall conduct another review.

- (3) In hiring for construction projects, contractors shall make good faith efforts to employ local persons, so as to enhance the local economy.
- (4) All contracts shall include provisions through which the contractor agrees, in addition to any other applicable Federal or State labor laws:
 - (a) To set goals, in conference with the Human Resources Director, for each job category or division of the work force used in the completion of the City work;
 - (b) To provide periodic reports concerning the progress the contractor has made in meeting the affirmative action goals it has agreed to;
 - (c) To permit the Director access to all books, records and accounts pertaining to its employment practices for the purpose of determining compliance with the affirmative action requirements.
- (5) The Director shall monitor the compliance of each contractor with the nondiscrimination provisions of each contract. The Director shall develop procedures and regulations consistent with the administrative policy adopted by the City Administrator for notice and enforcement of non-compliance. Such procedures and regulations shall include a provision for the posting of contractors not in compliance.
- (6) All City contracts shall provide further that breach of the obligation not to discriminate shall be a material breach of the contract for which the City shall be entitled, at its option, to do any or all of the following:
 - (a) To cancel, terminate, or suspend the contract in whole or part and/or refuse to make any required periodic payments under the contract;
 - (b) Declare the contractor ineligible for the award of any future contracts with the City for a specified length of time;
 - (c) To recover liquidated damages of a specified sum, said sum to be that percentage of the labor expenditure for the time period involved which would have accrued to minority group members had the affirmative action not been breached;
 - (d) Impose for each day of non-compliance, liquidated damages of a specified sum, based upon the following schedule:

<u>Contract Amount</u>	<u>Assessed Damages Per Day of Non-Compliance</u>
\$ 10,000 - 24,999	\$ 25.00
25,000 - 99,999	50.00
100,000 - 199,999	100.00
200,000 - 499,999	150.00
500,000 - 1,499,999	200.00

1,500,000 - 2,999,999	250.00
3,000,000 - 4,999,999	300.00
5,000,000 - and above	500.00

- (e) In addition the contractor shall be liable for any costs or expenses incurred by the City of Ann Arbor in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under this contract.

Section 6 - Materials, Appliances, Employees

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation, and other facilities necessary or used for the execution and completion of the work. Unless otherwise specified, all materials incorporated in the permanent work shall be new, and both workmanship and materials shall be of the highest quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

The Contractor shall at all times enforce strict discipline and good order among its employees, and shall seek to avoid employing on the work any unfit person or anyone not skilled in the work assigned.

Adequate sanitary facilities shall be provided by the Contractor.

Section 7 - Qualifications for Employment

The Contractor shall employ competent laborers and mechanics for the work under this Contract. For work performed under this Contract, employment preference shall be given to qualified local residents.

Section 8 - Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringements of any patent rights and shall hold the City harmless from loss on account of infringement except that the City shall be responsible for all infringement loss when a particular process or the product of a particular manufacturer or manufacturers is specified, unless the City has notified the Contractor prior to the signing of the Contract that the particular process or product is patented or is believed to be patented.

Section 9 - Permits and Regulations

The Contractor must secure and pay for all permits, permit or plan review fees and licenses necessary for the prosecution of the work. These include but are not limited to City building permits, right-of-way permits, lane closure permits, right-of-way occupancy permits, and the like. The City shall secure and pay for easements shown on the plans unless otherwise specified.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the contract documents are at variance with those requirements, it shall promptly notify the Engineer in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the work.

Section 10 - Protection of the Public and of Work and Property

The Contractor is responsible for the means, methods, sequences, techniques and procedures of construction and safety programs associated with the work contemplated by this contract. The Contractor, its agents or sub-contractors, shall comply with the "General Rules and Regulations for the Construction Industry" as published by the Construction Safety Commission of the State of Michigan and to all other local, State and National laws, ordinances, rules and regulations pertaining to safety of persons and property.

The Contractor shall take all necessary and reasonable precautions to protect the safety of the public. It shall continuously maintain adequate protection of all work from damage, and shall take all necessary and reasonable precautions to adequately protect all public and private property from injury or loss arising in connection with this Contract. It shall make good any damage, injury or loss to it's work and to public and private property resulting from lack of reasonable protective precautions, except as may be due to errors in the contract documents, or caused by agents or employees of the City. The Contractor shall obtain and maintain sufficient insurance to cover damage to any City property at the site by any cause.

In an emergency affecting the safety of life, or the work, or of adjoining property, the Contractor is, without special instructions or authorization from the Engineer, permitted to act at its discretion to prevent the threatened loss or injury. It shall also so act, without appeal, if authorized or instructed by the Engineer.

Any compensation claimed by the Contractor for emergency work shall be determined by agreement or in accordance with the terms of Claims for Extra Cost - Section 15.

Section 11 - Inspection of Work

The City shall provide sufficient competent personnel for the inspection of the work.

The Engineer shall at all times have access to the work whenever it is in preparation or progress, and the Contractor shall provide proper facilities for access and for inspection.

If the specifications, the Engineer's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the Engineer timely notice of its readiness for inspection, and if the inspection is by an authority other than the Engineer, of the date fixed for the inspection. Inspections by the Engineer shall be made promptly, and where practicable at the source of supply. If any work should be covered up without approval or consent of the Engineer, it must, if required by the Engineer, be uncovered for examination and properly restored at the Contractor's expense.

Re-examination of any work may be ordered by the Engineer, and, if so ordered, the work must be uncovered by the Contractor. If the work is found to be in accordance with the contract documents,

the City shall pay the cost of re-examination and replacement. If the work is not in accordance with the contract documents, the Contractor shall pay the cost.

Section 12 - Superintendence

The Contractor shall keep on the work site, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Engineer. The superintendent will be responsible to perform all on-site project management for the Contractor. The superintendent shall be experienced in the work required for this Contract. The superintendent shall represent the Contractor and all direction given to the superintendent shall be binding as if given to the Contractor. Important directions shall immediately be confirmed in writing to the Contractor. Other directions will be confirmed on written request. The Contractor shall give efficient superintendence to the work, using its best skill and attention.

Section 13 - Changes in the Work

The City may make changes to the quantities of work within the general scope of the Contract at any time by a written order and without notice to the sureties. If the changes add to or deduct from the extent of the work, the Contract Sum shall be adjusted accordingly. All the changes shall be executed under the conditions of the original Contract except that any claim for extension of time caused by the change shall be adjusted at the time of ordering the change.

In giving instructions, the Engineer shall have authority to make minor changes in the work not involving extra cost and not inconsistent with the purposes of the work, but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order by the Engineer, and no claim for an addition to the Contract Sum shall be valid unless the additional work was ordered in writing.

The Contractor shall proceed with the work as changed and the value of the work shall be determined as provided in Claims for Extra Cost - Section 15.

Section 14 - Extension of Time

Extension of time stipulated in the Contract for completion of the work will be made if and as the Engineer may deem proper under any of the following circumstances:

- (1) When work under an extra work order is added to the work under this Contract;
- (2) When the work is suspended as provided in Section 20;
- (3) When the work of the Contractor is delayed on account of conditions which could not have been foreseen, or which were beyond the control of the Contractor, and which were not the result of its fault or negligence;
- (4) Delays in the progress of the work caused by any act or neglect of the City or of its employees or by other Contractors employed by the City;
- (5) Delay due to an act of Government;
- (6) Delay by the Engineer in the furnishing of plans and necessary information;

- (7) Other cause which in the opinion of the Engineer entitles the Contractor to an extension of time.

The Contractor shall notify the Engineer within 7 days of an occurrence or conditions which, in the Contractor's opinion, entitle it to an extension of time. The notice shall be in writing and submitted in ample time to permit full investigation and evaluation of the Contractor's claim. The Engineer shall acknowledge receipt of the Contractor's notice within 7 days of its receipt. Failure to timely provide the written notice shall constitute a waiver by the Contractor of any claim.

In situations where an extension of time in contract completion is appropriate under this or any other section of the contract, the Contractor understands and agrees that the only available adjustment for events that cause any delays in contract completion shall be extension of the required time for contract completion and that there shall be no adjustments in the money due the Contractor on account of the delay.

Section 15 - Claims for Extra Cost

If the Contractor claims that any instructions by drawings or other media issued after the date of the Contract involved extra cost under this Contract, it shall give the Engineer written notice within 7 days after the receipt of the instructions, and in any event before proceeding to execute the work, except in emergency endangering life or property. The procedure shall then be as provided for Changes in the Work-Section 13. No claim shall be valid unless so made.

If the Engineer orders, in writing, the performance of any work not covered by the contract documents, and for which no item of work is provided in the Contract, and for which no unit price or lump sum basis can be agreed upon, then the extra work shall be done on a Cost-Plus-Percentage basis of payment as follows:

- (1) The Contractor shall be reimbursed for all reasonable costs incurred in doing the work, and shall receive an additional payment of 15% of all the reasonable costs to cover both its indirect overhead costs and profit;
- (2) The term "Cost" shall cover all payroll charges for employees and supervision required under the specific order, together with all worker's compensation, Social Security, pension and retirement allowances and social insurance, or other regular payroll charges on same; the cost of all material and supplies required of either temporary or permanent character; rental of all power-driven equipment at agreed upon rates, together with cost of fuel and supply charges for the equipment; and any costs incurred by the Contractor as a direct result of executing the order, if approved by the Engineer;
- (3) If the extra is performed under subcontract, the subcontractor shall be allowed to compute its charges as described above. The Contractor shall be permitted to add an additional charge of 5% percent to that of the subcontractor for the Contractor's supervision and contractual responsibility;
- (4) The quantities and items of work done each day shall be submitted to the Engineer in a satisfactory form on the succeeding day, and shall be approved by the Engineer and the Contractor or adjusted at once;

- (5) Payments of all charges for work under this Section in any one month shall be made along with normal progress payments. Retainage shall be in accordance with Progress Payments-Section 16.

No additional compensation will be provided for additional equipment, materials, personnel, overtime or special charges required to perform the work within the time requirements of the Contract.

When extra work is required and no suitable price for machinery and equipment can be determined in accordance with this Section, the hourly rate paid shall be 1/40 of the basic weekly rate listed in the Rental Rate Blue Book published by Dataquest Incorporated and applicable to the time period the equipment was first used for the extra work. The hourly rate will be deemed to include all costs of operation such as bucket or blade, fuel, maintenance, "regional factors", insurance, taxes, and the like, but not the costs of the operator.

Section 16 - Progress Payments

The Contractor shall submit each month, or at longer intervals, if it so desires, an invoice covering work performed for which it believes payment, under the Contract terms, is due. The submission shall be to the City's Finance Department - Accounting Division. The Engineer will, within 10 days following submission of the invoice, prepare a certificate for payment for the work in an amount to be determined by the Engineer as fairly representing the acceptable work performed during the period covered by the Contractor's invoice. To insure the proper performance of this Contract, the City will retain a percentage of the estimate in accordance with Act 524, Public Acts of 1980. The City will then, following the receipt of the Engineer's Certificate, make payment to the Contractor as soon as feasible, which is anticipated will be within 15 days.

An allowance may be made in progress payments if substantial quantities of permanent material have been delivered to the site but not incorporated in the completed work if the Contractor, in the opinion of the Engineer, is diligently pursuing the work under this Contract. Such materials shall be properly stored and adequately protected. Allowance in the estimate shall be at the invoice price value of the items. Notwithstanding any payment of any allowance, all risk of loss due to vandalism or any damages to the stored materials remains with the Contractor.

In the case of Contracts which include only the Furnishing and Delivering of Equipment, the payments shall be; 60% of the Contract Sum upon the delivery of all equipment to be furnished, or in the case of delivery of a usable portion of the equipment in advance of the total equipment delivery, 60% of the estimated value of the portion of the equipment may be paid upon its delivery in advance of the time of the remainder of the equipment to be furnished; 30% of the Contract Sum upon completion of erection of all equipment furnished, but not later than 60 days after the date of delivery of all of the equipment to be furnished; and payment of the final 10% on final completion of erection, testing and acceptance of all the equipment to be furnished; but not later than 180 days after the date of delivery of all of the equipment to be furnished, unless testing has been completed and shows the equipment to be unacceptable.

With each invoice for periodic payment, the Contractor shall enclose a Contractor's Declaration - Section 43, and an updated project schedule per Order of Completion - Section 2.

Section 17 - Deductions for Uncorrected Work

If the Engineer decides it is inexpedient to correct work that has been damaged or that was not done in accordance with the Contract, an equitable deduction from the Contract price shall be made.

Section 18 - Correction of Work Before Final Payment

The Contractor shall promptly remove from the premises all materials condemned by the Engineer as failing to meet Contract requirements, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute the work in accordance with the Contract and without expense to the City and shall bear the expense of making good all work of other contractors destroyed or damaged by the removal or replacement.

If the Contractor does not remove the condemned work and materials within 10 days after written notice, the City may remove them and, if the removed material has value, may store the material at the expense of the Contractor. If the Contractor does not pay the expense of the removal within 10 days thereafter, the City may, upon 10 days written notice, sell the removed materials at auction or private sale and shall pay to the Contractor the net proceeds, after deducting all costs and expenses that should have been borne by the Contractor. If the removed material has no value, the Contractor must pay the City the expenses for disposal within 10 days of invoice for the disposal costs.

The inspection or lack of inspection of any material or work pertaining to this Contract shall not relieve the Contractor of its obligation to fulfill this Contract and defective work shall be made good. Unsuitable materials may be rejected by the Engineer notwithstanding that the work and materials have been previously overlooked by the Engineer and accepted or estimated for payment or paid for. If the work or any part shall be found defective at any time before the final acceptance of the whole work, the Contractor shall forthwith make good the defect in a manner satisfactory to the Engineer. The judgment and the decision of the Engineer as to whether the materials supplied and the work done under this Contract comply with the requirements of the Contract shall be conclusive and final.

Section 19 - Acceptance and Final Payment

Upon receipt of written notice that the work is ready for final inspection and acceptance, the Engineer will promptly make the inspection. When the Engineer finds the work acceptable under the Contract and the Contract fully performed, the Engineer will promptly sign and issue a final certificate stating that the work required by this Contract has been completed and is accepted by the City under the terms and conditions of the Contract. The entire balance found to be due the Contractor, including the retained percentage, shall be paid to the Contractor by the City within 30 days after the date of the final certificate.

Before issuance of final certificates, the Contractor shall file with the City:

- (1) The consent of the surety to payment of the final estimate;
- (2) The Contractor's Affidavit in the form required by Section 44.

In case the Affidavit or consent is not furnished, the City may retain out of any amount due the Contractor, sums sufficient to cover all lienable claims.

The making and acceptance of the final payment shall constitute a waiver of all claims by the City except those arising from:

- (1) unsettled liens;
- (2) faulty work appearing within 12 months after final payment;
- (3) hidden defects in meeting the requirements of the plans and specifications;
- (4) manufacturer's guarantees.

It shall also constitute a waiver of all claims by the Contractor, except those previously made and still unsettled.

Section 20 - Suspension of Work

The City may at any time suspend the work, or any part by giving 5 days notice to the Contractor in writing. The work shall be resumed by the Contractor within 10 days after the date fixed in the written notice from the City to the Contractor to do so. The City shall reimburse the Contractor for expense incurred by the Contractor in connection with the work under this Contract as a result of the suspension.

If the work, or any part, shall be stopped by the notice in writing, and if the City does not give notice in writing to the Contractor to resume work at a date within 90 days of the date fixed in the written notice to suspend, then the Contractor may abandon that portion of the work suspended and will be entitled to the estimates and payments for all work done on the portions abandoned, if any, plus 10% of the value of the work abandoned, to compensate for loss of overhead, plant expense, and anticipated profit.

Section 21 - Delays and The City's Right to Terminate Contract

If the Contractor refuses or fails to prosecute the work, or any separate part of it, with the diligence required to insure completion, ready for operation, within the allowable number of consecutive calendar days specified plus extensions, or fails to complete the work within the required time, the City may, by written notice to the Contractor, terminate its right to proceed with the work or any part of the work as to which there has been delay. After providing the notice the City may take over the work and prosecute it to completion, by contract or otherwise, and the Contractor and its sureties shall be liable to the City for any excess cost to the City. If the Contractor's right to proceed is terminated, the City may take possession of and utilize in completing the work, any materials, appliances and plant as may be on the site of the work and useful for completing the work. The right of the Contractor to proceed shall not be terminated or the Contractor charged with liquidated damages where an extension of time is granted under Extension of Time - Section 14.

If the Contractor is adjudged a bankrupt, or if it makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or if it fails to make prompt payments to subcontractors or for material or labor, or persistently disregards laws, ordinances or the instructions of the Engineer, or otherwise is guilty of a substantial violation of any provision of the Contract, then the City, upon the certificate of the Engineer that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor 3 days written notice, terminate this Contract. The City may then take possession of the premises and of all materials, tools and appliances thereon and without prejudice to any other remedy it may have, make good the

deficiencies or finish the work by whatever method it may deem expedient, and deduct the cost from the payment due the Contractor. The Contractor shall not be entitled to receive any further payment until the work is finished. If the expense of finishing the work, including compensation for additional managerial and administrative services exceeds the unpaid balance of the Contract Sum, the Contractor and its surety are liable to the City for any excess cost incurred. The expense incurred by the City, and the damage incurred through the Contractor's default, shall be certified by the Engineer.

Section 22 - Contractor's Right to Terminate Contract

If the work should be stopped under an order of any court, or other public authority, for a period of 3 months, through no act or fault of the Contractor or of anyone employed by it, then the Contractor may, upon 7 days written notice to the City, terminate this Contract and recover from the City payment for all acceptable work executed plus reasonable profit.

Section 23 - City's Right To Do Work

If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this Contract, the City, 3 days after giving written notice to the Contractor and its surety may, without prejudice to any other remedy the City may have, make good the deficiencies and may deduct the cost from the payment due to the Contractor.

Section 24 - Removal of Equipment and Supplies

In case of termination of this Contract before completion, from any or no cause, the Contractor, if notified to do so by the City, shall promptly remove any part or all of its equipment and supplies from the property of the City, failing which the City shall have the right to remove the equipment and supplies at the expense of the Contractor.

The removed equipment and supplies may be stored by the City and, if all costs of removal and storage are not paid by the Contractor within 10 days of invoicing, the City upon 10 days written notice may sell the equipment and supplies at auction or private sale, and shall pay the Contractor the net proceeds after deducting all costs and expenses that should have been borne by the Contractor and after deducting all amounts claimed due by any lien holder of the equipment or supplies.

Section 25 - Responsibility for Work and Warranties

The Contractor assumes full responsibility for any and all materials and equipment used in the construction of the work and may not make claims against the City for damages to materials and equipment from any cause except negligence or willful act of the City. Until its final acceptance, the Contractor shall be responsible for damage to or destruction of the project (except for any part covered by Partial Completion and Acceptance - Section 26). The Contractor shall make good all work damaged or destroyed before acceptance. All risk of loss remains with the Contractor until final acceptance of the work (Section 19) or partial acceptance (Section 26). The Contractor is advised to investigate obtaining its own builders risk insurance.

The Contractor shall guarantee the quality of the work for a period of one year. The Contractor shall also unconditionally guarantee the quality of all equipment and materials that are furnished and installed under the contract for a period of one year. At the end of one year after the Contractor's receipt of final payment, the complete work, including equipment and materials furnished and installed under the contract, shall be inspected by the Contractor and the Engineer. Any defects shall

be corrected by the Contractor at its expense as soon as practicable but in all cases within 60 days. Any defects that are identified prior to the end of one year shall also be inspected by the Contractor and the Engineer and shall be corrected by the Contractor at its expense as soon as practicable but in all cases within 60 days.

The Contractor shall assign all manufacturer or material supplier warranties to the City prior to final payment. The assignment shall not relieve the Contractor of its obligations under this paragraph to correct defects.

Section 26 - Partial Completion and Acceptance

If at any time prior to the issuance of the final certificate referred to in Acceptance and Final Payment - Section 19, any portion of the permanent construction has been satisfactorily completed, and if the Engineer determines that portion of the permanent construction is not required for the operations of the Contractor but is needed by the City, the Engineer shall issue to the Contractor a certificate of partial completion, and immediately the City may take over and use the portion of the permanent construction described in the certificate, and exclude the Contractor from that portion.

The issuance of a certificate of partial completion shall not constitute an extension of the Contractor's time to complete the portion of the permanent construction to which it relates if the Contractor has failed to complete it in accordance with the terms of this Contract. The issuance of the certificate shall not release the Contractor or its sureties from any obligations under this Contract including bonds.

If prior use increases the cost of, or delays the work, the Contractor shall be entitled to extra compensation, or extension of time, or both, as the Engineer may determine.

Section 27 - Payments Withheld Prior to Final Acceptance of Work

The City may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any certificate to the extent reasonably appropriate to protect the City from loss on account of:

- (1) Defective work not remedied;
- (2) Claims filed or reasonable evidence indicating probable filing of claims by other parties against the Contractor;
- (3) Failure of the Contractor to make payments properly to subcontractors or for material or labor;
- (4) Damage to another Contractor.

When the above grounds are removed or the Contractor provides a Surety Bond satisfactory to the City which will protect the City in the amount withheld, payment shall be made for amounts withheld under this section.

Section 28 - Contractor's Insurance

- A. The Contractor shall procure and maintain during the life of this Contract, including the guarantee period and during any warranty work, such insurance policies, including those set forth below, as will protect itself from all claims for bodily injuries, death or property damage which may arise under this Contract; whether the acts were made by the Contractor or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:
1. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit
 2. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98. The City of Ann Arbor shall be named as an additional insured. There shall be no added exclusions or limiting endorsements including, but not limited to: Products and Completed Operations, Explosion, Collapse and Underground coverage or Pollution. Further, the following minimum limits of liability are required:

\$1,000,000 Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined.

\$2,000,000 Per Job General Aggregate

\$1,000,000 Personal and Advertising Injury

\$2,000,000 Products and Completed Operations Aggregate
 3. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97. The City of Ann Arbor shall be named as an additional insured. There shall be no added exclusions or limiting endorsements. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.
 4. Umbrella/Excess Liability Insurance shall be provided to apply excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.
- B. Insurance required under Section A.2 and A.3 of this Contract shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City.

- C. In the case of all Contracts involving on-site work, the Contractor shall provide to the City before the commencement of any work under this Contract documentation demonstrating it has obtained the above mentioned policies. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. An original certificate of insurance may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days after commencement of any work the Contractor supplies a copy of the endorsements required on the policies. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this Contract, the Contractor shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.
- D. Any Insurance provider of Contractor shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of A- Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.

Section 29 - Surety Bonds

Bonds will be required from the successful bidder as follows:

- (1) A Performance Bond to the City of Ann Arbor for the amount of the bid(s) accepted;
- (2) A Labor and Material Bond to the City of Ann Arbor for the amount of the bid(s) accepted.

Bonds shall be executed on forms supplied by the City in a manner and by a Surety Company satisfactory to the City Attorney.

Section 30 - Damage Claims

The Contractor shall be held responsible for all damages to property of the City or others, caused by or resulting from the negligence of the Contractor, its employees, or agents during the progress of or connected with the prosecution of the work, whether within the limits of the work or elsewhere. The Contractor must restore all property injured including sidewalks, curbing, sodding, pipes, conduit, sewers or other public or private property to not less than its original condition with new work.

Section 31 - Refusal to Obey Instructions

If the Contractor refuses to obey the instructions of the Engineer, the Engineer shall withdraw inspection from the work, and no payments will be made for work performed thereafter nor may work be performed thereafter until the Engineer shall have again authorized the work to proceed.

Section 32 - Assignment

Neither party to the Contract shall assign the Contract without the written consent of the other. The Contractor may assign any monies due to it to a third party acceptable to the City.

Section 33 - Rights of Various Interests

Whenever work being done by the City's forces or by other contractors is contiguous to work covered by this Contract, the respective rights of the various interests involved shall be established by the Engineer, to secure the completion of the various portions of the work in general harmony.

The Contractor is responsible to coordinate all aspects of the work, including coordination of, and with, utility companies and other contractors whose work impacts this project.

Section 34 - Subcontracts

The Contractor shall not award any work to any subcontractor without prior written approval of the City. The approval will not be given until the Contractor submits to the City a written statement concerning the proposed award to the subcontractor. The statement shall contain all information the City may require.

The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the General Conditions and all other contract documents applicable to the work of the subcontractors and to give the Contractor the same power to terminate any subcontract that the City may exercise over the Contractor under any provision of the contract documents.

Nothing contained in the contract documents shall create any contractual relation between any subcontractor and the City.

Section 35 - Engineer's Status

The Engineer has the right to inspect any or all work. The Engineer has authority to stop the work whenever stoppage may be appropriate to insure the proper execution of the Contract. The Engineer has the authority to reject all work and materials which do not conform to the Contract and to decide questions which arise in the execution of the work.

The Engineer shall make all measurements and determinations of quantities. Those measurements and determinations are final and conclusive between the parties.

Section 36 - Engineer's Decisions

The Engineer shall, within a reasonable time after their presentation to the Engineer, make decisions in writing on all claims of the City or the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the contract documents.

Section 37 - Storing Materials and Supplies

Materials and supplies may be stored at the site of the work at locations agreeable to the City unless specific exception is listed elsewhere in these documents. Ample way for foot traffic and drainage must be provided, and gutters must, at all times, be kept free from obstruction. Traffic on streets shall be interfered with as little as possible. The Contractor may not enter or occupy with agents, employees, tools, or material any private property without first obtaining written permission from its owner. A copy of the permission shall be furnished to the Engineer.

Section 38 - Lands for Work

The Contractor shall provide, at its own expense and without liability to the City, any additional land and access that may be required for temporary construction facilities or for storage of materials.

Section 39 - Cleaning Up

The Contractor shall, as directed by the Engineer, remove at its own expense from the City's property and from all public and private property all temporary structures, rubbish and waste materials resulting from its operations unless otherwise specifically approved, in writing, by the Engineer.

Section 40 - Salvage

The Engineer may designate for salvage any materials from existing structures or underground services. Materials so designated remain City property and shall be transported or stored at a location as the Engineer may direct.

Section 41 - Night, Saturday or Sunday Work

No night or Sunday work (without prior written City approval) will be permitted except in the case of an emergency and then only to the extent absolutely necessary. The City may allow night work which, in the opinion of the Engineer, can be satisfactorily performed at night. Night work is any work between 8:00 p.m. and 7:00 a.m. No Saturday work will be permitted unless the Contractor gives the Engineer at least 48 hours but not more than 5 days notice of the Contractor's intention to work the upcoming Saturday.

Section 42 - Sales Taxes

Under State law the City is exempt from the assessment of State Sales Tax on its direct purchases. Contractors who acquire materials, equipment, supplies, etc. for incorporation in City projects are not likewise exempt. State Law shall prevail. The Bidder shall familiarize itself with the State Law and prepare its Bid accordingly. No extra payment will be allowed under this Contract for failure of the Contractor to make proper allowance in this bid for taxes it must pay.

Section 43

CONTRACTOR'S DECLARATION

I hereby declare that I have not, during the period _____, 200__, to _____, 20__, performed any work, furnished any materials, sustained any loss, damage or delay, or otherwise done anything in addition to the regular items (or executed change orders) set forth in the Contract titled Ann Arbor Wastewater Treatment Plant Facilities Renovations – Storage Building Demolition and Improvements, for which I shall ask, demand, sue for, or claim compensation or extension of time from the City, except as I hereby make claim for additional compensation or extension of time as set forth on the attached itemized statement. I further declare that I have paid all payroll obligations related to this Contract that have become due during the above period and that all invoices related to this Contract received more than 30 days prior to this declaration have been paid in full except as listed below.

There is/is not (Contractor please circle one and strike one as appropriate) an itemized statement attached regarding a request for additional compensation or extension of time.

Contractor

Date

By

(Signature)

Its

(Title of Office)

Past due invoices, if any, are listed below.

Section 44

CONTRACTOR'S AFFIDAVIT

The undersigned Contractor, _____, represents that on _____, 20_____, it was awarded a contract by the City of Ann Arbor, Michigan to _____ under the terms and conditions of a Contract titled, Ann Arbor Wastewater Treatment Plant Facilities Renovations – Storage Building Demolition and Improvements . The Contractor represents that all work has now been accomplished and the Contract is complete.

The Contractor warrants and certifies that all of its indebtedness arising by reason of the Contract has been fully paid or satisfactorily secured; and that all claims from subcontractors and others for labor and material used in accomplishing the project, as well as all other claims arising from the performance of the Contract, have been fully paid or satisfactorily settled. The Contractor agrees that, if any claim should hereafter arise, it shall assume responsibility for it immediately upon request to do so by the City of Ann Arbor.

The Contractor, for valuable consideration received, does further waive, release and relinquish any and all claims or right of lien which the Contractor now has or may acquire upon the subject premises for labor and material used in the project owned by the City of Ann Arbor.

This affidavit is freely and voluntarily given with full knowledge of the facts.

Contractor
By
 (Signature)
Its
 (Title of Office)

Subscribed and sworn to before me, on this _____ day of _____, 200
_____, _____ County, Michigan

Notary Public
My commission expires on:

SUPPLEMENTARY CONDITIONS

SCOPE

These Supplementary Conditions amend or supplement the General Conditions. All provisions of the General Conditions which are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions which are defined in the General Conditions have the meanings assigned to them in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to the singular and plural thereof.

SC-1A Revise the title of Section 1, “Section 1 – Execution, Correlation, Intent of Documents, and Preliminary Matters”. At the start of first paragraph add, “1.01. Execution”. At the start of the second paragraph add, “1.02. Intent of Documents”. At the start of the third paragraph add, “1.03. Correlation”.

SC-1.03 Delete the fourth paragraph, starting with “(1) Addenda...” in its entirety and add the following in its place:

(1) Contract modifications including Change Orders; (2) Addenda in reverse chronological order; (3) Specifications; (4) Plans (also called “Drawings”); (5) General Conditions as may be modified by the Supplementary Conditions; (6) Contract; (7) Bid Forms; (8) Performance Bond and Labor and Materials Bond; (9) Proposal.

SC-1.04 through SC-1.11 Add the following at the end of Section 1:

1.04 *Terminology*

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

B. *Intent of Certain Terms or Adjectives*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake

responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day*

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

D. *Defective*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents, or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by City at Substantial Completion in accordance with Section 16 through Section 19).

E. *Furnish, Install, Perform, Provide*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

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

1.05 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Contract to the City, Contractor shall also deliver to the City such bonds as Contractor may be

required to furnish.

- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor shall deliver to the City, with copies to each additional insured identified in the General Conditions and Supplementary Conditions, certificates of insurance (and other evidence of insurance which any additional insured may reasonably request) which Contractor is required to purchase and maintain in accordance with Section 28.

1.06 *Copies of Documents*

- A. City shall furnish to Contractor up to ten printed or hard copies of Contract Documents (Drawings and Project Manual). Additional copies will be furnished upon request at the cost of reproduction.

1.07 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the effective date of the Contract 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 Contract. In no event will the Contract Times commence to run later than the ninetieth day after the day of Bid opening or the thirtieth day after the effective date of the Contract, whichever date is earlier.

1.08 *Starting the Work*

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

1.09 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
 1. a preliminary Progress Schedule;
 2. a preliminary Schedule of Submittals; and
 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Sum and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

1.10 *Preconstruction Conference*

- A. Before any Work at the Site is started, a conference attended by the City, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 1.09.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

1.11 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 1.09.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

SC-8 In the first through third lines, delete the words, "It shall defend all suits or claims for infringements of any patent rights and shall hold the City harmless from loss on account of infringement" and replace with the following:

To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless City and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents

SC-13

- SC-13 In the second paragraph, following the words, “extra cost” add the words, “or extra time”. In the same paragraph, after the words, “Contract Sum”, add the words, “Contract Time”.
- SC-16 Following the second paragraph, insert the following paragraph:
- If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that City has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect City’s interest therein, all of which must be satisfactory to City.
- SC-17 Delete the word, “Engineer” and insert in its place, “City, in consultation with the Engineer,”
- SC-28.A.2 Following the words, “City of Ann Arbor”, insert the words, “and Malcolm Pirnie, Inc.”
- SC-28.A.3 Following the words, “City of Ann Arbor”, insert the words, “and Malcolm Pirnie, Inc.”
- SC-28.B Following the word, “City”, insert the words, “or Engineer”. In the same paragraph, delete the last sentence (starting with, “Further, the Contractor...”) in its entirety and insert the following in its place:
- Waiver of Subrogation: Contractor and Subcontractors shall provide a waiver of subrogation as to all Contractor- and Subcontractor-carried insurance, in favor of the City and Malcolm Pirnie, Inc., their officers, employees, agents, and subcontractors, and shall require similar waivers from the Contractor’s and Subcontractor’s other subcontractors and their lower-tier subcontractors. Contractor and Subcontractors shall provide the City and Engineer with copies of such waivers.***
- SC-28.C Following the words, “City of Ann Arbor”, insert the words, “and Malcolm Pirnie, Inc.”
- SC-31 In the last line, in the phrase, “until the Engineer shall have again”, delete the word “Engineer” and insert in its place the following words, “City, in consultation with the Engineer”.
- SC-35 Make the following modifications:
- A. In the first paragraph, second sentence, in the phrase, “The Engineer has authority to stop the work”, delete the word “Engineer” and insert in its place the following words, “City, in consultation with the Engineer”.
- B. In the first paragraph, second sentence, delete the word, “insure” and insert in its place the word, “ensure”.

- C. In the first paragraph, third sentence, in the phrase, “which do not conform to the Contract”, after the word “which”, insert the following: “, in the opinion of the Engineer,”
- D. At the end of the first paragraph, insert the following, “Engineer will also have authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.”
- E. At the end of the Section, add the following new paragraph:

Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work. The limitations upon authority and responsibility set forth in this paragraph shall also apply to the Resident Project Representative, if any.

SC-38 Delete the paragraph in its entirety and replace with the following:

38.01 *Availability of Lands*

- A. The City shall furnish the Site. City shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. City will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and City are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in City’s furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Section 15.
- B. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment, without additional cost to the City and without liability to the City and Engineer.

38.02 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* Identified below are:
 - 1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and
 - 2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against City or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.
- C. In the preparation of the Drawings and Specifications, Engineer has relied upon:
1. The following report of explorations and tests of subsurface conditions at the Site.
 - a. Field Investigation Reports, June 2005, prepared by Malcolm Pirnie, Inc.
 - b. The technical data contained in such report upon which Contractor may rely are: the boring method, the locations and logs of the borings, the levels of subsurface water (if any), laboratory test methods and results, and similar factual data. Bore hole information represents subsurface characteristics to the extent indicated, only for the point location of the bore hole and, with regard to the level of subsurface water (if any), only at the time the boring was made. Contractor shall make its own interpretations of the subsurface characteristics to be encountered between bore holes and its own interpretations of the fluctuation of the level of subsurface water (if any) at and between bore holes.
 - c. A copy of the above report is available for review at the City of Ann Arbor Wastewater Treatment Plant, 49 South Dixboro Road, Ann Arbor, Michigan, 48105, upon 48 hours' notice to the Ann Arbor Wastewater Treatment Plant, (734) 971-4834.
 - d. Samples taken from boreholes are available for inspection at City of Ann Arbor Wastewater Treatment Plant, 49 South Dixboro Road, Ann Arbor, Michigan, 48105, upon 48 hours' notice to the Ann Arbor Wastewater Treatment Plant, (734) 971-4834.
 - e. Additional environmental and structural testing in the Storage Building. See Appendix A of the technical specifications "Concrete Core Sampling: A. Environmental Testing, B. Compressive Strength Testing.
 2. The following drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the Site:
 - a. City of Ann Arbor, Michigan Sewage Treatment Plant, PWA Docket No. 785, Plans for the Construction of the Sewage Pumping Station and Sewage Treatment Plant, Contract No. 7, Shoecraft, Drury and McNamee; Ayres, Lewis, Norris and May, Consulting Engineers, May 1935
 - b. Ann Arbor, Michigan, Sewage and Garbage Disposal System, Plans for Additions to Sewage and Garbage Treatment Plant, Shoecraft, Drury and McNamee, Consulting Engineers, March 1947, Rev. for record Feb. 51
 - c. Ann Arbor, Michigan Adds to Sewage Treatment Plant, Contract No. 2, Record of Incoming Sewer Line, Sheet S-1, Drury, McNamee and Porter, Consulting Engineers, April 28, 1949, Rev. for Record Feb. 51
 - d. Ann Arbor, Michigan Additions to Sewage Treatment Plant, Contract 2, Blower Bldg. Floor Openings for ENB-6 Piping, DWG. S-8, Sheet 48B, Drury, McNamee and Porter, Consulting Engineers, Rev. for Record July 29, 49 and Feb. 51
 - e. Ann Arbor, Michigan, Additions to Sewage Treatment Plant, Contract 2, Sheet S-10, 48A, Blower Building Basement Piping, Drury, McNamee and Porter, Consulting Engineers, Issued Aug. 1949
 - f. Ann Arbor, Michigan Sewage Treatment Plant, Contract 2, Yard Drains, Sheet S-24, 1-C, Drury, McNamee and Porter, Consulting Engineers, Issued June 1950, Revised for record, Feb. 51
 - g. Ann Arbor, Michigan Sewage Treatment Plant, Contract 2, Concrete Pavement Between Sludge Drying and Blower Building, Sheet S-21, 1-D, Drury, McNamee and Porter, Consulting Engineers, Issued June 1950, Revised for record, Feb. 51
 - h. Ann Arbor, Michigan, Additions to Waste Water Treatment Plant, Contract No. 2, McNamee, Porter and Seeley, Consulting Engineers, Issued January 1964

- i. Washtenaw County Department of Public Works, City of Ann Arbor, Michigan, Wastewater Treatment Plant Improvements, Contract 77-S-6, C26 2539 04, Volume I General – Architectural - Structural, McNamee, Porter and Seeley, Consulting Engineers, April 1977, Conforming to Construction Records 4/81
- j. Washtenaw County Department of Public Works, City of Ann Arbor, Michigan, Wastewater Treatment Plant Improvements, Contract 77-S-6, C26 2539 04, Volume II Pipe Work - Mechanical, McNamee, Porter and Seeley, Consulting Engineers, April 1977, Conforming to Construction Records 5/81
- k. Washtenaw County Department of Public Works, City of Ann Arbor, Michigan, Wastewater Treatment Plant Improvements, Contract 77-S-6, C26 2539 04, Volume II Electrical - Instrumentation, McNamee, Porter and Seeley, Consulting Engineers, April 1977, Conforming to Construction Records 10/12/81
- l. Wastewater Treatment Plant Improvements, City of Ann Arbor Contract No. 89-S-1, Divisions A through E, McNamee, Porter and Seeley, Engineers - Architects, Issued June 1989
- m. Wastewater Treatment Plant Improvements, City of Ann Arbor Contract 89-S-2, Divisions A through F, McNamee, Porter and Seeley, Engineers – Architects, Issued December 1989
- n. Wastewater Treatment Plant Improvements, West Plant Renovation, City of Ann Arbor Contract No. 89-S-3, McNamee, Porter and Seeley, Engineers – Architects, Issued January 1990
- o. Wastewater Treatment Plant Improvements, Aeration System Retrofit, City of Ann Arbor Contract No. 89-S-4, McNamee, Porter and Seeley, Engineers – Architects, Issued January 1990
- p. Wastewater Treatment Plant Improvements, Tertiary Filter Improvements, 0106.059-S-1, Volume I of I, McNamee, Porter and Seeley, Engineers – Architects, Issued June 1997
- q. Ann Arbor Wastewater Treatment Plant Water Main Extension, City of Ann Arbor Utilities Department, Midwestern Consulting, April 1998, As-Built 12-1-98
- r. City of Ann Arbor, Michigan, Water Utilities Department, Wastewater Treatment Plant, Disinfection Facilities Upgrade, Greeley and Hansen, October 1999 Drawings identified in Paragraph SC-38.02.C.2 are available for review at the City of Ann Arbor Wastewater Treatment Plant, 49 South Dixboro Road, Ann Arbor, Michigan, 48105, upon 48 hours' notice to the Ann Arbor Wastewater Treatment Plant, (734) 971-4834.

38.03 *Differing Subsurface or Physical Conditions*

- A. *Notice:* If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:
 - 1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph SC-38.02 is materially inaccurate; or
 - 2. is of such a nature as to require a change in the Contract Documents; or
 - 3. differs materially from that shown or indicated in the Contract Documents; or
 - 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Section 10), notify City and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

- B. *Engineer's Review:* After receipt of written notice as required by Paragraph SC-38.03.A, Engineer will promptly review the pertinent condition, determine the necessity of City's obtaining additional exploration or tests with respect thereto, and advise City in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph SC-38.03.A; and
 - b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Section 35.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to City with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If City and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, City and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

38.04 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to City or Engineer by the owners of such Underground Facilities, including City, or by others. Unless it is otherwise expressly provided otherwise:
 1. City and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data,
 - b. locating all Underground Facilities shown or indicated in the Contract Documents,
 - c. coordination of the Work with the owners of such Underground Facilities, including City, during construction, and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Section 10), identify the owner of such Underground Facility and give written notice to that owner and to City and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a contract modification such as a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If City and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, City or Contractor may make a Claim therefor as provided in Section 14 and Section 15.

38.05 *Reference Points*

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

38.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.
 1. In the preparation of the Drawings and Specifications, Engineer has relied upon:
 - a. The following report of a Hazardous Environmental Condition at the Site.
 - 1) Pre-demolition Survey, Field Investigation Report, dated June 2005, prepared by Malcolm Pirnie, Inc.
 - 2) The technical data contained in such report upon which Contractor may rely are: the testing methods, the locations and logs of the sampling and testing, the laboratory test methods and results, and similar factual data. Sampling and testing information represents characteristics to the extent indicated, only for the point location of the sample. Contractor shall make its own interpretations of the sampling and testing data to be encountered between sampling points.
 - 3) A copy of the above report is available for review at the City of Ann Arbor Wastewater Treatment Plant, 49 South Dixboro Road, Ann Arbor, Michigan, 48105, upon 48 hours' notice to the Ann Arbor Wastewater Treatment Plant, (734) 971-4834.
 - 4) Samples taken for the above report are not available. Contractor may visit the Site to obtain samples for testing by Contractor that would be done at Contractor's expense.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against City or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify City and Engineer (and promptly thereafter confirm such notice in writing). City shall promptly consult with Engineer concerning the necessity for City to retain a qualified expert to evaluate such condition or take corrective action, if any.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after City has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If City and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then City may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If City and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. City may have such deleted portion of the Work performed by City's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless City and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. The provisions of Paragraphs SC-38.02, SC-38.03, and SC-38.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

38.07 *Definitions*

A. The following definitions apply to Paragraph SC-38.

1. *Hazardous Environmental Condition* - The presence at the Site of asbestos, lead-based paint, PCBs, petroleum, hazardous waste, or radioactive material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
2. *Underground Facilities* - All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

