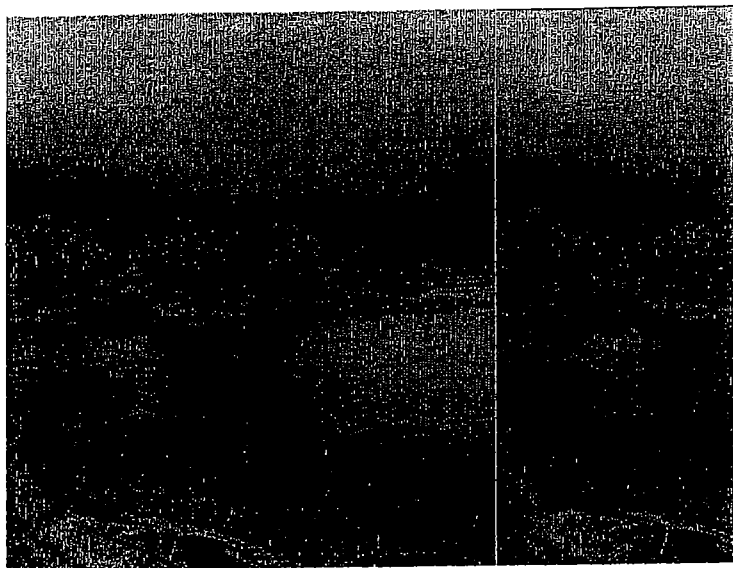




O&M SERVICES  
LITTLE NECK, IPSWICH, MA

CONTRACT DOCUMENTS

March 24, 2006



Prepared by:

Environmental Engineer/Commissioner	Exhibit
<b>LOMBARDO ASSOCIATES, INC.</b>	<b>LOMBARDO ASSOCIATES, INC.</b>
49 Edge Hill Road	49 Edge Hill Road
Newton, Massachusetts 02467	Newton, Massachusetts 02467

**EXHIBIT**

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## Table of Contents

SECTION 00520 – AGREEMENT .....	00520-1
SECTION 00700 – GENERAL CONDITIONS .....	00700-1
SECTION 00800 – SUPPLEMENTARY CONDITIONS .....	00800-1
SECTION 01020 – MEASUREMENT AND PAYMENT .....	01020-1
SECTION 01100 – SCOPE OF SERVICES .....	01100-1

## SECTION 00520 – AGREEMENT

STATE OF: Massachusetts

COUNTY OF: Essex

THIS AGREEMENT AND FORMAL CONTRACT, made and entered into this 24<sup>th</sup> day of March 2006, by and between LNWS, LLC, party of the first part, hereinafter called the "OWNER", and, **Waterline Services, LLC.**, located at 145 Batchelder Road, in the Town of Seabrook, State of New Hampshire, hereinafter called the "CONTRACTOR" party of the second part, WITNESSETH, that whereas the OWNER intends to have a **Emergency Operations & Maintenance Services associated with the Little Neck, Ipswich Wastewater System**, hereinafter called the Work, in accordance with the Measurement and Payment, Scope of Work and other Contract Documents prepared by Lombardo Associates, Inc., dated March 14, 2006.

NOW, THEREFORE, the OWNER and CONTRACTOR for the considerations hereinafter set forth, agree as follows:

1. Under this Contract the CONTRACTOR shall be accessible twenty-four (24) hours per day, seven (7) days per week to provide the necessary manpower and equipment to respond to an alarm as required by the OWNER and as outlined in Attachment A.
2. Contract Time: This agreement is subject to cancellation in whole or in part by either party within the first sixty (60) calendar days of the date of this agreement. Thereafter this agreement in its entirety is automatically renewable in one (1) year increments unless proper notification of cancellation, either in whole or in part, within sixty (60) calendar days of said termination date.
3. Insurance: The CONTRACTOR shall purchase and maintain such insurance as will protect the OWNER from claims which may arise from operations under this Contract, including operations performed for the name insured by independent contractors and general inspection thereof by the named insured.
4. Miscellaneous:
  - a. Terms used in this Formal Contract which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
  - b. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law); and unless specifically stated to the contrary in any written consent to an

assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

- c. OWNER and CONTRACTOR each binds himself, his partners, successors, assigns, and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- d. No mechanic, contractor, sub-contractor, material supplier or other person can or will contract for or in any manner have or acquire any lien upon the Work covered by this Agreement, or the land upon which the same is situated.
- e. The Engineer is: Lombardo Associates, Inc. Located at 49 Edge Hill Road, Newton, MA 02467. Attn: Pio Lombardo, P.E.

SIGNATURES:

OWNER: LNWS, LLC

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

CONTRACTOR: Waterline Services LLC.

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

Address for giving notices:

Owner:

LNWS, LLC  
P.O. Box 166  
Ipswich, MA 01938

Contractor:

Waterline Services LLC  
145 Batchelder Road  
Seabrook, NH 03874  
603-474-8282  
fax:603-474-8578

## CONDITIONS OF THE CONTRACT

### SECTION 00700 – GENERAL CONDITIONS

Article 1	Definitions
Article 2	Preliminary Matters
Article 3	Contract Documents: Intent and Reuse
Article 4	Physical Conditions
Article 5	Bonds and Insurance Requirements
Article 6	Scope of Work
Article 7	Execution of the Work
Article 8	Legal Relations and Responsibility to the public
Article 9	Prosecution and Progress
Article 10	Measurement and Payment
Article 11	Work by Others
Article 12	Miscellaneous

## ARTICLE 1 – DEFINITIONS

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

- 1.1. **AGREEMENT:** The written agreement between Owner and Contractor covering the Work to be performed; other sections of these Contract Documents are attached to the Agreement and made a part thereof as provided therein.
- 1.2. **APPLICATION FOR PAYMENT:** The form accepted by the Engineer and Owner which is to be used by the Contractor in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents, Owner or Engineer.
- 1.3. **CONTRACT OR CONTRACT DOCUMENTS:** The written agreement executed between the Owner and the Contractor, covering the performance of the Work and the furnishing of labor and materials, by which the Contractor is bound to perform the Work and furnish the labor and materials, and by which the Owner is obligated to compensate him therefore at the mutually established and accepted Contract Amount. The Contract Documents shall include the Agreement, Contractor's Bid Proposal, Certificates of Insurance, these General Conditions, Supplementary Conditions, Technical Specifications, Drawings, and other items specifically identified in the Agreement together with all Modifications issued after the execution of the Agreement.
- 1.4. **CONTRACT AMOUNT:** The moneys payable by Owner to Contractor under the Contract Documents as stated in the Agreement.
- 1.5. **CONTRACT TIME:** The number of days for the completion of the Work as stated in the Agreement commencing with the date of the Agreement.
- 1.6. **CONTRACTOR:** The individual, partnership, firm, or corporation with whom Owner has entered into the Agreement, acting directly or through lawful agents or employees, primarily liable for the acceptable performance of the Work for which contracted, and also for the payment of all legal debts pertaining to the Work.
- 1.7. **DAY:** A calendar day of twenty-four hours measured from midnight to the next midnight.
- 1.8. **DEFECTIVE:** An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to final payment.
- 1.9. **DRAWINGS:** The Contract Drawings or exact reproduction thereof, which graphically show the character and scope of the Work to be performed and which have been prepared or approved in concept by the Engineer and are referred to in and a part of the Contract Documents.
- 1.10. **EFFECTIVE DATE OF THE AGREEMENT:** The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.



- 1.11. ENGINEER: The person, firm, or corporation named as such in the Contract Documents.
- 1.12. EQUIPMENT: All machinery, together with the necessary parts supplied for upkeep and maintenance, and also all tools and apparatus necessary for the proper construction and acceptable completion of the Work.
- 1.13. FIELD ORDER: A written order to the Contractor issued by the Engineer effecting a change in the Work not involving an adjustment in the Contract Amount or an adjustment in the Contract Time.
- 1.14. INTENTION OF TERMS: Whenever, in these Specifications or upon the Drawings, the words "directed", "required", "permitted", "ordered", "designated", "prescribed", or words of like import, are used, it shall be understood that the direction, requirement, permission, order, designation, or prescription of the Engineer is intended; and similarly, the words "approved", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Engineer, subject in each case to the final determination of the Owner. Any reference to a paragraph or subparagraph within a section shall include the general provision of the section or sections and paragraph pertinent thereto.
- 1.15. MODIFICATION: (a) A written amendment of the Contract Documents signed by both parties, (b) a Change Order, or (c) a Supplemental Agreement. A modification may only be issued after the effective date of the Agreement.
- 1.16. OWNER: The public body or authority, legal entity, corporation, association, firm or individual with whom the Contractor has entered into the Agreement and for whom the Work is to be provided.
- 1.17. PROJECT REPRESENTATIVE: An authorized representative of the Owner who is assigned to the Work or any part thereof.
- 1.18. SUBCONTRACTOR: An individual, firm or corporation having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
- 1.19. SUPPLEMENTAL AGREEMENT: A written proposal and agreement executed by the Contractor and by the Owner, covering Work not included in the Contract Documents or as specified in paragraph 6.2, which is necessary or desirable to the proper completion of the Work.
- 1.20. SUPPLEMENTARY CONDITIONS: The part of the Contract Documents which amends or supplements the General Conditions and Technical Specifications.
- 1.21. WORK: The term "Work" shall be understood to mean the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the Work and the carrying out of all the duties and obligations imposed by the Contract Documents and the entire completed execution or the various separately identifiable parts thereof required to be furnished under the Contract Documents.

(END ARTICLE 1)

## ARTICLE 2 – PRELIMINARY MATTERS

### Copies of Contract Documents

- 2.1. Owner shall furnish to Contractor up to five copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

### COMMENCEMENT OF CONTRACT TIME

#### Starting the Work

- 2.2. Contractor shall start to perform the Work as directed in the Scope of Work when the Agreement is fully executed.

#### Before Starting Work

- 2.3. Before undertaking the Work, Contractor shall carefully study and compare the Contract Documents and check the site in the field to identify any potential conflicts or problems with the Work site and procedures as outlined in the Contract Documents. Contractor shall promptly report in writing to Engineer any conflict, error or discrepancy that Contractor may discover.

#### Kickoff Meeting

- 2.4. Within five days after the date of the Agreement, but before Contractor starts the Work at the site, a meeting shall be held for review of the Operations Plan referred to in Paragraph 2.3 above, to review the details of the O&M requirements and to establish such working understandings among the parties as to the Work as are not inconsistent with the Contract Documents.

(END OF ARTICLE 2)

### ARTICLE 3 – CONTRACT DOCUMENTS

#### INTENT AND REUSE

##### Intent

- 3.1. It is the intent of this Agreement to describe a complete project which may be utilized for its intended purpose(s) as more fully described in the Contract Documents. The Contract Documents comprise the entire agreement between Owner and Contractor concerning the Work. They may be altered only by a written modification.
- 3.2. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If, during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, he shall report it to Engineer in writing at once and before proceeding with the Work affected thereby; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof or should reasonably have known thereof.
- 3.3. It is the intent of the Contract Documents to describe the complete Work (or part thereof) to be executed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Scope of Work as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words that have a well-known technical or trade meaning are used to describe the Work, materials or equipment, such words shall be interpreted in accordance with such meaning.

Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code in effect on the effective date of the Agreement, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of Owner, Contractor or Engineer, or any of their agents or employees from those set forth in the Contract Documents. Clarifications and interpretations of the Contract Documents shall be issued by Engineer.

- 3.4. The Contract Documents will be governed by the laws of the State of Massachusetts.

(END ARTICLE 3)

## ARTICLE 4 – PHYSICAL CONDITIONS

### Unforeseen Physical Conditions

- 4.1. Contractor shall promptly notify Owner and Engineer in writing of any physical conditions at the site or in any existing structure that will materially affect the Contractor's ability to perform the work for the agreed upon price. Engineer will promptly review those conditions and advise Owner in writing if corrective measures are necessary. If the Engineer and Owner find that there are physical conditions which differ materially from those identified in the Contract Documents, and which could not reasonably have been anticipated by Contractor after personal investigation and testing, a Change Order shall be issued incorporating the necessary revisions. No such change shall be approved unless asserted prior to Final Payment.

(END ARTICLE 4)

## ARTICLE 5 - BONDS AND INSURANCE REQUIREMENTS

### General

- 5.1. The Contractor shall not commence work under this Agreement until he has obtained all insurance required by these Contract Documents, and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence Work until all similar insurance required of the subcontractor has been obtained. The Contractor shall add the Owner and the Engineer together with their officers, agents and employees, to all relevant insurance policies as an additional named insured.

### Workmen's Compensation Insurance

- 5.2. The Contractor shall obtain and maintain during the life of this Agreement adequate Workmen's Compensation Insurance as prescribed by the Workmen's Compensation Act, as amended, of the State of Massachusetts. This insurance shall cover all of his employees employed for the work. If any of the Work is sublet, the Contractor shall require each of his subcontractors to provide similar coverage for all of the latter's employees to be engaged in such Work.

### Public Liability and Property Damage Insurance

- 5.3. The Contractor shall be required to carry Comprehensive General Liability/Auto Liability insurance to protect himself, his subcontractors, the Owner, and the Engineer, including any officer or agent of said Owner and Engineer, from claims for public liability or property damage which may arise from the operations under this Agreement, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. The minimum limits of insurance are indicated in the Supplementary Conditions. Any subcontractor will be required to carry Comprehensive General Liability and Automobile Liability insurance in an amount equal to that required by the Contractor. The Comprehensive General Liability insurance will include as Additional Named Insureds: the Owner, the Engineer and each of their consultants, agents and employees. The Contractor shall furnish a policy endorsement in addition to Certificate of Insurance.

Contractor and his Insurance Provider agree that it will indemnify and hold harmless the Owner, the Engineer and all of their consultants, agents and employees from any loss, cost, damage, expense and liability including attorney's fees, by reason of property damage, personal injury, or death, such damage and injury of whatsoever nature or kind arising out of or as a result of the performance of the Work under this Agreement, or any negligent act or negligent failing to act, or on account of the use of improper or defective materials, or on account of any poor workmanship or on account of any act of omission or commission in connection with the performance of the Work by Contractor, its employees, agents and subcontractors.

Contractor agrees that the Comprehensive General Liability and Property Damage Insurance (including Automobile Liability and Property Damage Insurance), which the Contractor is required to maintain pursuant to the Contract Documents shall not act as a limitation on Contractor's obligation to indemnify the Owner, the Engineer and all of their consultants, agents and employees. The Comprehensive General Liability insurance shall include broad form property damage coverage, broad form contractual liability coverage and completed operations insurance.

#### Proof of Insurance

- 5.4. Prior to the commencement of any work under this Agreement, the Contractor shall furnish to the Owner certificates of insurance to prove that all required insurance is in force, and shall require any subcontractor to submit similar evidence before undertaking work under this Agreement. Each insurance policy shall contain a clause providing that it shall not be canceled or materially altered without thirty (30) days' written notice to the Owner and Engineer. Insurance obtained by the Contractor shall be subject to approval by the Owner for adequacy of protection. Neither approval by the Owner of any insurance supplied by a Contractor or subcontractor, nor failure to disapprove such insurance shall relieve the Contractor or subcontractors of their obligation to maintain in full force during the life of the Agreement all required insurance as set forth in this Article and in the Supplementary Conditions.

#### Receipt and Application of Proceeds of Insurance

- 5.5. Any insured loss associated with services provided in this Agreement which is under the policies of insurance required by this Article or the Supplementary Conditions shall be adjusted with Owner and made payable to Owner as trustee for the insureds, as their interests may appear, subject to the requirements of paragraph 5.6. Owner shall deposit in a separate account any money so received, and he shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the Cost thereof covered by an appropriate Change Order.

#### Adjustment and Settlement of Insurance Claims

- 5.6. Owner as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as trustee shall only make settlement with the insurers in accordance with such agreement as the parties in interest may reach.

#### Term of Insurance Required

- 5.7. All insurance policies required pursuant to these Contract Documents shall remain in effect throughout the life of the agreement and any subsequent extensions of the agreement.

(END ARTICLE 5)

## ARTICLE 6 – SCOPE OF WORK

### Intent of Scope of Work

- 6.1. The intent of the Scope of Work is to prescribe a complete work which the Contractor undertakes to do in full compliance with the Contract Documents, together with any authorized Modifications. The Contractor shall perform all items of work covered and stipulated in the Contract Documents. The Contractor shall furnish, unless otherwise provided in the Contract Documents, all materials, equipment, implements, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light and all other facilities and incidentals necessary for the completion of the Work.

(END ARTICLE 6)

## ARTICLE 7 -EXECUTION OF THE WORK

### Authority of Engineer

- 7.1. The Engineer shall decide any and all questions which may arise as to the quality and acceptability of the materials furnished, the quality of the Work performed, the general manner of performance. He shall decide all questions which may arise as to the interpretation of the General Conditions, Supplemental Conditions and Scope of Work, all questions as to acceptable fulfillment of the Agreement, all disputes and mutual rights by the Contractors, if there is more than one Contractor on the Work, and, with the approval of the Owner, all questions as to compensation. The decision of the Engineer shall be final and he shall have executive authority to make effective such decisions and to request the Contractor to carry out all orders promptly.

### Cooperation of Contractor

- 7.2. The Contractor shall give to the Work the constant attention necessary to facilitate the progress thereof, and he shall cooperate with the Engineer and with other contractors in every way possible. The Contractor shall have a competent Superintendent on the Work at all times who is fully authorized as his agent on the Work; such superintendent shall be capable of reading and thoroughly understanding the Scope of Work and shall receive and fulfill instructions, suggestions and communications from the Engineer, or his authorized representative. The Superintendent shall have full authority to execute the Work specified in the Contract Documents without delay and to promptly supply materials, tools, plant equipment and labor as may be required to perform such Work. Such Superintendent shall be furnished irrespective of the amount of Work sublet. Said Superintendent shall have authority to act on behalf of Contractor. All communications given to the Superintendent shall be as binding as if given to Contractor.
- 7.3. The Engineer shall be authorized to inspect Work done and material furnished. Such observation may extend to any part of the Work and to preparation, fabrication, or manufacture of the materials to be used. The Engineer is authorized to call the attention of the Contractor to any failure of the Work or materials to conform to the Contract Documents. He shall have the authority to reject materials or suspend the Work not conforming to Contract Documents until any questions at issue can be referred to and decided between the Engineer and the Owner. If the Contractor refuses to suspend operations on verbal order, the Engineer shall issue a written order giving the reason for suspension of the Work. Work done following an order to suspend Work will not be accepted nor paid for. The Engineer shall in no case act as foreman or perform other duties for the Contractor, nor interfere with the management of the Work by the latter. Any advice which the Engineer may give the Contractor shall in no way be construed as releasing the Contractor from fulfilling all of the terms of the Contract Documents.

### Unaccepted Work

- 7.4. The full cost associated with any Work that has been rejected or not performed in a timely manner shall be borne by the Contractor. The Owner will make no payments for any work that is not in accordance with the Scope of Work and all the terms and conditions set forth in the Agreement. Upon the failure of the Contractor to correct rejected Work immediately after receiving formal notice from the Engineer, the Owner may recover for such rejected Work moneys due the Contractor or by action in a court having proper jurisdiction over such matters, or may employ labor and equipment and satisfactorily repair or remove and



replace such Work and charge the cost of the same to the Contractor, which cost will be deducted from any money due him. In exercising his rights under this paragraph, Owner shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, Owner may exclude Contractor from all or part of the Work and suspend Contractor's services related thereto. All direct and indirect costs of Owner in exercising such rights shall be charged against Contractor in an amount verified by Engineer and agreed to by Owner, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Contract Amount. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of Work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights hereunder.

#### Disputed Claims for Extra Work

- 7.5. In case the Contractor deems extra compensation is due him for Work not clearly covered in the Contract Documents, or not ordered by the Engineer, he must submit in writing of his intention to make claim for such extra compensation before he begins the Work on which he bases the claim and shall afford the Engineer every facility for keeping strict account of the actual cost of the Work. Failure on the part of the Contractor to give such notification or to afford the Engineer proper facilities for keeping strict account of actual cost shall constitute a waiver of the claim for such extra compensation. The filing of such notice by the Contractor and keeping of costs by the Engineer shall not in any way be construed to prove the validity of the claim. When the Work has been completed, the Contractor shall within fifteen (15) days file his claim for extra compensation with the Engineer, who will present it to the Owner for consideration with his recommendations. Further written supporting data will be submitted to the Engineer within forty-five days of completion of the aforementioned Work unless Engineer allows an additional period of time to ascertain more accurate data. Owner and Engineer shall render a decision to Contractor within a reasonable period of time.

#### Visits to Site

- 7.6. Engineer will make visits to the site during times that the Work is being performed to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

On the basis of such visits and on-site observations as an experienced and qualified professional, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defects and deficiencies in the Work.

#### Rejecting Defective Work

- 7.7. Engineer will have authority to reject Work that is defective, and will also have authority to require special inspection of the work, whether or not the Work is completed.

(END ARTICLE 7)

## ARTICLE 8 – LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

### Laws to be Observed

- 8.1 The Contractor is assumed to be familiar with all federal, state and local laws, codes, ordinances, and regulations which, in any manner, affect those engaged or employed in the Work or the material or equipment used in or upon the site of the Work, or in any way affect the conduct of the Work. No pleas of misunderstanding or ignorance on the part of the Contractor will, in any way, serve to modify the provisions of the Agreement. However, if Contractor observes that the Scope of Work is at variance with any relevant federal, state and local laws, codes, ordinances, and regulations, Contractor shall give Engineer prompt written notice thereof and any necessary changes shall be adjusted by an appropriate written Modification. The Contractor, at all times, shall observe and comply with all federal, state and local laws, codes, ordinances, and regulations in any manner affecting the conduct of the Work, and the Contractor and his Surety shall indemnify and save harmless the Owner, the Engineer and their consultants, agents and employees, against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by himself or his employees.

### Patented Devices, Materials and Processes

- 8.2 If the Contractor is required or desires to use any design, device, invention, product, material, or process covered by letters of patent or copyright, he shall provide for such use by suitable legal agreement with the patentee or patent owner and shall pay all license fees and royalties and assume all costs incident to said use in performance of the Work or incorporation of the Work. The Contractor and the surety shall indemnify and save harmless the Owner and Engineer from any and all claims for infringement by reason of the use of any such patented design, device, invention, product, material, or process or any trademark or copyright in connection with the Work agreed to be performed under this Agreement, and shall indemnify the Owner and Engineer for any costs, expense, and damages, including attorney's fees, which it may be obliged to pay for reason of any such infringement at any time during the prosecution, or after the completion of the Work.

### Safety and Protection

- 8.3 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- 8.3.1 All employees on the Work and other persons who may be affected thereby,
- 8.3.2 All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site of the Work, and;
- 8.3.3 Other property at the site of the Work or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of performing the Work.

Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall maintain all necessary

safeguards for such safety and protection. All damage, injury or loss to any property referred to in paragraph 8.5.2 or 8.5.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of the Scope of Work or to the acts or omissions of Owner or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor). Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and final payment has been made.

8.3.4 The Contractor shall be required to assume sole and complete responsibility for conditions at the site of the Work during the course of performing the Work, including the safety of all persons who may enter on to the site of the Work for any reason and the security of all property located on the site of the Work. The Contractor shall also be responsible for compliance with all applicable Federal, State and local regulations concerning the safety and security of the site of the Work. This requirement shall apply at all times during the course of the Agreement and not only to the normal working hours described in the Scope of Work.

8.4 Contractor shall designate a responsible member of his organization at the site of the Work whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by Contractor to Owner.

#### Emergencies

8.5 In emergencies affecting the safety or protection of persons or the Work or property at the site of the Work or adjacent thereto, Contractor, without special instruction or authorization from Engineer or Owner, is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Engineer prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby.

#### Protection and Restoration of Property

8.6 The Contractor shall be responsible for the preservation of all public and private property, trees, fences, monuments, underground structures, etc., on and adjacent to the site of the Work and shall use every precaution necessary to prevent damage or injury thereto. He shall protect carefully, from disturbance or damage, all land monuments and property marks. He shall be responsible for all damage or injury to property of any character resulting from any act, omission, neglect or misconduct in his or any subcontractor's manner, or method of executing said Work, or due to his or any subcontractor's non-execution of said Work, or at any time due to defective Work or materials, and said responsibility shall not be released until the Work has been completed and accepted. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the Work, or in consequence of the non-execution thereof on the part of the Contractor or subcontractor, Contractor shall restore, at his own expense, such property to a condition similar or equal to that existing before such damage or injury was done by repairing, rebuilding, or otherwise restoring, as may be directed, or he shall make good such damage or injury in an acceptable manner. In case of the failure on the part of the

Contractor to restore such property or to have started action to make good such damage or injury, the Engineer may, upon forty-eight (48) hours' notice, proceed to direct the repair, rebuilding of or otherwise restore such property as may be deemed necessary and the cost thereof will be deducted from any moneys due or which may become due the Contractor under the Contract Documents. The cost of damages due to Contractor's operation or cost of protecting utilities where required under the Contract Documents shall be included in the original Contract Amount for the Work.

#### Responsibility for Damage Claims

- 8.7 To the fullest extent permitted by law, the Contractor shall indemnify and save harmless the Owner and Engineer and all of their officers, agents and employees from all suits, actions, or claims of any character brought on account of any injuries or damages sustained by any person or property in consequence of any neglect in safeguarding the Work, or through the use of unacceptable materials in the execution of the Work, or on account of any act or omission by the said Contractor, Subcontractor, their agents and employees, or on account of any claims or amounts recovered for any infringement of patent, trademark, or copyright, or from any claims or amounts arising or recovered under the state's Compensation laws, or any other law, by-law, ordinance, order or decree, and so much of the money due the said Contractor by virtue of the Contract Documents, as shall be considered necessary by the Owner, may be retained or, in case no money is due, his Surety shall be held until such suit or suits, action or actions, claim or claims, for injuries or damages as aforesaid, shall have been settled and satisfactory evidence to that effect furnished to the Owner.

#### Contractor's Responsibility for the Work

- 8.8 Until the final acceptance of the Work by the Engineer as evidenced in writing, the Contractor shall have the charge and care thereof and shall take every necessary precaution against injury or damage to any part thereof by the action of the elements or from any other cause, and the Contractor at his own expense shall rebuild, repair, restore, and make good all injuries or damages to any portion of the Work occasioned by any causes before its completion and acceptance.

#### No Waiver of Legal Rights

- 8.9 Inspection by the Engineer or by any of his duly authorized representatives; any order, measurement or certificate by the Engineer; any order by the Owner for the payment of money, any payment for or acceptance of any Work or any extension of time; or any possession taken by the Owner shall not operate as a waiver of and provision of the Contract Documents, or any power therein provided, or any waiver of any other or subsequent breach. The Owner reserves the right to correct any error that may be discovered in any estimate that may have been paid, and to adjust the same to meet the requirements of the Contract Documents. The Owner reserves the right to claim and recover, by process of law, sums as may be sufficient to correct any error or make good any deficit in the Work resulting from such error, dishonesty, or collusion upon conclusive proof of collusion or dishonesty between the Contractor or his agents and any person including the Engineer or his assistants discovered in the Work after the final payment has been made.

#### Limitation of Responsibility

- 8.10 Owner or Engineer will not be responsible for Contractor's means, methods, techniques, sequences or procedures in performing the Work, or the safety precautions and programs incident thereto, and Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- 8.11 Owner or Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractors, or of the agents or employees of any Contractor or Subcontractor, or of any other persons at the site of the Work or otherwise performing any of the Work.
- 8.12 Neither Owner's or Engineer's authority to act under the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of Engineer to Contractor, any Subcontractor, any manufacturer, fabricator, supplier or distributor, or any of their agents or employees or any other person performing any of the Work.

#### Rights-of-Way

- 8.13 The Owner will furnish all lands and rights-of-way required for completion of the Work.

#### Use of Premises

- 8.14 Contractor shall confine equipment and the operations of workmen to areas permitted by law, ordinances, permits or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with work-related equipment or other materials or equipment.

(END ARTICLE 8)

## ARTICLE 9 – PROSECUTION AND PROGRESS

### Concerning Subcontractors

9.1. Contractor shall only employ subcontractors in accordance with the provisions set forth below:

9.2.1 Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Owner or Engineer may have reasonable objection. A Subcontractor or other person or organization identified in writing to Owner and Engineer by Contractor prior to the Agreement Date and not objected to in writing by Owner or Engineer prior to the Agreement Date will be deemed acceptable to Owner and Engineer. Acceptance of any Subcontractor, other person or organization by Owner or Engineer shall not constitute a waiver of any right of Owner or Engineer to reject defective Work. If Owner or Engineer after due investigation has reasonable objection to any Subcontractor, other person or organization proposed by Contractor after the Agreement Date, Contractor shall submit an acceptable substitute and the Contract Amount shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate Change Order shall be issued. Contractor shall not be required to employ any Subcontractor, other person or organization against whom Contractor has reasonable objection.

9.2.2 Contractor shall be fully responsible for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between Owner or Engineer and any Subcontractor or other person or organization having a direct contract with Contractor, nor shall it create any obligation on the part of Owner or Engineer to pay or to see to the payment of any monies due any Subcontractor or other person or organization, except as may otherwise be required by law. Owner or Engineer may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done.

9.2.3 The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade unless specifically required in said divisions and sections.

9.2.4 All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Contractor shall pay each Subcontractor a just share of any insurance monies received by Contractor on account of losses under policies issued pursuant to Article 5.

## Character of Personnel and Equipment

- 9.2. The Contractor shall employ personnel, as are careful and competent, and the Engineer may request the dismissal of any person or persons employed by the Contractor in, about, or upon the Work who shall misconduct himself or be incompetent or negligent in the proper performance of his or their duties, or neglects or refuses to comply with the Contract Documents given and such person or persons shall not be employed again thereon without the written consent of the Engineer. Should the Contractor continue to employ, or again employ, such person or persons, the Owner may withhold all pay estimates which are or may become due, or the Owner through the Engineer may suspend the Work until such orders are complied with. No preference or discrimination among citizens of the United States shall be made, except as may be required by special labor provisions. The Contractor shall furnish such equipment as is considered necessary for the prosecution of the Work in an acceptable manner and at a satisfactory rate of progress. All equipment, tools, and machinery used for handling materials and executing any part of the Work shall be subject to the approval of the Engineer and shall be maintained in a satisfactory working condition. Equipment used on any portion of the Work shall be such that no damage to the buildings, roadways, adjacent property, or other objects will result from its use. The Agreement may be terminated if the Contractor fails to provide adequate equipment for the Work.

## Temporary Suspension of Work

- 9.3. The Engineer, in consultation with Owner when time permits, shall have the authority to suspend the Work wholly or in part because of unfavorable weather, or other essential conditions, or because of the failure on the part of the Contractor to properly prosecute the Work in accordance with the Contract Documents, to carry out orders or to remove defective material incorporated into the Work. The Contractor shall not suspend the Work without written authorization and prior to resuming Work shall give the Engineer adequate notice to afford opportunity to re-establish observation of Work being performed.

## Failure to Complete Work on Time

- 9.4. In case the Contractor shall fail to fully perform and complete the Work in conformity to the provisions and conditions of the Agreement within the specified time frame outlined in the Scope of Work for such performance and completion or within such further time as, in accordance with the provisions of the Contract Documents, shall be fixed or allowed for such performance and completion, the Contractor shall and will pay to the Owner for each and every day of the additional time in excess of the time set forth in the Scope of Work and any granted extension thereof, the sum set forth in Section 00520 of the Agreement as liquidated damages and not as a penalty. The parties agree that Owner will suffer loss and damage; however, due to the uncertainty and difficulty of measuring actual damages for every day the Work remains uncompleted and unfinished, the parties agree that said sum is a reasonable forecast of compensatory damages. The Owner shall recover said damages by deducting the amount thereof out of any moneys which may be due or become due the Contractor, or by an action at law against the Contractor or his Surety, or by either or both of these methods.

## Adjustment for Suspended Work

- 9.5. In the event the Contractor is ordered by the Engineer, in writing, to suspend Work for some unforeseen cause not provided for in the Contract Documents, and over which the

Contractor has no control, the Contractor may be reimbursed for actual money expended on the Work during the period of shutdown. No allowance will be made for anticipated profits. The period of shutdown shall be computed from the date set out in the written order for Work to cease until the date of the order for Work to resume. Claims for such compensation shall be filed with the Engineer within ten (10) days after date of the order to resume Work or such claims will not be considered. The Contractor shall submit with his claims, substantiating papers covering the entire amount shown on the claim. After receiving relevant information from the Engineer, the Owner shall take the claim under consideration, and may make such investigations as are deemed necessary, and shall be the sole judge as to the equitability of such claim and such decision shall be final. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather for suspensions made at the request of the Contractor, or for any other delay provided for in the Contract Documents.

#### Termination of Contract

- 9.6. The Agreement, of which these Contract Documents form a part, may be terminated by the Owner for the following reasons: (a) Failure of the Contractor to start the Work in accordance with the Scope of Work; (b) Deliberate failure on the part of the Contractor to observe any requirement of the Contract Documents; (c) Failure of the Contractor to promptly make good any defects in materials or Work or any defects of any other nature, the correction of which has been directed in writing by the Engineer; (d) Substantial evidence of collusion for the purpose of illegally procuring an Agreement or perpetrating fraud on the Owner in the performance of Work under the Agreement; (e) If the Contractor is adjudged bankrupt or becomes insolvent; (f) If the Contractor shall allow any final judgment to stand against him unsatisfied for a period of ten (10) days; (g) If the Contractor makes an assignment for the benefit of creditors; (h) If a trustee or receiver is appointed for Contractor or for any of Contractor's property; (i) If Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws; (j) If Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment; (k) If Contractor repeatedly fails to make prompt payments to Subcontractors for labor, materials or equipment; (l) If Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction; (m) If Contractor disregards the authority of Engineer; (n) if a dispute arises concerning measurement and payment for services that cannot be resolved to the satisfaction of the Owner or (o) If Contractor otherwise violates in any substantial way any provisions of the Contract Documents. Before the Agreement is terminated, the Contractor and his Surety will first be notified in writing by the Engineer of the conditions which make termination of the Agreement imminent. Seven (7) days after this notice is given, if a satisfactory effort has not been made by the Contractor or his Surety to correct the conditions, the Owner may declare the Agreement terminated and notify the Contractor and his Surety accordingly. Upon receipt of notice from the Owner that the Agreement has been terminated, the Contractor shall immediately discontinue all operations. The Owner may then proceed with the Work in any lawful manner that he may elect until it is finally completed. Owner may exclude Contractor from the site of the Work. If the unpaid balance of the Contract Amount exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, such excess shall be paid to Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to Owner. Such costs incurred by Owner shall be verified by Engineer and incorporated in a Change Order, but in finishing the Work, Owner shall not be required to obtain the lowest figure for the Work performed.



- 9.7. Where Contractor's services have been so terminated by Owner, the termination shall not affect any rights of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- 9.8. Upon seven (7) days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Agreement. In such case, Contractor will use his best efforts to minimize additional cost being incurred under the Agreement. Contractor shall be paid for all Work executed prior to the termination date, all materials or equipment ordered prior to the date of the notice of termination which cannot be canceled or, at the option of the Owner, returned, and reasonable termination expenses.

#### Termination of Contractor's Responsibility

- 9.9. This Agreement will be considered complete when the term of the Work has expired and all claims for payment of labor, materials, or services of any kind used in connection with the Work have been settled by the Contractor or his Surety and final payment has been made by Owner. The Contractor will then be released from further obligations. Neither the final payment nor any provision in the Contract Documents shall relieve the Contractor of the responsibility for negligence or inadequate Workmanship undiscovered prior to termination of the agreement.

(END ARTICLE 9)

## ARTICLE 10 – MEASUREMENT AND PAYMENT

### Measurement of Quantities

- 10.1. The determination of quantities of Work acceptably completed under the terms of the Agreement, will be made by the Engineer and based on measurements taken by him or his representative, in accordance with the Measurement and Payment section of the Contract Documents.

### Scope of Payment

- 10.2. The Contractor shall accept the compensation, as herein provided, in full payment for furnishing all materials, equipment, labor, tools, and incidentals necessary to complete the Work and the required insurance policies; also for loss or damage arising from the nature of the Work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the Work until the final acceptance by the Engineer, and for all risks of every description connected with the prosecution of the Work, for all expenses incurred in consequence of the suspension or discontinuance of the Work as herein specified, and for any infringement of patent, trademark, or copyright; and for completing the Work according to the Contract Documents.

### Payment for Increased or Decreased Quantities

- 10.3. When alterations in the Contract Documents or quantities of Work not requiring Supplemental Agreements, as hereinbefore provided for, are ordered and performed, the Contractor shall accept payment in full at the Contract Amount for the actual quantities of Work done. No allowance will be made for anticipated profits. Increased or decreased Work involving Supplemental Agreements will be paid for as stipulated in such agreements.

### Extra Work

- 10.4. Extra Work, for which no price is provided in the Bid Proposal, shall be covered by a Supplemental Agreement or Change Order to be signed by the Owner and Contractor before such Work is commenced. Extra Work will be paid for either at a lump sum, or unit prices agreed upon, or on the basis of the Cost of the Work as set forth in paragraphs 10.5 and 10.6 plus a contractor's fee for overhead and profit as set forth in paragraph 10.7. The Contractor shall make no claim for Work done on Cost of Work basis unless performed on written order and in accordance therewith. Work performed prior to a written order by the Engineer will not be paid for.

### Cost of the Work

- 10.5. The term "Cost of the Work" means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Work, shall include only the following items and shall not include any of the costs itemized in paragraph 10.6.

- 10.5.1 Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall

include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security, contributions, unemployment, excise and payroll taxes, Workers' or Workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and operators at the site. The expenses of performing Work after regular working hours, on Sunday or legal holidays, shall be included in the above to the extent authorized by Owner.

10.5.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

10.5.3 Payments made by Contractor to the Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive Bids from Subcontractors acceptable to Contractor and shall deliver such Bids to Owner who will then determine, with the advice of Engineer, which Bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as Contractor's Cost of the Work. All subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.

10.5.4 Costs of special consultants employed for services specifically related to the Work.

10.5.5 Supplemental costs including the following:

10.5.5.2 The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

10.5.5.3 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workmen, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of Contractor.

10.5.5.4 Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

- 10.5.5.5 Sales, use or similar taxes related to the Work, and for which Contractor is liable.
- 10.5.5.6 Deposits lost for causes other than Contractor's negligence, royalty payments and fees for permits and licenses.
- 10.5.5.7 Losses and damages (and related expenses); not compensated by insurance or otherwise, to the Work or otherwise sustained by Contractor in connection with the execution of the Work, provided they have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's Fee. If, however, any such loss or damage requires reconstruction and Contractor is placed in charge thereof, Contractor shall be paid for service a fee proportionate to that stated in paragraph 10.7.2.
- 10.5.5.8 The cost of utilities, fuel and sanitary facilities at the site.
- 10.5.5.9 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
- 10.5.5.10 Cost of premiums for additional Bonds and Insurance required because of changes in the Work.

10.6. The terms Cost of the Work shall not include any of the following:

- 10.6.1 Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site of the Work or in his principal or a branch office for general administration for the Work and not specifically included in the agreed upon schedule of job classifications referred to in subparagraph 10.5.1, all of which are to be considered administrative costs covered by the Contractor's Fee.
- 10.6.2 Expenses of Contractor's principal and branch offices other than Contractor's office at the site of the Work.
- 10.6.3 Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the work and charges against Contractor for delinquent payments.
- 10.6.4 Cost of premiums for all Bonds and for all Insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same (except for additional Bonds and insurance required because of changes in the Work).

- 10.6.5 Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- 10.6.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.7. Contractor's Fee:
- 10.7. The Contractor's Fee allowed to Contractor for overhead and profit shall be determined as follows:
- 10.7.1 A mutually acceptable fixed fee; or if none can be agreed upon,
- 10.7.2 A fee based on the following percentages of the various portions of the Cost of the Work:
- 10.7.2.1 For costs incurred under paragraphs 10.5.1 and 10.5.2, the Contractor's Fee shall be ten percent.
- 10.7.2.2 For costs incurred under paragraph 10.5.3, the Contractor's Fee shall be five percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be ten percent.
- 10.7.2.3 No fee shall be payable on the basis of costs itemized under paragraphs 10.5.4, 10.5.5 and 10.6.
- 10.8. The amount of credit to be allowed by Contractor to Owner for any such change which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any.

#### Substantiation of Cost of Work

- 10.9. Whenever the cost of any Work is to be determined pursuant to paragraphs 10.5 and 10.6, Contractor will submit in form acceptable to Engineer an itemized cost breakdown together with supporting data.

#### Application for Payment

- 10.10. Contractor shall on a monthly basis submit to Engineer for review and approval an Application for Payment filled out and signed by Contractor covering the Work completed through the prior month interval and accompanied by such supporting documentation as is required by the Contract Documents and also as the Engineer may reasonably require. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

#### Review of Applications for Payment

- 10.11. Engineer will, within five (5) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Pay Request to Owner,

or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application. Owner shall, within thirty (30) days subsequent to presentation to him of the Application for Payment with Engineer's recommendation, pay Contractor the amount recommended.

10.12.1 Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, that Contractor is entitled to payment of the amount recommended.

10.12. Engineer may refuse to recommend the whole or any part of any payment if, in his opinion, it would be incorrect to make such representations to Owner. He may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or evaluations, nullify any such payment previously recommended to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

10.12.1 Written claims have been made against Owner or Liens have been filed in connection with the Work.

10.12.2 The Contract Amount has been reduced because of Modifications.

10.12.3 Contractor's failure to make payment to Subcontractors, or for labor, materials or equipment.

#### Change of Contract Amount

10.13. The Contract Amount may only be changed by written Modification. When Contractor and Owner agree upon a price for extra or changed Work by way of a written Modification, Contractor and Owner agree that the price set forth in the Modification shall include the cost of the extra or change plus any direct, indirect, and impacted costs attributable to the change or extra.

(END ARTICLE 10)

## ARTICLE 11 – WORK BY OTHERS

- 11.1 Owner may perform additional work related to the Work by himself, or have additional work performed by entities other than the Contractor, or let other direct contracts therefore which shall contain General Conditions similar to these.

Contractor shall afford the other entities who are parties to such direct contracts (or Owner, if Owner is performing the additional work with the Owner's employees) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate his Work with theirs.

- 11.2 If the performance of additional work by other entities or Owner was not noted in the Contract Documents, written notice thereof shall be given to Contractor prior to starting any such additional work.

(END ARTICLE 11)

## ARTICLE 12 – MISCELLANEOUS

### Giving Notice

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

### General

- 12.2. Should Owner or Contractor suffer injury or damage to his person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage.
- 12.3. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor and all of the rights and remedies available to Owner and Engineer thereunder, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by law or Agreement, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents shall survive final payment and termination or completion of this Agreement.

### Titles and Headings

- 12.4. The titles and headings used in the Contract Documents are for guidance and convenience and are not intended to control over the specific language contained in the body of the paragraphs in the event a conflict, error or discrepancy occurs. Further, titles and headings shall not limit the scope of an article or paragraph.

(END ARTICLE 12)



## SECTION 00800 – SUPPLEMENTARY CONDITIONS

### 1. Minimum Insurance Coverage and Limits

Insurance coverage is required in accordance with Article 5 of the General Conditions. Specific coverage and limits shall be as indicated below.

#### 1.1. General Liability

##### 1.1.1. Limits

a. General Aggregate	\$ 2,000,000
b. Products/Completed Operations Hazard Aggregate	\$ 2,000,000
c. Personal & Advertising Injury	\$ 500,000
d. Each Occurrence	\$ 1,000,000
e. Fire Damage (any one fire)	\$ 200,000
f. Medical Expense (any one person)	\$ 50,000

1.1.2. In order to ensure that there are no impaired aggregates, a per job aggregate is required.

1.1.3. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by the Contractor pursuant to this Agreement. A claims-made policy may satisfy these insurance requirements, provided that the necessary retroactive dates and extended reporting periods are procured by the Contractor to maintain such continuous coverage.

#### 1.2. Automobile Liability

1.3.1. Comprehensive, owned, hired, and non-coverages required (combined single limit)	\$ 1,000,000
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1.3. Excess Liability (umbrella form)	
(each occurrence)	\$ 2,000,000
(aggregate)	\$ 5,000,000

2. The Owner and Engineer and its subcontractors and agents shall be named as additional insured and shall be indemnified, per Section 00700, Article 5.

3. The following person, firm or corporation are identified as the Owner's authorized representative who is assigned to the Work or any part thereof;

Engineer: Lombardo Associates, Inc.  
49 Edge Hill Road  
Newton, MA 02467  
Attn: Pio Lombardo, P.E.

(END OF SECTION)

## SECTION 01020 – MEASUREMENT AND PAYMENT

The following section describes the measurement of and payment for the work to be done under this Agreement.

The Contractor will be responsible for complying with all requirements governing the Work including, but not necessarily limited to, the requirements of the Ipswich Conservation Commission, the Commonwealth of Massachusetts Department of Environmental Protection and the Occupational Safety & Health Administration.

The Contractor shall acquaint himself with all work associated with the payment item and shall have **no claim** for additional compensation due to his unfamiliarity with the requirements of various items.

Regular operations and maintenance services described in Section 01100 will be compensated according to the following schedule:

1. Monthly Inspection and Maintenance.....\$840
2. Quarterly Maintenance..... \$1,320

\*Prices are for Labor and Tool Truck and include safety equipment and small tools

The following schedule will be used in determining the compensation for completion of Emergency O&M work:

1. Labor:

<u>Classification</u>	<u>Rate</u>
Foreman.....	\$90.00/hr
Operator.....	\$80.00/hr
Plumber.....	\$80.00/hr
Millwright.....	\$70.00/hr
Carpenter.....	\$65.00/hr
Laborer.....	\$60.00/hr
Travel.....	\$0.75/mi

- ❖ Labor is billed at a four (4) hour minimum.
- ❖ Normal Business Hours are 7:00AM to 3:30PM, Monday - Friday.
- ❖ All work performed outside normal business hours will be billed at time and one half.

- ❖ Sundays and Holidays are billed at double time.
- ❖ Vehicles other than the Tool Truck (listed below) will be billed at a rate of \$0.75/mile.

2. Equipment:

<u>Type</u>	<u>Hourly</u>	<u>1 Day</u>
Crane.....		\$1,200
Excavator.....		\$880
Backhoe.....		\$760
Bobcat.....		\$680
Roller.....		\$680
Triaxle.....		\$680
Tool Truck.....	\$25.....	

- ❖ Rates exclude mobilization to and from the jobsite.
- ❖ Payment for mobilization and demobilization is cost-plus-20% markup.

3. Materials:

Materials will be billed on a cost-plus-20%-markup for overhead and profit. The CONTRACTOR will provide copies of material invoices as backup for all billings to the OWNER.

4. Sub-Contractors:

Subcontractors will be billed on a cost-plus-20%-markup for overhead and profit. The CONTRACTOR will provide copies of Subcontractor invoices as backup for all billings to the OWNER.

The OWNER agrees to pay, and the CONTRACTOR agrees to invoice the OWNER on the 25th day of each month for which the work was performed. Payment terms will be net thirty (30) days.

(END OF SECTION)

## SECTION 01100 – SCOPE OF SERVICES

The following section describes the scope of services for the work to be done under this Agreement.

### 1. Monthly Inspection and Maintenance

#### A. Visual Inspection of the:

1. Pumping Stations: Wetwells and Valve Vaults and equipment – three (3) locations
2. Overflow Holding Tanks – two (2) locations
3. Check inlet sewer manholes for the Holding Tanks – two (2) locations
4. Master Meter Vault – one (1) location
5. Odor Control Blowers and Irrigation – three (3) locations
6. Witness Generator Startup and check fluid levels – one (1) location
7. Control Cabinets – three (3) locations (4 when Kings Way complete)
8. MIS Panel – one (1) locations

#### B. Exercise the valves at all locations, including the two exterior valves not normally used in pump-out operations – twelve (12) valves

#### C. Light cleaning of grease build up at the Wet Wells, three (3) locations, which will include the removal of buildup of grease on the submersible pumps, inlet pipe(s) and any cables or floats.

#### D. The CONTRACTOR will provide either an electronic or hand written report within twenty-four (24) hours of the inspection.

### 2. Quarterly Maintenance

#### A. Two times per year: Exercise the five (5) exterior gate valves, which will include the excavation to expose the gate box tops, backfill, cleanup and hand seeding or sodding as directed by Engineer.

#### B. One time per year: Maintenance of the Emergency Generator, which will include a full service check, changing the oil and filter as required by the manufacturer.

#### C. One time per year: Maintenance of the three (3) Odor Control Blowers and appurtenances as required by the manufacturer.

#### D. One time per year: Pull submersible pumps out of wetwells – three (3) locations, two (2) pumps per location, clean and inspect.

#### E. The CONTRACTOR will provide either an electronic or hand written report within twenty-four (24) hours of the maintenance.

### 3. OWNER is responsible for the forwarding of select alarms to the CONTRACTOR for his interpretation and determination of the level of urgency and the appropriate response necessary as outlined in the scope of emergency services and to be at a minimum:

Event	Response
High Water Alarm	Inspect pumps, Inspect overflow tank and if necessary, pump
Pump Failure Alarm	Inspect Pump station for proper operation and inspect pumps, panels, etc.
Pump Station Power Failure	Bring portable generator of sufficient capacity to Pump Station to operate as necessary

- a. If an alarm which warrants an immediate response, at a minimum, the CONTRACTOR will deploy his on-call field representative, plumber with tool truck, safety equipment and small tools, to the jobsite to analyze the situation and take whatever action necessary to correct the situation. CONTRACTOR shall notify the Owner's Engineer by electronic or telephone communication when the on-call field has been deployed and if there are any difficulties in addressing correction of the alarm causing condition.
  - b. If the alarm does not warrant immediate response, at a minimum, the CONTRACTOR will schedule its on site field service representative, plumber with tool truck, to the jobsite during normal business hours to analyze the situation, provide his verbal assessment of the situation and take the appropriate action(s). CONTRACTOR shall notify the Owner's Engineer by electronic or telephone communication that the alarm does not, in its opinion, warrant an immediate response, when the on site field representative has been deployed and if there are any difficulties in addressing correction of the alarm causing condition.
  - c. In any situation, whether observation was the extent of the response or if work was performed, the CONTRACTOR will provide either an electronic or hand written report within twenty-four (24) hours of the alarm event.
4. The CONTRACTOR agrees to furnish all the necessary labor, materials, equipment, tools and services necessary to perform and complete in a workmanlike manner all work required, in strict compliance with the Contract Documents herein mentioned, which are hereby made a part of the Agreement.