

AGREEMENT

THIS AGREEMENT is dated as of the 19 day of April in the year
2004 by and between **Kentucky American Water** (hereinafter called OWNER) and
W. Rogers Company (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Construction of KRS Water System Improvements – Replacement of (2) Traveling Water Screens and their appurtenances located at the Kentucky River Station intake at 6300 Cedar Creek Lane, Lexington, KY. Construction will include, but not be limited to, all work specified in the drawings and specifications entitled KRS Water System Improvements – Replacement of (2) Traveling Water Screens.

Article 2. ENGINEER

The ENGINEER for the Project is Kentucky American Water and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIMES

3.1 The Work will be substantially completed by June 1, 2004, and will begin when the Contract Times commences to run as provided in Paragraph 2.3 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.13 of the General Conditions by July 1, 2004.

3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in providing in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER three hundred dollars (\$300.00) for each day that expires after the times specified in Paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Times or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER one hundred fifty dollars (\$150.00) for each day that expires after the times specified in Paragraph 3.1 for completion and readiness for final payment.

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3 Article 4. CONTRACT PRICE
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5 4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the
6 Contract Documents in current funds as follows:
7

8 LUMP SUM PRICE of \$478,654.00
9

10
11 Article 5. PAYMENT PROCEDURES
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13 CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General
14 Conditions. Applications for Payment will be processed by ENGINEER as provided in the General
15 Conditions.
16

17 5.1 Progress Payment. OWNER shall make progress payments on account of the Contract
18 Price on the basis of CONTRACTOR's Applications for Payment as recommended by
19 ENGINEER. At intervals of once a month, the CONTRACTOR shall submit an estimate of the
20 value of the Work completed to the first day of such month, and the value of materials and
21 equipment suitably stored at the work site to be incorporated into the finished project. Upon
22 approval by the OWNER, payment will be made for the net sum of ninety (90%) percent of such
23 value less aggregate of previous payments. The net sum will be paid to the CONTRACTOR
24 within thirty (30) days following receipt of the approved estimate.
25

26 5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with
27 Paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract
28 Price and any retained funds, as recommended by ENGINEER as provided in said Paragraph
29 14.13.
30

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32 Article 6. CONTRACTOR'S REPRESENTATIONS
33

34 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following
35 representations:
36

37 6.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract
38 Documents, Contract Times, Work, site, locality, and all local conditions and Laws and
39 Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
40

41 6.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface
42 conditions and drawings of physical conditions which are identified in the Supplementary
43 Conditions as provided in Paragraph 4.2 of the General Conditions, and accepts the limitations
44 set forth in Article 4, Section 4.2 of the General Conditions.
45

46 6.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for
47 obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports
48 and studies (in addition to or to supplement those referred to in Paragraph 6.2 above) which
49 pertain to the subsurface or physical conditions at or contiguous to the site or otherwise which
50 may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR
51 considers necessary for the performance or furnishing of the Work at the Contract Price, within
52 the Contract Times and in accordance with the other terms and conditions of the Contract
53 Documents, including specifically the provisions of Paragraph 4.2 of the General Conditions; and
54 no additional examinations, investigations, explorations, tests, reports, studies or similar
55 information or data are or will be required by CONTRACTOR for such purposes.
56

1 6.4 CONTRACTOR has reviewed and checked all information and data shown or indicated
2 on the Contract Documents with respect to existing Underground Facilities at or contiguous to the
3 site and assumes responsibility for the accurate location of said Underground Facilities. No
4 additional examinations, investigations, explorations, tests, reports, studies or similar information
5 or data in respect of said Underground Facilities are or will be required by CONTRACTOR in
6 order to perform and furnish the Work at the Contract Price, within the Contract Times and in
7 accordance with the other terms and conditions of the Contract Documents, including specifically
8 the provisions of Paragraph 4.3 of the General Conditions.
9

10 6.5 CONTRACTOR has correlated the results of all such observations, examinations,
11 investigations, explorations, tests, reports and studies with the terms and conditions of the
12 Contract Documents.
13

14 6.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or
15 discrepancies that he has discovered in the Contract Documents and the written resolution
16 thereof by ENGINEER is acceptable to CONTRACTOR.
17
18

19 Article 7. CONTRACT DOCUMENTS
20

21 The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR
22 concerning the Work consist of the following:
23

24 7.1 This Agreement (pages A-1 to A-5, inclusive).
25

26 7.2 Performance and Labor and Material Payment Bonds (pages PB-1 to PB-2 and pages
27 IB-1 to IB-2, consisting of 4 pages).
28

29 7.3 Notice of Award and Notice to Proceed.
30

31 *7.4 General Conditions (Document Identification: 12/93 - AWWWS Co. Standard Documents,
32 pages GC-0 to GC-29, inclusive).
33

34 *7.5 Supplementary Conditions (pages SC-1 to SC-5, inclusive).
35

36 *7.6 Specifications bearing the title KRS Water System Improvements – Replacement of (2)
37 Traveling Water Screens, and consisting of 7 divisions, as listed in table of contents thereof.
38

39 *7.7 Drawings, consisting of a cover sheet and sheets, all numbered 1 through 4, inclusive
40 with sheets 2 and 3 supplied by US Filter per their specifications and sheet 4 giving supplemental
41 information and bearing the following general title:
42

43 KRS Water System Improvements – Replacement of (2) Traveling Water Screens
44

45 (Note: Drawings have been furnished by VENDOR and/or ENGINEER and are not attached to
46 this Agreement.)
47

48 *7.8 Addendum number A-1.
49

50 7.9 CONTRACTOR's Bid (pages B-1 to B-4, inclusive) together with Supplementary
51 Information submitted with the Bid.
52

53 7.10 Documentation submitted by CONTRACTOR prior to Notice of Award.
54

55 7.11 The following which may be delivered or issued after the Effective Date of the Agreement
56 and are not attached hereto: All Written Amendments and other documents amending,

1 modifying, or supplementing the Contract Documents pursuant to Paragraphs 3.5 and 3.6 of the
2 General Conditions.

3
4 7.12 The documents listed in Paragraphs 7.2 et seq. above are attached to this Agreement
5 (except as expressly noted otherwise above).
6

7 There are no Contract Documents other than those listed above in this Article 7. The Contract
8 Documents may only be amended, modified or supplemented as provided in Paragraphs 3.5 and
9 3.6 of the General Conditions.
10

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14 **Article 8. MISCELLANEOUS**
15

16 8.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions
17 will have the meaning indicated in the General Conditions.
18

19 8.2 No assignment by a party hereto of any rights under or interests in the Contract
20 Documents will be binding on another party hereto without the written consent of the party sought
21 to be bound; and specifically but without limitation moneys that may become due and moneys
22 that are due may not be assigned without such consent (except to the extent that the effect of this
23 restriction may be limited by law), and unless specifically stated to the contrary in any written
24 consent to an assignment no assignment will release or discharge the assignor from any duty or
25 responsibility under the Contract Documents.
26

27 8.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and
28 legal representatives to the other party hereto, its partners, successors, assigns and legal
29 representatives in respect of all covenants, agreements and obligations contained in the Contract
30 Documents.
31

32
33 **Article 9. OTHER PROVISIONS**
34

35 9.1 **Government Regulations**
36

37 The following clauses, where applicable, are incorporated in this Agreement by reference as is
38 fully set out; the Equal Opportunity Clause prescribed in 41 CFR 60-1.40, the Affirmative Action
39 Clause prescribed in 41 CFR 60-250.4, regarding veterans and veterans of the Vietnam Era, and
40 the Affirmative Action Clause for Handicapped Workers prescribed in 41 CFR 60-741.4.
41

42 CONTRACTOR accepts this Agreement and will supply any information relating to federal or
43 state laws, rules or regulations relating to the above.
44
45

KRS WATER SYSTEM IMPROVEMENTS - REPLACEMENT OF (2) TRAVELING WATER SCREENS

4-06-04

1 IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in quadruplicate.
2 Two counterparts have been delivered to OWNER, and one counterpart each has been delivered to
3 CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified
4 by OWNER and CONTRACTOR or by ENGINEER on their behalf.
5

6 This Agreement will be effective on April 19, 2004
7

8
9 OWNER:

10 KENTUCKY AMERICAN WATER

11 By [Signature]

12
13
14
15
16 (Corporate Seal)

17
18
19 Attest _____

20
21
22 Address for giving notices

23
24 2300 Richmond Road

25
26 Lexington, Kentucky 40502
27

CONTRACTOR:

W. ROGERS COMPANY

By [Signature]

(Corporate Seal)

Attest [Signature]

Address for giving notices

649 BIZZELL DRIVE

LEXINGTON, KY 40510

License No. _____

Agent for service of process:

1400, LLC
333 W. VINE ST. SUITE 1400
LEXINGTON, KY 40507

(If CONTRACTOR is a corporation, attach evidence of authority to sign.)

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41 Approved By:

[Signature]

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46 Director of Loss Control

CERTIFIED RESOLUTIONS AND EVIDENCE OF AUTHORITY

The Board of Directors of W. Rogers Company, a Kentucky corporation (the "Corporation"), on the 12th day of April, 2004, adopted the following preambles and resolutions:

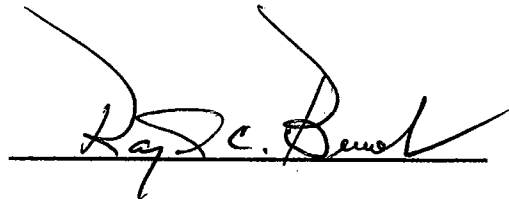
WHEREAS, the Board of Directors of the Corporation has deemed it in the best interest of the Corporation to submit a bid for construction of the the KRS Water System Improvements – Replacement of (2) Traveling Screens project for Kentucky American Water Company ("Project") and to execute an Agreement, Bid Bond, Payment Bond and Performance Bond if determined to be the successful bidder;

NOW, THEREFORE, BE IT:

RESOLVED that Warren P. Rogers, the President of the Corporation, be and is hereby authorized and directed to execute on behalf of the Corporation any bid proposal, Agreements, Bid Bonds, Payment Bonds, Performance Bonds and all other documents, instruments and papers and perform such acts as may be legally, properly and reasonably required or necessary for the Corporation to obtain a contract for construction of the "Project", all containing such terms and provisions as he deems appropriate.

I, Raymond C. Brooks, the duly elected Secretary of the Corporation hereby certify that the foregoing is a true and exact copy of the Preambles and Resolutions adopted by the Board of Directors of the Corporation on the 12th day of April, 2004 and that said Resolutions have not been amended or rescinded as of the date hereof. I further certify that Warren P. Rogers is the President of the Corporation, and as such, has full power and authority to sign all agreements or other documents pertaining to the above referenced transaction, whether currently being executed or to be executed thereafter. Below is a true and correct specimen signature of Warren P. Rogers.

Dated this 12th day of April, 2004.



Raymond C. Brooks

Certified Signature:



Warren P. Rogers

PERFORMANCE BOND

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4 **KNOW ALL MEN BY THESE PRESENTS: that W. Rogers Company**

5 **having an office at 649 Bizzell Drive, Lexington, KY 40510, as Principal, hereinafter**
6 **called CONTRACTOR, and Safeco Insurance Company of America**

7 **having an office at Seattle, WA, as Surety, hereinafter**

8 **called Surety, are held and firmly bound unto Kentucky American Water, having an office at 2300**
9 **Richmond Road, Lexington, Kentucky 40502, as Obligee, as Obligee, hereinafter called OWNER, for the**

10 **use and benefit of claimants as hereinbelow defined, in the amount of**
11 **Four hundred seventy eight thousand six hundred fifty four and no/100 478,654.00**

12 **for the payment whereof CONTRACTOR and Surety bind themselves, their heirs, executors,**
13 **administrations, successors and assigns, jointly and severally, firmly by these presents.**

14
15 **WHEREAS, CONTRACTOR has by written agreement dated _____, 20____, entered into a**
16 **Contract with the OWNER for the construction of the project entitled KRS Water System Improvements -**
17 **Replacement of (2) Traveling Water Screens, in accordance with Drawings and Specifications prepared**
18 **by Kentucky American Water, which Contract is by reference made a part hereof, and is hereinafter**
19 **referred to as the Contract.**

20
21 **NOW, THEREFORE, the condition of this obligation is such that, if CONTRACTOR shall promptly and**
22 **faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full**
23 **force and effect.**

24
25 **The Surety hereby waives notice of any alteration or extension of Contract Times made by the OWNER.**

26
27 **Whenever CONTRACTOR shall be and declared by OWNER to be in default under the Contract, the**
28 **Surety shall promptly remedy the default. If the OWNER terminates the Contract for such default, the**
29 **following precautions shall govern the liability of the CONTRACTOR and the Surety hereunder.**

30
31 **In the event of such termination, the CONTRACTOR and the Surety shall remain fully liable to the**
32 **OWNER for the CONTRACTOR'S failure to timely complete the Contract, any additional costs incurred by**
33 **the OWNER in completing the Contract, and liquidated damages from the originally scheduled completion**
34 **date to the date of the actual completion of the work by the OWNER.**

35
36 **In the event of such termination, the Surety company may elect to take over and complete performance of**
37 **the Contract by giving written notice to the OWNER of such determination within seven (7) days of the**
38 **OWNER'S mailing of notice of termination to the Surety and actually commencing completion with**
39 **fourteen (14) days of the OWNER'S notice to the Surety. The Surety shall fully complete the work by the**
40 **originally scheduled date of completion and the CONTRACTOR and the Surety shall remain liable to the**
41 **OWNER for all damages sustained by the OWNER and for liquidated damages for delay.**

42
43 **Any suit under this bond must be instituted before the expiration of two (2) years from the date on which**
44 **final payment under the Contract falls due or before the expiration of two (2) years from the Date of**
45 **Substantial Completion of the Project, whichever is later.**

46
47 **No right of action shall accrue on this bond to or for the use of any person or corporation other than the**
48 **OWNER named herein or the heirs, executors, administrators or successors of the OWNER.**
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KRS WATER SYSTEM IMPROVEMENTS - REPLACEMENT OF (2) TRAVELING WATER SCREENS

04-06-04

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Signed and sealed this

12 day of April, 2004.

WITNESS:

(Witness)

WITNESS:

(Witness)

W. Rogers Company

CONTRACTOR (SEAL)

By Walter Progen

PRESIDENT
(Title)

Safeco Insurance Company of America

(Name of Surety) (SEAL)

By Catherine L. McMillan
(Attach Power of Attorney)

Catherine L. McMillan, Attorney-In-Fact
(Title)

KRS WATER SYSTEM IMPROVEMENTS – REPLACEMENT OF (2) TRAVELING WATER SCREENS

Bond #6267695

LABOR AND MATERIAL PAYMENT BOND

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KNOW ALL MEN BY THESE PRESENTS: that W. Rogers Company

having an office at 649 Blizzell Drive, Lexington, KY 40510, as Principal, hereinafter called CONTRACTOR, and Safeco Insurance Company of America, having an office at Seattle, WA

as Surety, hereinafter called Surety, are held and firmly bound unto Kentucky American Water, having an office at 2300 Richmond Road,

Lexington, Kentucky 40502, as Obligee, hereinafter called OWNER, for the use and benefit of claimants as hereinbelow defined in the amount of Four hundred seventy eight thousand six hundred fifty

four and no/100***** (\$ 478,654.00), for the payment whereof CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, CONTRACTOR has by written agreement dated _____, 20___, entered into a Contract with the OWNER for the construction of the project entitled: KRS Water System Improvements – Replacement of (2) Traveling Water Screens, in accordance with Drawings and Specifications prepared by Kentucky American Water, which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if CONTRACTOR shall promptly make payment of all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however to the following conditions:

1. A claimant is defined as one having a direct contract with the CONTRACTOR or with a Subcontractor of the CONTRACTOR for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named CONTRACTOR and Surety hereby jointly and severally agreed with the OWNER that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The OWNER shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:
a) Unless claimant, other than one having a direct contract with the CONTRACTOR, shall have given written notice to any two of the following: the CONTRACTOR, the OWNER or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same

KRS WATER SYSTEM IMPROVEMENTS - REPLACEMENT OF (2) TRAVELING WATER SCREENS

04-06-04

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by registered mail or certified mail, postage prepaid, in an envelope addressed to the CONTRACTOR, OWNER or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which CONTRACTOR ceased Work on said Contract or after the expiration of one (1) year following the Date of Substantial Completion of the Project, whichever is later, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

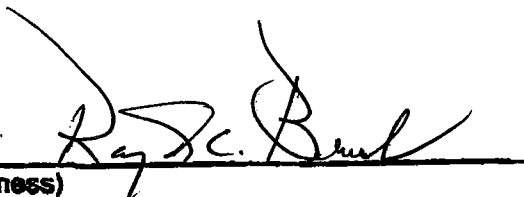
4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against such improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this 12 day of April, 2004

W. Rogers Company

WITNESS:

CONTRACTOR (SEAL)



By Walter P. Rogers

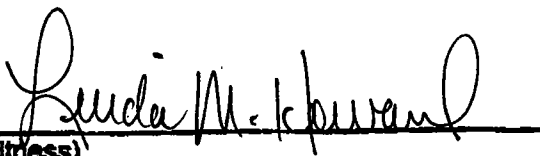
(Witness)

PRESIDENT
(Title)

WITNESS:

Safeco Insurance Company of America

(Name of Surety) (SEAL)



By Catherine L. McMillan
(Attach Power of Attorney)

(Witness)

Catherine L. McMillan, Attorney-In-Fact
(Title)



SAFECO

POWER
OF ATTORNEY

SAFECO INSURANCE COMPANY OF AMERICA
GENERAL INSURANCE COMPANY OF AMERICA
HOME OFFICE: SAFECO PLAZA
SEATTLE, WASHINGTON 98185

No. 12745

KNOW ALL BY THESE PRESENTS:

That SAFECO INSURANCE COMPANY OF AMERICA and GENERAL INSURANCE COMPANY OF AMERICA, each a Washington corporation, does each hereby appoint

*****THOMAS H. MCCARLEY, III; CATHERINE L. MCMILLAN; LINDA MCLAUGHLIN HOWARD; JASON E. TALLENT; Knoxville, Tennessee*****

its true and lawful attorney(s)-in-fact, with full authority to execute on its behalf fidelity and surety bonds or undertakings and other documents of a similar character issued in the course of its business, and to bind the respective company thereby.

IN WITNESS WHEREOF, SAFECO INSURANCE COMPANY OF AMERICA and GENERAL INSURANCE COMPANY OF AMERICA have each executed and attested these presents

this 9th day of April, 2003

CHRISTINE MEAD, SECRETARY

MIKE MCGAVICK, PRESIDENT

CERTIFICATE

Extract from the By-Laws of SAFECO INSURANCE COMPANY OF AMERICA
and of GENERAL INSURANCE COMPANY OF AMERICA:

"Article V, Section 13. - FIDELITY AND SURETY BONDS ... the President, any Vice President, the Secretary, and any Assistant Vice President appointed for that purpose by the officer in charge of surety operations, shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the company in the course of its business... On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking."

Extract from a Resolution of the Board of Directors of SAFECO INSURANCE COMPANY OF AMERICA
and of GENERAL INSURANCE COMPANY OF AMERICA adopted July 28, 1970.

"On any certificate executed by the Secretary or an assistant secretary of the Company setting out,

- (i) The provisions of Article V, Section 13 of the By-Laws, and
- (ii) A copy of the power-of-attorney appointment, executed pursuant thereto, and
- (iii) Certifying that said power-of-attorney appointment is in full force and effect,

the signature of the certifying officer may be by facsimile, and the seal of the Company may be a facsimile thereof."

I, Christine Mead, Secretary of SAFECO INSURANCE COMPANY OF AMERICA and of GENERAL INSURANCE COMPANY OF AMERICA, do hereby certify that the foregoing extracts of the By-Laws and of a Resolution of the Board of Directors of these corporations, and of a Power of Attorney issued pursuant thereto, are true and correct, and that both the By-Laws, the Resolution and the Power of Attorney are still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of said corporation

this _____ day of _____



CHRISTINE MEAD, SECRETARY

**KRS WATER SYSTEM IMPROVEMENTS
REPLACEMENT OF (2) TRAVELING WATER SCREENS**

NOTICE OF AWARD

Dated April 19, 2004

TO: W. Rogers Company
(Bidder)

ADDRESS: 649 Bizzell Drive, Lexington, KY 40510

OWNER: Kentucky American Water
(Name)

2300 Richmond Rd, Lexington, KY 40502
(Address)

CONTRACT FOR: KRS Water System Improvements – Replacement of (2) Traveling Water Screens
(Insert name of Contract as it appears in the Bidding Documents)

You are notified that your Bid dated February 17, 2004 for the above Contract has been considered. You are the apparent successful bidder and have been awarded a contract for KRS Water System Improvements – Replacement of (2) Traveling Water Screens

The Contract Price of your Contract is Four hundred seventy-eight thousand six hundred fifty four and no cents Dollars (\$ 478,654.00).

Five copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award. The Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within fifteen days of the date of this Notice of Award, that is by _____, 2004.

1. You must deliver to the OWNER four fully executed counterparts of the Agreement including all the Contract Documents.
2. You must deliver with the executed Agreement the Contract Security (Bonds) as specified in the Instructions to Bidders (Paragraph 17) and General Conditions (Paragraph 5.1).
3. (List other conditions precedent).

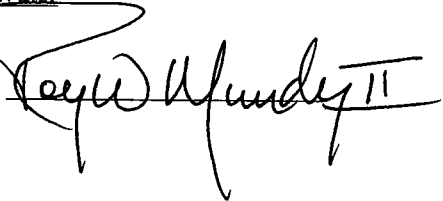
Deliver insurance certificates

Failure to comply with these conditions within the time specified will entitle OWNER to consider your Bid abandoned, to annul this Notice of Award and to declare your Bid Security forfeited.

Within ten days after you comply with those conditions, OWNER will return to you one fully signed counterpart of the Agreement with the Contract Documents attached.

Kentucky American Water
(OWNER)

BY
(Authorized Signature)

A handwritten signature in black ink, appearing to read "Roy W. Hundert II". The signature is written in a cursive style with a horizontal line at the end.

President
(Title)

Copy to ENGINEER

NOTICE TO PROCEED

Dated April 19, 20 04

TO: W. Rogers Company
(Bidder)
ADDRESS: 649 Bizzell Drive, Lexington, KY 40510

OWNER: Kentucky American Water
(Name)
2300 Richmond Rd, Lexington, KY 40502
(Address)

CONTRACT FOR: KRS Water System Improvements – Replacement of (2) Traveling Water Screens
(Insert name of Contract as it appears in the Bidding Documents)

You are notified that the Contract Times under the above Contract will commence to run on _____, 20 04. By that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 3 of the Agreement the dates of Substantial Completion and Final Completion are June 1, 20 04 and July 1, 20 04, respectively.

Before you may start any Work at the site, Paragraph 2.7 of the General Conditions provides that you and OWNER must each deliver to the other (with copies to ENGINEER) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also before you may start any Work at the site, you must
N/A

Kentucky American Water
(OWNER)

BY Jay W. Wandy II
(Authorized Signature)

President
(Title)

Copy to ENGINEER

MARSH

CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER
ATL-000933602-01

PRODUCER
MARSH USA INC.
P.O. BOX 36012
KNOXVILLE, TN 37930-6012
Attn: Kim D. Lay (865) 769-7700

S67736-KY-KY-

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

COMPANIES AFFORDING COVERAGE

- COMPANY
A NATIONAL FIRE INS CO HARTFORD
- COMPANY
B TRANSCONTINENTAL INSURANCE COMPANY
- COMPANY
C OHIO CASUALTY INSURANCE CO
- COMPANY
D

INSURED
W. Rogers Company, Inc.
P. O. Box 11640
Lexington, KY 40576

COVERAGES This certificate supersedes and replaces any previously issued certificate for the policy period noted below.

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| CO LTR | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS | |
|---|---|---------------|----------------------------------|-----------------------------------|------------------------------|---------------|
| A | GENERAL LIABILITY | TCP2020340838 | 10/01/03 | 10/01/04 | GENERAL AGGREGATE | \$ 2,000,000 |
| | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY | | | | PRODUCTS - COMP/OP AGG | \$ 2,000,000 |
| | <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR | | | | PERSONAL & ADV INJURY | \$ 1,000,000 |
| | <input checked="" type="checkbox"/> OWNER'S & CONTRACTOR'S PROT | | | | EACH OCCURRENCE | \$ 1,000,000 |
| | <input checked="" type="checkbox"/> <u>Underground Explosion and</u> | | | | FIRE DAMAGE (Any one fire) | \$ 50,000 |
| | <u>Collapse Hazards are included.</u> | | | | MED EXP (Any one person) | \$ 5,000 |
| | | | | | | |
| B | AUTOMOBILE LIABILITY | BUA2020340841 | 10/01/03 | 10/01/04 | COMBINED SINGLE LIMIT | \$ 1,000,000 |
| | <input checked="" type="checkbox"/> ANY AUTO | | | | BODILY INJURY (Per person) | \$ |
| | <input type="checkbox"/> ALL OWNED AUTOS | | | | BODILY INJURY (Per accident) | \$ |
| | <input type="checkbox"/> SCHEDULED AUTOS | | | | PROPERTY DAMAGE | \$ |
| <input checked="" type="checkbox"/> HIRED AUTOS | | | | | | |
| <input checked="" type="checkbox"/> NON-OWNED AUTOS | | | | | | |
| | | | | | | |
| | GARAGE LIABILITY | | | | AUTO ONLY - EA ACCIDENT | \$ |
| | <input type="checkbox"/> ANY AUTO | | | | OTHER THAN AUTO ONLY: | |
| | | | | | EACH ACCIDENT | \$ |
| | | | | | AGGREGATE | \$ |
| C | EXCESS LIABILITY | BX052781059 | 10/01/03 | 10/01/04 | EACH OCCURRENCE | \$ 11,000,000 |
| | <input checked="" type="checkbox"/> UMBRELLA FORM | | | | AGGREGATE | \$ 11,000,000 |
| | <input type="checkbox"/> OTHER THAN UMBRELLA FORM | | | | | \$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | | WC STATUTORY LIMITS | OTHER |
| | THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL | | | | EL EACH ACCIDENT | \$ |
| | OTHER | | | | EL DISEASE-POLICY LIMIT | \$ |
| | | | | | EL DISEASE-EACH EMPLOYEE | \$ |

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

RE: Construction of KRS Water System Improvements. Replacement of 2 Traveling Water Screens. Kentucky American Water (the owner and engineer) is named as Additional Insured as respects General Liability coverage for the above project.

| CERTIFICATE HOLDER | CANCELLATION |
|--|--|
| Kentucky American Water 2300 Richmond Road Lexington, KY 40502 | SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE. |
| | MARSH USA INC. BY: Donald B. Wake <i>Donald B. Wake</i> |
| | MMF: (3/02) VALID AS OF: 04/08/04 |

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID SM
WROGE-1

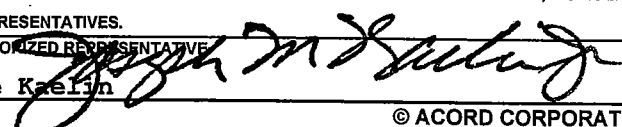
| PRODUCER Sterling G. Thompson Co. 137 W. Muhammad Ali Blvd.#200 Louisville KY 40202 Phone: 502-585-3277 Fax: 502-585-3306 | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. | | | | | | | | | | | | |
|--|--|-----------------------------|--------|--|--|------------|--|------------|--|------------|--|------------|--|
| INSURED W. Rogers Company, Inc. P O Box 11640 Lexington KY 40576 | <table border="1"> <tr> <th style="width: 80%;">INSURERS AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A: KY Assoc. General Contractors</td> <td></td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table> | INSURERS AFFORDING COVERAGE | NAIC # | INSURER A: KY Assoc. General Contractors | | INSURER B: | | INSURER C: | | INSURER D: | | INSURER E: | |
| INSURERS AFFORDING COVERAGE | NAIC # | | | | | | | | | | | | |
| INSURER A: KY Assoc. General Contractors | | | | | | | | | | | | | |
| INSURER B: | | | | | | | | | | | | | |
| INSURER C: | | | | | | | | | | | | | |
| INSURER D: | | | | | | | | | | | | | |
| INSURER E: | | | | | | | | | | | | | |

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR ADD'L LTR | INSRD | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS | |
|----------------|-------|--|---------------|----------------------------------|-----------------------------------|---|--------------|
| | | GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | | | | EACH OCCURRENCE | \$ |
| | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | \$ |
| | | | | | | MED EXP (Any one person) | \$ |
| | | | | | | PERSONAL & ADV INJURY | \$ |
| | | | | | | GENERAL AGGREGATE | \$ |
| | | | | | | PRODUCTS - COMP/OP AGG | \$ |
| | | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS | | | | COMBINED SINGLE LIMIT (Ea accident) | \$ |
| | | | | | | BODILY INJURY (Per person) | \$ |
| | | | | | | BODILY INJURY (Per accident) | \$ |
| | | | | | | PROPERTY DAMAGE (Per accident) | \$ |
| | | GARAGE LIABILITY <input type="checkbox"/> ANY AUTO | | | | AUTO ONLY - EA ACCIDENT | \$ |
| | | | | | | OTHER THAN AUTO ONLY: EA ACC | \$ |
| | | | | | | AGG | \$ |
| | | EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$ | | | | EACH OCCURRENCE | \$ |
| | | | | | | AGGREGATE | \$ |
| | | | | | | | \$ |
| | | | | | | | \$ |
| | | | | | | | \$ |
| A | | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below | 7430 | 01/01/04 | 12/31/04 | WC STATU-TORY LIMITS | OTH-ER |
| | | | | | | E.L. EACH ACCIDENT | \$ 1,000,000 |
| | | | | | | E.L. DISEASE - EA EMPLOYEE | \$ 1,000,000 |
| | | | | | | E.L. DISEASE - POLICY LIMIT | \$ 1,000,000 |
| | | OTHER | | | | | |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Project: Construction of KRS Water System Improvements replacement of two traveling water screens.

| | |
|---|--|
| CERTIFICATE HOLDER KENT-01 Kentucky American Water Co. 2300 Richmond Road Lexington KY 40502 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Joe Keelin  |
|---|--|

GENERAL CONDITIONS

The General Conditions contained in this part of the Contract Documents are based on the Standard General Conditions of the Construction Contract prepared by the Engineers Joint Contract Documents Committee with modifications to be consistent with American Water System Policies. Only the General Conditions contained herein are a part of the Contract Documents for the project.

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS

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

- 1.1 *Addenda* -- Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the bidding requirements or the Contract Documents.
- 1.2 *Agreement* -- The written contract between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.
- 1.3 *Application for Payment* -- The form accepted by ENGINEER which is to be used by CONTRACTOR in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
- 1.4 *Asbestos* -- Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
- 1.5 *Bid* -- The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- 1.6 *Bonds* -- Performance and Payment bonds and other instruments of security.
- 1.7 *Change Order* -- A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
- 1.8 *Contract Documents* -- The Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders and ENGINEER's written interpretations and clarifications issued pursuant to paragraphs 3.5, 3.6.1, and 3.6.3 on or after the Effective Date of the Agreement. Shop Drawing submittals approved pursuant to paragraphs 6.26 and 6.27 and the reports and drawings referred to in paragraphs 4.2.1 and 4.2.2 are not Contract Documents.
- 1.9 *Contract Price* -- The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9.1 in the case of Unit Price Work).
- 1.10 *Contract Times* -- The number of days or the dates stated in the Agreement (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with paragraph 14.13.
- 1.11 *CONTRACTOR* -- The person, firm or corporation with whom OWNER has entered into the Agreement.
- 1.12 *Defective* -- An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.8 or 14.10).
- 1.13 *Drawings* -- The drawings which show the scope, extent and character of the Work to be furnished and performed by the CONTRACTOR and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents. Shop Drawings are not Drawings as so defined.
- 1.14 *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. However, the contractor has no rights or remedies arising from execution of the Agreement prior to the Commencement of Contract Times.
- 1.15 *ENGINEER* -- The person, firm or corporation named as such in the Agreement.
- 1.16 *ENGINEER's Consultant* -- A person, firm or corporation having a contract with OWNER to furnish professional services for the benefit of OWNER and ENGINEER with respect to the Project and who is identified as such in the Supplementary Conditions. The term ENGINEER's Consultant shall be deemed also to include a person, firm or corporation having a contract with ENGINEER's Consultant to furnish professional services as an independent professional associate or consultant to ENGINEER's Consultant with respect to the Project and who is identified as such in the Supplementary Conditions.
- 1.17 *Field Order* -- A written order issued by ENGINEER which orders minor changes in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Times.
- 1.18 *General Requirements* -- Sections of Division 1 of the Specifications.

1.41 *Work* --The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

1.42 *Work Change Directive* -- A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.23. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times as provided in paragraph 10.2.

1.43 *Written Amendment* -- A written amendment of the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 2 - PRELIMINARY MATTERS

Delivery of Bonds:

2.1 When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with paragraph 5.1.

Copies of Documents:

2.2 OWNER shall furnish to CONTRACTOR up to ten 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 Times; Notice to Proceed:

2.3 The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective Date of the Agreement. In no event will owner have any obligations or duties to CONTRACTOR under the Agreement until Contract Times commence to run.

Starting the Work:

2.4 CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run, but no

Work shall be done at the site prior to the date on which the Contract Times commence to run,

Before Starting Construction:

2.5 Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or should have known thereof.

2.6 Within ten days after the Effective Date of the Agreement (unless otherwise specified in Division 1 -General Requirements), CONTRACTOR shall submit to ENGINEER for review:

2.6.1 a preliminary progress schedule indicating the times (number of days or dates) for starting and completing the various stages of the Work, including any principal events (milestones) specified in the Contract Documents;

2.6.2 a preliminary schedule of Shop Drawings and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal;

2.6.3 a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction.

2.7 Before any Work at the site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with paragraphs 5.4, 5.6 and 5.7.

Preconstruction Conference:

2.8 Within twenty days after the Contract Times start to run, but before any Work at the site is started, a conference attended by 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 2.6, procedures for handling Shop Drawings and other submittals, processing Applications for Payments, and maintaining required records.

3.4 Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved", or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgement of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgement will be solely to evaluate, in general, the completed Work for compliance with the information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as indicated by and reflected in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.13 or any other provision of the Contract Documents. Where "provide" is used in the Specifications or Drawings, it shall be understood to mean, "provide complete in place", that is, furnish and install.

Amending and Supplementing Contract Documents:

3.5 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 3.5.1 a formal Written Amendment,
- 3.5.2 a Change Order (pursuant to paragraph 10.4), or
- 3.5.3 a Work Change Directive (pursuant to paragraph 10.1).

3.6 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

- 3.6.1 a Field Order (pursuant to paragraph 9.5),
- 3.6.2 ENGINEER's approval of a Shop Drawing or sample (pursuant to paragraphs 6.26 and 6.27), or
- 3.6.3 ENGINEER's written interpretation or clarification (pursuant to paragraph 9.4).
- 3.6.4 Any variations and deviation in the Work arising from any of the methods set forth in Paragraph 3.6 will not authorize any ammendment to the Contract Price or Contract Times. The sole method to amend the Contract Price or Contract Times is pursuant to Paragraph 3.5.

Reuse of Documents:

3.7 CONTRACTOR, and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or

copies of any thereof) prepared by or bearing the seal of ENGINEER, or ENGINEER's Consultant; and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies or extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaption by ENGINEER.

ARTICLE 4 -- AVAILABILITY OF LANDS: SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

Availability of Lands:

4.1 OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a correct statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's lien against such lands in accordance with applicable Laws and Regulations. OWNER shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR and OWNER are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in OWNER's furnishing these lands, right-of-way or easements, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2 Subsurface and Physical Conditions:

4.2.1 Reports and Drawings: Reference is made to the Supplementary Conditions for identification of:

- 4.2.1.1 Subsurface Conditions at the Site: Those reports of explorations and tests of subsurface conditions at the site that have been utilized by ENGINEER in preparation of the Contract Documents; and
- 4.2.1.2 Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized by the ENGINEER in preparing the Contract Documents.

4.2.2 Limited Reliance by CONTRACTOR Authorized; Technical Data: CONTRACTOR may rely upon the 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 technical data, CONTRACTOR may not rely upon and shall make no claim against OWNER, ENGINEER or any of the

written notice thereof to that owner and to OWNER 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 consequence of the existence of the Underground Facility. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document such consequences. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or the amount or length of any such adjustment in Contract Times or Contract Price, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

However, OWNER, ENGINEER and ENGINEER's Consultants shall not be liable to CONTRACTOR for any costs, losses or damages sustained by CONTRACTOR on or in connection with any other project or anticipated project or that otherwise do not increase CONTRACTOR's cost of the Work.

Reference Points:

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

4.5 Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material:

4.5.1 OWNER shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. OWNER shall not be responsible for any such materials brought onto the job site by CONTRACTOR, Subcontractors, Suppliers or anyone else for whom CONTRACTOR is responsible.

4.5.2 CONTRACTOR shall immediately (i) stop all Work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by paragraph 6.23) and (ii) notify OWNER and ENGINEER (and thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. CONTRACTOR shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR special written notice (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by CONTRACTOR to be resumed, either party may make a claim therefor as provided in Articles 11 and 12.

4.5.3 If after receipt of such special written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order such portion of the Work that is in connection with such hazardous condition or in such affected area to be deleted from the Work. If OWNER and CONTRACTOR cannot agree to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefor as provided in Articles 11 and 12. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

4.5.4 To the fullest extent permitted by Laws and Regulations OWNER shall indemnify and hold harmless CONTRACTOR and ENGINEER and their respective officers, directors, consultants, Subcontractors, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from such hazardous condition, provided that (a) any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (b) nothing in this subparagraph 4.5.4 shall obligate OWNER to indemnify any person or entity from and against the consequences of that person's or entity's own negligence.

4.5.5 The provisions of paragraphs 4.2 and 4.3 are not intended to apply to Asbestos, PCB's, Petroleum, Hazardous

5.4.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

5.4.4 claims for damages insured by customary personal injury liability coverage which are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;

5.4.5 claims for damages, other than to the Work itself because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

5.4.6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The policies of insurance so required by this paragraph 5.4 to be purchased and maintained shall:

5.4.7 with respect to insurance required by paragraphs 5.4.3 through 5.4.6 inclusive, include as additional insureds OWNER and ENGINEER (subject to any customary exclusion in respect of professional liability) and any other persons or entities indicated in the Supplementary Conditions, all of whom shall be listed by name as additional insureds, and include coverage for the respective officers and employees of all such additional insureds;

5.4.8 include the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Law and Regulation, whichever is greater;

5.4.9 include completed operations insurance;

5.4.10 include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.16, 6.31 and 6.32;

5.4.11 contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed or renewal refused until at least 30 days prior written notice has been given to OWNER, ENGINEER and each other additional insured indicated in the Supplementary Conditions to whom a certificate of insurance had been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.3.2 will so provide);

5.4.12 remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work in accordance with paragraph 13.12; and

5.4.13 with respect to completed operations insurance and any other insurance coverage written on a claims-made

basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and any other additional insured indicated in the Supplementary Conditions to whom a certificate of insurance has been issued evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

OWNER's Liability Insurance:

5.5 OWNER shall be responsible for purchasing and maintaining OWNER's own liability insurance and, at OWNER's option, may purchase and maintain such insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

Builders Risk Property Insurance:

5.6 Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain "builders risk" property insurance upon the Work at the site in the amount of the full replacement cost there (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws or Regulations). This insurance shall:

5.6.1 include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultant, and any other persons or entities indicated in the Supplementary Conditions, all of whom shall be listed as insureds or additional insureds;

5.6.2 be written on a Builder's Risk "all-risk" policy form, shall at least include insurance for physical loss and damage, and shall insure against the peril of fire and extended coverage, theft, vandalism and malicious mischief, earthquake, temporary buildings, falsework, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations and water damage, and such other perils as may be provided in the Supplementary Conditions;

5.6.3 include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers, architects, attorneys and other professionals);

5.6.4 cover materials and equipment stored on or off the site or in transit prior to being incorporated in the Work where such materials and equipment are included in an approved Application for Payment; and

5.6.5 be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER, with thirty days written notice to each other additional insured to whom a certificate of insurance has been issued.

5.7 OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the OWNER, CONTRAC-

of any such partial use or occupancy.

ARTICLE 6 -- CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence:

6.1 CONTRACTOR shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of construction which is indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

6.2 CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The OWNER shall have the right to reject or demand replacement of such superintendent at any time, with or without cause, solely at the OWNER's discretion, based upon objective or subjective reasons, which reasons the OWNER may, but is not required to, disclose to the CONTRACTOR. The superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

Labor, Materials and Equipment:

6.3 CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER's written consent given after prior written notice to ENGINEER.

6.4 Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

6.5 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier, except as otherwise provided in Contract Documents.

Progress Schedule:

6.6 CONTRACTOR shall adhere to the finalized progress schedule established in accordance with paragraph 2.9, as it may be adjusted from time to time in accordance with the Contract Documents. CONTRACTOR shall submit to the ENGINEER for acceptance (to the extent indicated in paragraph 2.9) adjustments in the finalized progress schedule to reflect the impact thereon of new developments. Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

Substitutes and "Or-Equal" Items:

6.7 Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, no like, equivalent, or "or equal" item or substitution is permitted.

6.8 Concerning Subcontractors, Suppliers and Others:

6.8.1 CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and ENGINEER as indicated in paragraph 6.8.2) whether initially or as a substitute, against whom OWNER or ENGINEER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

6.8.2 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by OWNER and ENGINEER and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's or ENGINEER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of

Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.3.2.

Taxes:

6.15 Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

Use of Premises:

6.16 CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made against OWNER or ENGINEER by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify, hold harmless and defend OWNER, ENGINEER and ENGINEER's Consultants and anyone directly or indirectly employed by any of them from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against OWNER, ENGINEER or ENGINEER's Consultant to the extent caused by or based upon CONTRACTOR's performance of the Work.

6.17 During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER at Substantial Completion of the Work. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.18 CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

Record Documents:

6.19 CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples and Shop Drawings will be delivered to ENGINEER for OWNER.

Safety and Protection:

6.20 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:

6.20.1 all persons on the Work who may be affected by the Work;

6.20.2 all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.20.3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designed for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and the protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRAC-

required by paragraph 2.9. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER, and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.27 ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of submission as required by paragraph 6.25.3 and ENGINEER has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.25.1.

6.28 Where a Shop Drawing or Sample is required by the Contract Documents or the final schedule of Shop Drawings and Sample submissions accepted by ENGINEER as required by paragraph 2.9, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

Continuing the Work:

6.29 CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.5 or as CONTRACTOR and OWNER may otherwise agree in writing.

6.30 CONTRACTOR's General Warranty and Guarantee

6.30.1 CONTRACTOR warrants and guarantees to OWNER, ENGINEER and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be *defective*.

6.30.2 CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute and unconditional. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CON-

TRACTOR's obligation to perform the Work in accordance with the Contract Documents:

6.30.2.1 observations by ENGINEER;

6.30.2.2 recommendation of any progress or final payment by ENGINEER;

6.30.2.3 the issuance of a certificate of Substantial Completion or any payment by OWNER to CONTRACTOR under the Contract Documents;

6.30.2.4 any use or occupancy of the Work or any part thereof by OWNER;

6.30.2.5 any act or acceptance by OWNER or any failure to do so;

6.30.2.6 any review and approval of a Shop Drawing or Sample submittal, or the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13; or

6.30.2.7 any inspection, test or approval by others; or

6.30.2.8 any correction of *defective* Work by OWNER.

6.31 *Indemnification;*

6.31.1 To the fullest extent permitted by Laws and Regulations CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant and the affiliated companies, consultants, agents, officers, directors and employees of each and any of them from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, personal injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.

6.31.2 In any and all claims against OWNER, ENGINEER, ENGINEER's Consultant or the affiliated companies, consultants, agents, officers, directors, or employees of each or any of them by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, any

physical conditions in or relating to existing structures which have been utilized by ENGINEER in preparing the Drawings and Specifications.

8.5 OWNER's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 through 5.10.

8.6 OWNER is obligated to execute Change Orders as indicated in paragraph 10.4.

8.7 OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.

8.8 In connection with OWNER's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

8.9 The OWNER shall not supervise, direct or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

8.10 OWNER's responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site is set forth in paragraph 4.5.

ARTICLE 9 -- ENGINEER'S STATUS

9.1 OWNER's Representative:

9.1.1 ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and ENGINEER.

9.1.2 The assignment of any authority, duties or responsibilities to ENGINEER under the Contract Documents, or any undertaking, exercise or performance thereof by ENGINEER, is intended to be for the sole and exclusive benefit of OWNER and not for the benefit of CONTRACTOR, Subcontractor, Supplier or any other person or organization.

Visits to Site:

9.2 Subject to the limitations of authority and responsibilities indicated in paragraph 9.13, ENGINEER will make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to

observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER will endeavor for the benefit of OWNER 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. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work. ENGINEER will not supervise, direct or have control over any of CONTRACTOR's Work during such visits or as a result of such observations of CONTRACTOR's Work.

Project Representative:

9.3 If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more continuous observation of the Work. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions. If OWNER designates another agent to represent OWNER at the site who is not ENGINEER's agent or employee, the duties, responsibilities and limitations of authority of such other person will be as provided in the Supplementary Conditions.

Clarifications and Interpretations:

9.4 ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If CONTRACTOR or OWNER believes that a written clarification or interpretation justifies an adjustment in the Contract Price or an adjustment, if any, of the Contract Times and the parties are unable to agree to the amount or extent thereof, CONTRACTOR or OWNER may make a claim therefor as provided in Article 11 or Article 12. All requests from CONTRACTOR for clarification or interpretation shall be submitted to ENGINEER in writing.

Authorized Variations in Work:

9.5 ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the complete project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR who shall perform the Work involved promptly. If CONTRACTOR or OWNER believes

Suppliers, or of any other person or organization performing or furnishing any of the Work.

9.13.4 ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. When functioning as initial interpreter and judge, ENGINEER will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

ARTICLE 10 -- CHANGES IN THE WORK

10.1 Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work. Such additions, deletions or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

10.2 If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of a Work Change Directive, a claim may be made therefor as provided in Article 11 and Article 12.

10.3 CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.5 and 3.6, except in the case of an emergency as provided in paragraph 6.23 or in the case of uncovering Work as provided in paragraph 13.9.

10.4 OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

10.4.1 changes in the Work which are (i) ordered by OWNER pursuant to paragraph 10.1, (ii) required because of acceptance of *defective* Work under paragraph 13.13 or correcting *defective* Work under paragraph 13.14, or (iii) agreed to by the parties;

10.4.2 changes in the Contract Price or Contract Times which are agreed to by the parties; and

10.4.3 changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 9.11;

provided that in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.

10.5 If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 11 -- CHANGE OF CONTRACT PRICE

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

11.2 The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after such start of the occurrence or event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of said occurrence or event. All claims for adjustment in the Contract Price shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2.

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

11.3.1 where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.9.1 through 11.9.3 inclusive);

11.3.2 where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit). Such allowance shall not exceed a fee calculated in accordance with paragraph 11.6.2.

11.3.3 where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.3.2, on the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR's fee for overhead and

with the Work.

11.4.5.9 Cost of premiums for additional Bonds and insurance required because of changes in the Work.

11.5 The term Cost of the Work shall not include any of the following:

11.5.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, project managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4 all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

11.5.2 Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.

11.5.3 Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

11.5.4 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 the cost of premiums covered by subparagraph 11.4.5.9 above).

11.5.5 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.

11.5.6 Other overhead or general expense costs of any kind.

11.5.7 The costs of any item not specifically and expressly included in paragraph 11.4.

CONTRACTOR's Fee:

11.6 The CONTRACTOR's fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

11.6.1 a mutually acceptable fixed fee; or

11.6.2 if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

11.6.2.1 for costs incurred under paragraphs 11.4.1 and 11.4.2 the CONTRACTOR's Fee shall be fifteen percent;

11.6.2.2 for costs incurred under paragraph 11.4.3 the CONTRACTOR's fee shall be five percent;

11.6.2.3 where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraphs 11.4.1, 11.4.2, 11.4.3 and 11.6.2 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of fifteen percent of the costs incurred by such Subcontractor under paragraphs 11.4.1 and 11.4.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor, for example:

| | |
|---|-----------------|
| Cost of the Work Performed by Sub-Subcontractor | = \$10,000.00 |
| Sub-Subcontractor's Fee (15 percent) | <u>1,500.00</u> |
| Total to Sub-Subcontractor | \$11,500.00 |
| Subcontractor's Fee (5 percent) | <u>575.00</u> |
| Subtotal | \$12,075.00 |
| CONTRACTOR's Fee (5 percent) | <u>603.75</u> |
| Total Change Order | = \$12,678.75 |

11.6.2.4 no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5 and 11.5;

11.6.2.5 the amount of credit to be allowed by CONTRACTOR or OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to ten percent of the net decrease; and

11.6.2.6 when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.5 inclusive.

11.7 Whenever the cost of any Work is to be determined pursuant to paragraph 11.4 and 11.5, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

Cash Allowances:

11.8 It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to ENGINEER. CONTRACTOR agrees that:

11.8.1 The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and

11.8.2 CONTRACTOR's costs for unloading and handling on the site, labor, installation costs, overhead, profit

date or time) in an amount equal to the time lost due to delays beyond the control of both OWNER and CONTRACTOR shall be CONTRACTOR's sole and exclusive remedy for such delays. At OWNER's option, the Contract Times (or any applicable specified milestone completion date or time) will be extended for the entire Work or only that portion of the Work affected by the event giving rise to the claim. The CONTRACTOR will be notified in writing of the OWNER's decision in this matter. If OWNER elects to extend the Contract Times (or any applicable specified milestone completion date or time) for the affected portion of Work only, liquidated damages, if applicable, will be apportioned between affected Work and non-affected Work based on the value each portion represents as a percentage of the Contract Price. In no event shall OWNER or CONTRACTOR be liable to the other for damages arising out of or resulting from (i) delays caused by or within the control of the other, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

**ARTICLE 13 – TESTS AND INSPECTIONS:
CORRECTION, REMOVAL OR ACCEPTANCE
OF DEFECTIVE WORK**

13.1 Notice of Defects: Prompt notice of all *defective* Work of which OWNER and ENGINEER have actual knowledge will be given to CONTRACTOR. All *defective* Work may be rejected, corrected or accepted as provided in this Article 13.

Access to Work:

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

Tests and Inspections:

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

13.4 OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

13.4.1 for inspections, tests or approvals covered by paragraph 13.5 below;

13.4.2 that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.9 below shall be paid as provided in said paragraph 13.9; and

13.4.3 as otherwise specifically provided in the Contract Documents.

13.5 If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspection, tests or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection, or approval. CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for OWNER's or ENGINEER's acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work.

13.6 If any Work (including the Work of others) that is to be inspected, tested or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation. Such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.7 Neither observations by ENGINEER nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

Uncovering Work:

13.8 If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

13.9 If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as ENGINEER may require, that portion of the Work in question furnishing all necessary labor, material and equipment. If it is found that such Work is *defective*, CONTRACTOR shall bear all direct, indirect and consequential costs and damages of such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs), and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. If, however, such Work is not found to be *defective*, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or any applicable specified milestone completion date), or both, directly attributable to such un-

be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. Such direct, indirect and consequential costs and damages will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, court and arbitration or other dispute resolution costs and all cost 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 and remedies hereunder.

ARTICLE 14 -- PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values:

14.1 The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

Application for Progress Payment:

14.2 At least thirty days before the date established for each progress payment, CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is required 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 OWNER 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 and other arrangements to protect OWNER's interest therein, all of which will be satisfactory to OWNER. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

CONTRACTOR's Warranty of Title:

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

Review of Applications for Progress Payment:

14.4 ENGINEER will, within fifteen days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application 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. Fifteen days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by OWNER to CONTRACTOR.

14.5 ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's on-site observations of the executed Work as an experienced and qualified engineer and on ENGINEER's review of the Application for Payment and the accompanying data and schedules that to the best of ENGINEER's knowledge, information and belief (i) the Work has progressed to the point indicated, and (ii) the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10 and to any other qualifications stated in the recommendation), and (iii) the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work. However, by recommending any such payment ENGINEER will not thereby be deemed to have represented that (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents, or (ii) there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or OWNER to withhold payment to CONTRACTOR.

14.6 ENGINEER's recommendation of any payment, including final payment shall not mean that ENGINEER is responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of Work, or for any failure of CONTRACTOR to perform or furnish Work in accordance with the Contract Documents.

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

14.7.1 the Work is *defective*, or completed Work has been damaged requiring correction or replacement,

14.10.2 No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

Final Inspection:

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

Final Application for Payment:

14.12 After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by paragraph 5.4, certificates of inspection, marked-up record documents (as provided in paragraph 6.9) and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments, except that the progress payment shall be clearly marked "Final Application for Payment." The final Application for payment shall be accompanied by (i) all documentation called for in the Contract Documents including but not limited to the evidence of insurance required by subparagraph 5.4.13, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Work.

Final Payment and Acceptance:

14.13 If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation, all as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within fifteen days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application to OWNER for payment. At the same time ENGINEER will give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.15. Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty days after presentation to OWNER of the Application and accompanying documentation, in appropriate form and substance, and with ENGINEER's recommendation and notice of acceptability, the amount recommended by ENGINEER will become due and will be paid by OWNER to CONTRACTOR.

14.14 If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if ENGINEER

so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.1, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

Waiver of Claims:

14.15 The making and acceptance of final payment will constitute:

14.15.1 a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from *defective* Work appearing after final inspection pursuant to paragraph 14.11 or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it will not constitute a waiver by OWNER of any rights in respect of CONTRACTOR's continuing obligations under the Contract Documents; and

14.15.2 a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

ARTICLE 15 -- SUSPENSION OF WORK AND TERMINATION

OWNER May Suspend Work:

15.1 OWNER may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 11 and 12.

OWNER May Terminate:

15.2 Upon the occurrence of any one or more of the following events:

15.2.1 if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as revised from time to time);

ARTICLE 16 -- DISPUTE RESOLUTION

Subject to the provisions of paragraph 9.10, 9.11, and 9.12, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 -- MISCELLANEOUS

Giving Notice:

17.1 Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have

been validly given if delivered in person to the individual or to a member of the firm or to an 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.

Computation of Time:

17.2.1 When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.2.2 A calendar day of twenty-four hours measured from midnight to the next midnight will constitute a day.

Notice of Claim:

17.3 Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other Party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

Cumulative Remedies:

17.4 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraph 6.30, 6.31, 6.32, 13.1, 13.12, 13.14, 14.3, and 15.2 and all of the rights and remedies available to OWNER and ENGINEER thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

SUPPLEMENTARY CONDITIONS

The Supplementary Conditions amend or supplement the General Conditions (12/93 AWWA Co. Standard Documents Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

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SUPPLEMENTARY CONDITIONS

SC-1 Definitions

The terms used in these Supplementary Conditions which are defined in the General Conditions have the meanings assigned to them in the General Conditions.

Whenever the term "Water Company" is used in these Contract Documents it shall have the same meaning as OWNER or ENGINEER, whichever is applicable.

SC-1.16 ENGINEER'S Consultant

The ENGINEER'S Consultant for this project is:

Shannyn C. Walker, E.I.T, Kentucky-American Water Company, 2300 Richmond Road, Lexington, KY 40502

SC-4.2 Subsurface and Physical Conditions

4.2.1 In the preparation of Drawings and Specifications, ENGINEER has relied upon:

4.2.1.1 The following reports of explorations and tests of subsurface conditions at the site of the Work: Report dated (N/A) prepared by (N/A), entitled (N/A), consisting of (N/A) pages.

4.2.1.2 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 of the Work: Drawings dated (N/A) of (N/A), prepared by (N/A), entitled: (N/A), consisting of (N/A) sheets, numbered (N/A) to (N/A) inclusive.

Copies of these reports and drawings that are not included with the Bidding Documents may be examined at (N/A) during regular business hours. These reports and drawings are not part of the Contract Documents.

4.2.2 Anything in Paragraph GC 4.2 to the contrary notwithstanding, CONTRACTOR shall not be entitled to rely on the following data:

SC-4.5.5 Chemicals Used or Stored

Chemicals known to be used or stored by the OWNER include the following:

NONE

SC-5.4 CONTRACTOR's Liability Insurance

The limits of liability for the insurance required by Paragraph 5.3 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

Workmen's Compensation Insurance: The CONTRACTOR shall carry Workmen's Compensation Insurance during the life of the Contract to insure his statutory liability to his employees in the state or states in which the work under this Contract is to be performed, plus \$100,000 Employer's Liability Coverage.

General Liability: The CONTRACTOR shall carry Commercial General Liability Insurance during the life of the Contract. The policy shall be written on an occurrence basis and shall include broad form property

1 damage coverage. The required limits for this coverage are to meet the limits shown in either of the
2 sample Certificates of Insurance included in Appendix A of these Supplementary Conditions.
3

4 Automobile Liability: The CONTRACTOR shall carry the Comprehensive form of Automobile Liability and
5 Property Damage Insurance during the life of the Contract. The required limits for this coverage are to
6 meet the limits shown in either of the sample Certificates of Insurance included as Appendix A to these
7 Supplementary Conditions.
8

9 Umbrella and/or Excess Liability: Depending on the limits provided in the above primary insurance
10 policies the CONTRACTOR shall carry Umbrella and/or Excess Liability Insurance during the life of the
11 Contract with limits meeting those shown in either of the sample Certificates of Insurance included as
12 Appendix A to these Supplementary Conditions.
13

14 **SC-5.4.7 Additional Insureds**

15
16 The policies of insurance so required by Paragraph 5.4 shall include as additional insureds the following
17 parties:

- 18 1. OWNER
- 19 2. ENGINEER

20 21 **SC-5.6 Builders Risk Insurance**

22
23 The CONTRACTOR shall bear all risks of all loss or damage to the materials and Work until the Work is
24 finally accepted by the OWNER, except that the CONTRACTOR may claim reimbursement under the
25 OWNER's builder's risk insurance policy as herein provided and limited. OWNER will carry "All Risk"
26 Builders Risk Insurance subject to deductibles, terms and conditions as stated in the policy and below. It
27 is the obligation and responsibility of the CONTRACTOR to make appropriate claim to the insurance
28 company for all losses claimed under the policy. Should any loss not be covered under this policy, in
29 whole in or parts, the CONTRACTOR shall bear the loss. Any questions regarding coverages, limitation,
30 exclusion, etc. contained in the policy shall be addressed by bidders prior to submittal of bids, to Warren
31 and Welsh Co. Insurance, Irwin Building, King of Prussia, PA 19406, phone no. (215) 337-0330.
32

33 Such insurance shall cover the full value of the cost of replacement to the OWNER, less applicable
34 deductibles, of all completed portions of the work to be performed throughout the entire time of
35 construction. The deductibles on each separate and unrelated loss are (1) 5% of the value of loss
36 caused by earthquake and (2) \$500 on all other losses. OWNER will furnish to the CONTRACTOR
37 evidence of the insurance coverage provided.
38

39 Such insurance shall not cover (1) damage to or loss of material or equipment furnished by either party
40 which are damaged or lost due to carelessness or negligence on the part of the CONTRACTOR, or (2)
41 damage to or loss of machinery, tools, equipment, or other property furnished by the CONTRACTOR
42 whether or not used by the CONTRACTOR in carrying out the terms of the Contract unless such
43 machinery, tools, equipment or other property are specifically intended for permanent incorporation into
44 the Contract work and are included in an approved application for payment.
45

46 **SC-6.13 Permits**

47
48 OWNER will obtain and pay for all necessary permits which by Laws or Regulations must be obtained by
49 the OWNER. The CONTRACTOR will obtain and pay for all other permits, licenses and certificates of
50 inspection. The CONTRACTOR will pay for all inspection costs and fees.
51

52 The CONTRACTOR and/or his Subcontractor(s) shall obtain, complete, seal and sign all applications
53 required to obtain construction permits required by state and local government agencies. A Xerox copy of
54 the electrician's and plumber's current state and/or local license shall be delivered to the OWNER.
55

1 When required by the local governing body, the electrician and plumber will execute a mechanical bond in
2 the form approved by the local government.

3
4 All bonds, application forms and copies of licenses shall be delivered to the OWNER so these documents
5 may be submitted with the OWNER's application for a building permit.

6
7 **SC-6.15 Sales Tax**

8
9 Add the following language after Paragraph 6.15 of the General Conditions:

10
11 CONTRACTOR shall indemnify and hold harmless the OWNER for any sales and use tax which OWNER
12 is required to pay by reason of CONTRACTOR's failure to seek and to implement any available Sales and
13 Use Tax Exemption and CONTRACTOR's failure to obtain any necessary exemption certificate.

14
15 OWNER may set off against monies otherwise due CONTRACTOR hereunder the amount of any sales
16 and use tax, or any other tax, which OWNER is required to pay by reason of CONTRACTOR's failure to
17 comply with Paragraph 6.15 of the General Conditions.

18
19 CONTRACTOR shall furnish evidence satisfactory to OWNER that CONTRACTOR has paid all sales,
20 consumer, use and other similar taxes required to be paid by CONTRACTOR. OWNER reserves the
21 right to audit the CONTRACTOR's statement prior to release of retainage and final payment.

22
23 **SC-9.3 Project Representation**

24
25 The duties, responsibilities and limitations of authority of the Resident Project Representative shall be as
26 follows:

27 A. General

28
29 The Resident Project Representative (RPR) is ENGINEER's agent at the site, will act as directed
30 by and under the supervision of ENGINEER.

31
32 B. Duties and Responsibilities of RPR

33
34 1. Conferences and Meetings: Attend meetings with CONTRACTOR, such as
35 preconstruction conferences, progress meetings, job conferences and other project-
36 related meetings.

37
38 2. Liaison: Serve as ENGINEER's liaison with CONTRACTOR, working principally
39 through CONTRACTOR's superintendent and assist in understanding the intent of the
40 Contract Documents; and assist ENGINEER in serving as OWNER's liaison with
41 CONTRACTOR when CONTRACTOR's operations affect OWNER's on-site operations.

42
43 3. Shop Drawings and Samples: Advise ENGINEER and CONTRACTOR of the
44 commencement of any Work requiring a Shop Drawing or sample if the submittal has not
45 been approved by ENGINEER.

46
47 4. Review of Work, Rejection of Defective Work, Inspections and Tests:

48
49 a. Conduct on-site observations of the Work in progress to assist
50 ENGINEER in determining if the Work is in general proceeding in accordance
51 with the Contract Documents.

52
53 b. Report to ENGINEER whenever RPR believes that any Work is
54 unsatisfactory, faulty or defective or does not conform to the Contract
55 Documents, or has been damaged, or does not meet the requirements of any
56 inspection, test or approval required to be made.

1
2 c. Verify that tests, equipment and systems startups and operating and
3 maintenance training are conducted in the presence of appropriate personnel,
4 and that CONTRACTOR maintains adequate records thereof.
5

6 5. Interpretation of Contract Documents: Report to ENGINEER when clarifications
7 and interpretations of the Contract Documents are needed and transmit to
8 CONTRACTOR clarifications and interpretations as issued by ENGINEER.
9

10 6. Modifications: Consider and evaluate CONTRACTOR's suggestions for
11 modifications in Drawings or Specifications and report with RPR's recommendations to
12 ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.
13

14 7. Payment Requests: Review applications for payment with CONTRACTOR for
15 compliance with the established procedure for their submission and forward with
16 recommendations to ENGINEER, noting particularly the relationship of the payment
17 requested to the schedule of values, Work completed and materials and equipment
18 delivered at the site but not incorporated in the Work.
19

20 8. Completion:

21 a. Before ENGINEER issues a Certificate of Substantial Completion, submit
22 to CONTRACTOR a list of observed items requiring completion or correction.
23

24 b. Conduct final inspection in the company of ENGINEER, OWNER and
25 CONTRACTOR and prepare a final list of items to be completed or corrected.
26

27 c. Observe that all items on final list have been completed or corrected and
28 make recommendations to ENGINEER concerning acceptance.
29

30
31 C. Limitations of Authority

32 Resident Project Representative:

33 1. Shall not authorize any deviation from the Contract Documents or substitution of
34 materials or equipment, unless authorized by ENGINEER.
35

36 2. Shall not exceed limitations of ENGINEER's authority as set forth in the
37 Agreement or the Contract Documents.
38

39 3. Shall not undertake any of the responsibilities of CONTRACTOR, subcontractors
40 or CONTRACTOR's superintendent.
41

42 4. Shall not issue directions relative to, or assume control over, any aspect of the
43 means, methods or techniques of construction unless such directions or control are
44 specifically required by the Contract Documents.
45

46
47
48 **SC-14.12 Final Application for Payment**

49 Add the following language at the end of Paragraph 14.12 of the General Conditions:

50 CONTRACTOR, Subcontractors and Suppliers shall execute and deliver to OWNER their release of liens
51 on forms supplied by OWNER. Blank forms are included in Appendix B of these Supplementary
52 Conditions.
53

54
55
56 END

SECTION

Appendix A - Sample Insurance Certificates

Client#: 535467

18CJHUG1

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/11/03

| | | |
|---|---|----------------|
| PRODUCER B&T-Carson Insurance Services 101 Tennessee Avenue (25302) P.O. Box 6278 Charleston, WV 25362 | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. | |
| | INSURERS AFFORDING COVERAGE | NAIC # |
| INSURED C.J. Hughes Construction Company, Inc. Contractors Rental Corporation P.O. Box 7305 Huntington, WV 25776 | INSURER A: St. Paul Fire & Marine Ins. Company | P&C |
| | INSURER B: Kentucky Associated General | P&C |
| | INSURER C: | |
| | INSURER D: | |
| | INSURER E: | |

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSURER ADD'L OR INSURER | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS | |
|--------------------------|---|---------------|----------------------------------|-----------------------------------|---|-------------|
| A | GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> BI/PD Ded:5,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | KK02200069 | 10/01/03 | 10/01/04 | EACH OCCURRENCE | \$1,000,000 |
| | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | \$100,000 |
| | | | | | MED EXP (Any one person) | \$10,000 |
| | | | | | PERSONAL & ADV INJURY | \$1,000,000 |
| | | | | | GENERAL AGGREGATE | \$2,000,000 |
| | | | | | PRODUCTS - COMP/OP AGG | \$2,000,000 |
| | | | | | | |
| A | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS | KA02200004 | 10/01/03 | 10/01/04 | COMBINED SINGLE LIMIT (Ea accident) | \$1,000,000 |
| | | | | | BODILY INJURY (Per person) | \$ |
| | | | | | BODILY INJURY (Per accident) | \$ |
| | | | | | PROPERTY DAMAGE (Per accident) | \$ |
| A | GARAGE LIABILITY <input type="checkbox"/> ANY AUTO | | | | AUTO ONLY - EA ACCIDENT | \$ |
| | | | | | OTHER THAN EA ACC | \$ |
| | | | | | AUTO ONLY: AGG | \$ |
| A | EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$ | KK02200069 | 10/01/03 | 10/01/04 | EACH OCCURRENCE | \$5,000,000 |
| | | | | | AGGREGATE | \$5,000,000 |
| | | | | | | \$ |
| | | | | | | \$ |
| | | | | | | \$ |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below | 6761 | 12/31/03 | 12/31/04 | WC STATU-TORY LIMITS | OTH-ER |
| | | | | | E.L. EACH ACCIDENT | \$3,000,000 |
| | | | | | E.L. DISEASE - EA EMPLOYEE | \$3,000,000 |
| | | | | | E.L. DISEASE - POLICY LIMIT | \$3,000,000 |
| A | OTHER Employers Liability - WV & OH | KK02200069 | 10/01/03 | 10/01/04 | \$500,000 | |
| | | | | | \$500,000 | |
| | | | | | \$500,000 | |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Verification of coverage

CERTIFICATE HOLDER

Kentucky American Water
 Att: Debble Mireault
 2300 Richmond Road
 Lexington, KY 40502

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Beverly Wolstire

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID TL
DIXAS-1
DATE (MM/DD/YY)
09/13/01

PRODUCER
Reading Lexington
Warrodsburg Rd Suite 220
Lexington KY 40504
Phone: 859-296-4580 Fax: 859-296-4583

INSURED
Dix Assoc Pipeline Contractors
210 Industry Parkway
Nicholasville KY 40356

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURER A: **Travelers**
INSURER B: **AGC KY ASSOC GEN CONT**
INSURER C: **ST. PAUL INSURANCE CO.**
INSURER D:
INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS |
|--|--------------------|----------------------------------|-----------------------------------|--|
| GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Blasting Included <input checked="" type="checkbox"/> Blanket Addl Ins GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC | DTHCO169J326-1-97 | 09/15/01 | 09/15/02 | EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS | DTJ810169J326-1-97 | 09/15/01 | 09/15/02 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ |
| GARAGE LIABILITY <input type="checkbox"/> ANY AUTO | | | | AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$ |
| EXCESS LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$ | DTJCUP169J326-1-97 | 09/15/01 | 09/15/02 | EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 Retention \$ 10,000 \$ \$ |
| WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | 6701 | 12/31/00 | 12/31/01 | <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 3,000,000 E.L. DISEASE - EA EMPLOYEE \$ 3,000,000 E.L. DISEASE - POLICY LIMIT \$ 3,000,000 |
| OTHER Equipment | IM03900104 | 09/15/01 | 09/15/02 | Leased 350,000 Scheduled 768,000 |

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
68-6374

CERTIFICATE HOLDER **ADDITIONAL INSURED; INSURER LETTER:** KYAMERI

Ky American Water
Attn: Debbie Mireault
2300 Richmond Rd
Lexington KY 40502

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
[Signature]
Rob Hoenscheid

---APPENDIX B---

RELEASE OF LIENS

1
2
3
4
5
6 WHEREAS, we, the undersigned, have installed or furnished labor, materials and/or equipment for the
7 installation of the Project entitled KRS Water System Improvements – Replacement of (2) Traveling
8 Water Screens, installed pursuant to a written agreement dated _____, 20____, between the
9 Kentucky American Water, having an office at 2300 Richmond Road, Lexington, Kentucky 40502,
10 hereinafter called OWNER and W. Rogers Company,
11 having an office at, 649 Bizzell Drive, Lexington, KY 40510,

12 hereinafter called CONTRACTOR, which said facilities are owned by the OWNER and described and
13 located as follows:

14
15
16
17 Construction of KRS Water System Improvements – Replacement of (2) Traveling Water Screens and
18 appurtenances located at the Kentucky River Station intake at 6300 Cedar Creek Lane, Lexington, KY.
19
20
21

22 WHEREAS, we, the undersigned, have agreed to release any and all claims and liens which we have, or
23 might have, against the OWNER, or said facilities by reason of the labor, materials and equipment
24 furnished by us in connection with said installation;

25
26 NOW THESE PRESENTS WITNESS that we the undersigned, in consideration of the premises, and of
27 the sum of One Dollar (\$1.00) in hand paid by the said OWNER, at and before the sealing and delivery
28 hereof, the receipt whereof we do hereby acknowledge, have remised, released and forever quitclaimed,
29 and by these presents do remise, release and forever quitclaim, unto the said OWNER, its successors
30 and assigns, any and all manner of liens, claims and demands whatsoever which we now have, or might
31 or could have, on or against the said facilities, or the owner thereof, for work done, or for equipment or
32 materials furnished in connection with the installation thereof. It is the intent of this release that the
33 OWNER, its successors and assigns shall and may hold, have, use and enjoy the said facilities free and
34 discharged from all liens and demands whatsoever which we now have, or might or could have against
35 the same if these presents had not been made.
36
37
38

1 IN WITNESS WHEREOF, we have hereunto set our hand and seal the day written opposite our
2 signature.

3
4 Company Name _____(SEAL)

5
6 By _____

7
8 Title _____

9
10 Dated, _____, 20__.

11
12
13 Sworn to and subscribed before me, a Notary Public, this ___ day of , _____20__.

14
15
16 _____(SEAL)

17 Notary Public

18
19
20
21 I, _____, duly authorized representative of

22 _____, designated as CONTRACTOR,

23 do hereby state that the parties whose names are signed to the attached releases, pages 1 through ____,
24 are all of the parties who have furnished labor, materials or equipment in connection with the construction
25 of the facilities mentioned above; excepting only such materials as may have been furnished by the
26 OWNER.

27
28
29 Dated: _____, 20__ _____
30 Representative's Signature

31
32
33 Sworn to and subscribed before me, a Notary Public, this ___ day of , _____20__.

34
35
36 _____(SEAL)

37 Notary Public

38
39

**RELEASE OF LIENS
SUBCONTRACTORS AND SUPPLIERS**

WHEREAS, we, the undersigned, have installed or furnished labor, materials and/or equipment for the installation of the Project entitled KRS Water System Improvements – Replacement of (2) Traveling Water Screens, installed pursuant to a written agreement dated _____, 20____, between the Kentucky American Water, having an office at 2300 Richmond Road, Lexington, Kentucky 40502, hereinafter called OWNER and _____, having an office at, _____,

hereinafter called CONTRACTOR, which said facilities are owned by the OWNER and described and located as follows:

Construction of KRS Water System Improvements – Replacement of (2) Traveling Water Screens and appurtenances located at the Kentucky River Station intake at 6300 Cedar Creek Lane, Lexington, KY.

WHEREAS, we, the undersigned, have agreed to release any and all claims and liens which we have, or might have, against the OWNER or said facilities by reason of the labor, materials and equipment furnished by us in connection with said installation;

NOW THESE PRESENTS WITNESS that we, the undersigned, in consideration of the premises, and of the sum of One Dollar (\$1.00) in hand paid by the said OWNER, at and before the sealing and delivery hereof, the receipt whereof we, do hereby acknowledge, have remised, released and forever quitclaimed, and by these presents do remise, release and forever quitclaim, unto the said OWNER, its successors and assigns, any and all manner of liens, claims and demand whatsoever which we now have, or might or could have, on or against the said facilities, or the owner thereof, for work done, or for equipment or materials furnished in connection with the installation thereof. It is the intent of this release that the OWNER, its successors and assigns shall and may hold, have, use and enjoy the said facilities free and discharged from all liens and demands whatsoever which we now have, or might or could have against the same if these presents had not been made. And we do further certify and acknowledge, that we have received of and from the said CONTRACTOR, payment in full on account of labor done or materials or equipment furnished for or in connection with said facilities.

IN WITNESS WHEREOF, we have hereunto set our hand and seal the day written opposite our signature.

Company Name _____(SEAL)

By _____

Title _____

Dated, _____, 20____.

Sworn to and subscribed before me, a Notary Public, this ____ day of , _____ 20____.

_____(SEAL)

Notary Public

SECTION 1000

SUMMARY OF WORK

PART 1 - GENERAL

1.01 SCOPE OF WORK PERFORMED UNDER THIS CONTRACT

The CONTRACTOR shall furnish all labor, materials, equipment and means to construct the project entitled KRS Water System Improvements – Replacement of (2) Traveling Water Screens, as shown on the Drawings and described herein. The main purpose for this project is to replace (2) Traveling Screens at the intake structure on the Kentucky River that have been in service since the 1950's. These traveling screens are essential in protecting the raw water intake pumps from leaves, branches, fish, and other debris larger than 1/2". The traveling screens are located just behind the coarse bar rack and can be isolated by the closure of two sluice gates.

The work includes, but is not limited to, the following items:

- Removal and proper offsite disposal of existing (2) traveling screens and all appurtenances.
- Installation of (2) US Filter traveling screens per US Filter and Kentucky American Water drawings and specifications.
- Inspection and replacement, as necessary, for the existing deflector and steel refuse trough.
- Removal and proper disposal of existing steel intermediate enclosure for each traveling screen.
- Installation in-kind of approximately 3/8-inch thick steel intermediate enclosure for (2) traveling screens, approximately 28' H X 5'-6" D X 7' W for each traveling screen, with a hinged, 2-door access at the base. (Must visit site to determine accurate details and dimensions of enclosure.)
- Replace in-kind Bubbler Level Sensing Line System. (General design concept illustrated in Appendix A following Summary of Work.) (Must visit site to determine accurate details and dimensions of system.)

Certain material and equipment on this project will be purchased by Kentucky American Water for installation by the Contractor while other material must be supplied and installed by Contractor. Detailed explanation of this is reflected in the drawings and specifications.

1.02 ENUMERATION OF DRAWINGS AND SPECIFICATIONS

Drawings and specifications are provided for construction.

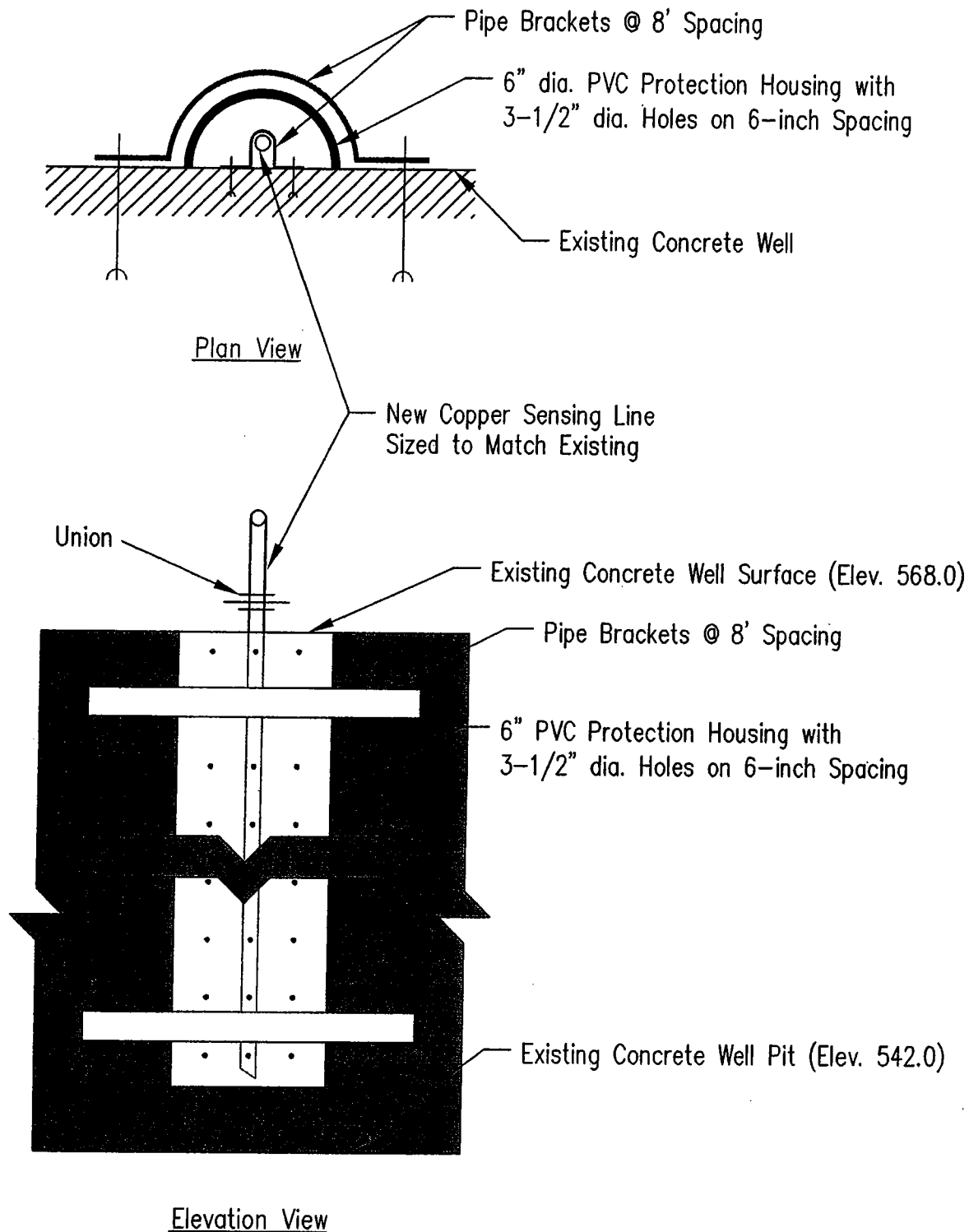
PART 2 - PRODUCTS (Not Applicable)

PART 3 - EXECUTION (Not Applicable)

END OF SECTION

APPENDIX A

Bubbler Level Sensing Line Replacement



BUBBLER LEVEL SENSING LINE
GENERAL SKETCH

SCALE: NO SCALE
DATE DRAWN: 01/20/04
FILE:

SECTION 1010

DRAWING INDEX

PART 1 - GENERAL

1.01 DRAWINGS

The following drawings, prepared by the Kentucky-American Water Company accompany this Specification and are part of the Contract Documents. These drawings are provided under separate binding.

| <u>Sheet No.</u> | <u>Drawing No.</u> | <u>Title</u> |
|------------------|--------------------|--|
| 1 | | Cover Sheet & Location Map |
| 2 | 30551-101 | General Arrangement for (2) REX Traveling Water Screens |
| 3 | 30551-102 | Specifications and Details for (2) REX Traveling Water Screens |
| 4 | | Supplemental Information |

PART 2 - PRODUCTS (Not Applicable)

PART 3 - EXECUTION (Not Applicable)

END OF SECTION

SECTION 1046

CONTINUITY OF PLANT OPERATIONS AND WORK SEQUENCE

PART 1 - GENERAL

1.01 INTENT OF SECTION

The following description of the work sequence, as it relates to continuity of plant operations, provides the Contractor with a suggested approach to implement the work while minimizing interruptions of the Owner's operation. The Owner understands that implementation of the work may require some down time for portions of the plant. Nevertheless, the Contractor must schedule the interruptions with the Owner to permit alternative modes of operation and maintain continuous water service.

The following outline identifies the areas of work that may restrict plant operations and allows the Owner and Contractor to negotiate the permissible down time for specific plant functions and suggest other provisions for continuous or partial operation.

1.02 WORK PLAN

The Contractor shall submit a written work plan, prior to performing each phase of the work, to give the Owner and Engineer assurance that the Contractor has planned the work to minimize interruptions. The work plan also provides the opportunity for the Owner and Engineer to review the Contractor's assumptions regarding interruptions of the Owner's operation. The work plan shall provide sufficient flexibility to accommodate changes requested by the Owner and Engineer to minimize the interruptions.

PART 2 - PRODUCTS (Not Applicable)

PART 3 - EXECUTION

3.01 GENERAL

3.02 NOTIFICATIONS

(State Owner requirements for shutdowns, cleaning of basins, restarting, testing, etc.)

3.02 SUGGESTED SEQUENCE

END OF SECTION

SECTION 1075

BASIS OF PAYMENT

PART 1 - GENERAL

1.01 SCOPE

The lump sum Contract price constitutes full payment to the CONTRACTOR for Work to be performed under this Contract. When applicable, and authorized by OWNER, additional work will be paid for in accordance with the supplementary unit price schedule, of the Bid. The cost of labor, equipment, materials or work called for in the Specifications, shown on the Drawings, or necessary for a complete and satisfactory installation, but which are not specifically mentioned in this Section shall be included in the appropriate supplementary unit price by the CONTRACTOR at no additional expense to the OWNER.

PART 2 - PRODUCTS (Not Applicable)

PART 3 - EXECUTION (Not Applicable)

END OF SECTION

SECTION 1300

SUBMITTALS

PART 1 - GENERAL

1.01 BEFORE STARTING WORK

A. Preliminary Progress Schedule

Bar-Chart Schedule: Prepare a fully developed, horizontal bar-chart type Contractor's construction schedule. Submit finalized schedule prior to submission of the first Application for Payment.

Provide a separate time bar for each significant construction activity. Provide a continuous vertical line to identify the first working day of each week. Use the same breakdown of units of the Work as indicated in the "Schedule of Values".

Within each time bar indicate estimated completion percentage in 10 percent increments. As Work progresses, place a contrasting mark in each bar to indicate Actual Completion.

Prepare the schedule on a sheet, or series of sheets, of stable transparency, or other reproducible media, of sufficient width to show data for the entire construction period but no wider than 36".

Secure time commitments for performing critical elements of the Work from parties involved. Coordinate each element on the schedule with other construction activities; include minor elements involved in the sequence of the Work. Show each activity in proper sequence. Indicate graphically sequences necessary for completion of related portions of the Work.

Coordinate the Contractor's construction schedule with the schedule of values, list of subcontracts, submittal schedule, progress reports, payment requests and other schedules.

Indicate completion in advance of the date established for Substantial Completion. Indicate Substantial Completion on the schedule to allow time for the Engineer's procedures necessary for certification of Substantial Completion.

Phasing: Provide notations on the schedule to show how the sequence of the Work is affected by requirements for phased completion to permit Work by separate Contractors and partial occupancy by the Owner prior to Substantial Completion.

Work Stages: Indicate important stages of construction for each major portion of the Work, including testing and installation.

Area Separations: Provide a separate time bar to identify each major construction area for each major portion of the Work. Indicate where each element in an area must be sequenced or integrated with other activities.

Cost Correlation: At the head of the schedule, provide a two item cost correlation line, indicating "precalculated" and "actual" costs. On the line show dollar-volume of Work performed as of the dates used for preparation of payment requests.

Refer to Section "Applications for Payment" for cost reporting and payment procedures.

1 4. Demobilization - To reflect the cost of removing the temporary facilities and final
2 site cleanup.

3
4 5. Permits - To include fees required for any permits which CONTRACTOR is
5 required to obtain including inspection fees associated with such permits.

6
7 The cost of home office overhead, profit, financing, contingencies, etc. are to be
8 apportioned to the construction activities in the schedule of values based on the
9 percentage that each construction activity cost represents when compared to the subtotal
10 of all construction activity costs. This subtotal is excluding mobilization, demobilization,
11 job site overhead, permits, home office overhead, profit, financing, contingencies, etc.
12 The total of all items in the schedule of values shall equal the Contract Price.

13
14 **D. Cash Flow Schedule**

15
16 Accompanying the CPM Schedule required above, the CONTRACTOR shall also submit to the
17 ENGINEER, for approval, a Cash Flow Schedule. The Cash Flow Schedule shall show the
18 amounts of money by months which will be required to reimburse the CONTRACTOR for Work
19 performed during each month of the Contract Times. The sum of all the monthly cash
20 requirements shall equal the Contract Price. The monthly cash requirements shall be
21 proportioned based on the CPM Schedule. The initial cash flow schedule shall depict monthly
22 cash requirements based on the early start dates of the CPM Schedule as well as the monthly
23 cash requirements based on late start dates of the CPM Schedule. The approved cash flow
24 schedule will be developed by the ENGINEER and will reflect the CONTRACTOR's schedule
25 performance as of the date of approval. This process of approving cash flow schedules will occur
26 with each required schedule update.

27
28 The approved Cash Flow Schedule will be used by the OWNER to program funds for progress
29 payments to the CONTRACTOR. Monthly payments will be made to the CONTRACTOR in
30 accordance with the Contract Agreement, but at no time will the aggregate amount of payments
31 exceed the accumulated amount of payments for the same period of the approved Cash Flow
32 Schedule.

33
34 **E. Preconstruction Video Taping**

35
36 Prior to mobilization at the site, the CONTRACTOR shall furnish to the ENGINEER a video
37 cassette recording of all planned construction areas, material storage areas, areas adjacent to
38 these areas, including but not limited to, streets, driveways, sidewalks, curbs, ditches, fencing,
39 railing, visible utilities, retaining structures and adjacent building structures. The purpose of the
40 video taping is to document existing conditions and to provide a fair measure of required
41 restoration. Care should be taken to record all existing conditions which exhibit deterioration,
42 imperfections, structural failures or situations that would be considered substandard.

43
44 The taping shall be performed by a professional firm specializing in audio-video work. The tapes
45 shall be high quality, color and in the VHS format. Temporary lighting shall be provided as
46 necessary to properly tape areas where natural lighting is insufficient (indoors, shadows, etc.).
47 The tapes shall include an audio soundtrack to provide the following information:

- 48
49 - detailed description of location being viewed referenced to Contract Drawings (ie.
50 station no., building designation, pipeline route etc.)
51 - direction (N, S, E, W, looking up, looking down, etc.) of camera view
52 - date, time, temperature, environmental conditions at time of taping.

53
54 Any areas not readily visible by taping methods shall be described in detail. Unless otherwise
55 approved by ENGINEER, taping shall not be performed during inclement weather or when the
56 ground is covered partially or totally with snow, ice, leaves, etc.