

CONTRACT BIDDING DOCUMENTS

County of Clinton

Industrial Development Agency

137 Margaret Street, Suite 209

Plattsburgh, NY 12901



**SOUTH JUNCTION ENTERPRISES
EXPANSION PROJECT #3
COMPTROLLER CONTRACT # DR38948
PIN 7935.32.301**

June 5, 2024

County of Clinton Industrial Development Agency
137 Margaret Street, Suite 209
Plattsburgh, NY 12901

CCIDA PROJECT NUMBER 7935.32.301

TABLE OF CONTENTS

- Invitation to Bid
- Permitting and Detailed Summary of Work
- Instructions to Bidders
- Proposal
- Contract Agreement
- Approval of Sub Contractor Form
- Disadvantaged Business Enterprise Requirements
- General Conditions
- Special Provisions – Standard Clauses of New York State Contracts
- General Installation Specifications & Technical Construction Specifications
- Contract Plans including Project Location Maps
- NYSDOT Prevailing Wage Rate Schedule

INVITATION TO BID

Invitation to Bid (INV-1)

INVITATION TO BID

NOTICE IS HEREBY GIVEN that the County of Clinton Industrial Development Agency (the “Agency”) will receive sealed bids for the following project:

Project name:

South Junction Enterprises Expansion Project #3

Project description:

A bucket elevator, receive and reclaim conveyors, silo, and storage system will be constructed for the purpose of unloading and storing bulk commodities.

The project is proposed to be bid in the early spring of 2024 with construction to begin upon selection of the successful bidder. The project is targeted to complete as much work as possible in 2024. Such sealed bids must be filed with the following:

Address:

County of Clinton Industrial Development Agency, 137 Margaret Street, Suite 209, Plattsburgh, NY 12901 (the “Agency Offices”)

Bid due date:

All bids must be submitted by 5:00 PM EST, June 20, 2024

After the deadline, the said bids will be publicly opened and read. Digitally submitted bids (i.e., email, fax, flash drive, cd, etc.) will not be accepted.

Bid documents will be distributed to invited bidders and to interested Contractors responding to legal notices posted in The Press Republican. Bidders will receive one (1) digital copy of the documents in Adobe .pdf file format. No additional copies of the bid documents, either hard copy or digital will be provided.

The Agency shall not be held responsible for the completeness or accuracy of any bid documents received by a Contractor that were not directly issued to that Contractor by the Agency. Any Contractor submitting a bid based on incomplete or inaccurate information resulting from documentation received from any third party, shall not have cause for relief from award or completion of a contract in accordance with the official documents on file with the Agency.

The Contract is to provide all the necessary services, material, equipment, labor and superintendence necessary to perform the construction work in accordance with the standards of the New York State Department of Transportation, the Federal Railroad Administration, the American Railway Engineering & Maintenance of Way Association, and the Agency.

South Junction Expansion Project #3

Project schedule:

Project Advertised	June 5, 2024
Contractor Questions Due	June 17, 2024
Bids Due / Bid Opening	June 20, 2024
Anticipated Complete Construction	360 Days from the Notice to Proceed

The Agency reserves the right to reject any or all bids, waive any informalities in the bidding, or award certain items only and the Contractor(s) will have no claim against the Agency or the State of New York.

County of Clinton Industrial Development Agency

PERMITTING AND DETAILED SUMMARY OF WORK

1. PERMITTING

A railcar unloading system will be constructed consisting of a galvanized incline drag conveyor, a receiving and reclaim drag conveyor, and a 30' 12RW storage tank w/ flying dutchman for the purpose of receiving and storing feed ingredients from railcar unloading. Required Pre-construction Notifications to the district engineer and compliance with all permit General Conditions will be the responsibility of the contractor. It is expected that bidding bridge repair contractors will be familiar with these Nationwide Permit requirements and bid accordingly. In accordance with the above information, conformance to the Nationwide Permit requirements is the responsibility of the contractor and incidental to the work described.

2. DETAILED SUMMARY OF WORK

A detailed list of materials for the constructed storage system begins on the following page.

1	Ea	<p>Honeyville Galvanized Incline Drag Conveyor Model: HD-F221CT Capacity: 10,000 BPH Speed: 34.5Rpm / 157.7Fpm Overall Length: 59'-2" Discharge Ht: 11'-9" (4' Below Grade) Purpose: Receive Canola Meal (35PCF) From Railcars</p> <p>Conveyor Includes:</p>
1	ea	- HD-F221CT Incline Base Unit w/ 3-7/16" Head Shaft & 2-3/16" Tail Shaft
1	ea	- 8ga. Head & Tail Sections
1	ea	- 5' Wide x 4' Long Bypass Inlet Hopper F/ Rail Receiving (In Lieu Of Std. 10')
3	ea	- Horizontal Extension w/ 81 XH Chain & 3/8" UHMW Paddles
1	ea	- 15 ⁰ Bend Section In Lieu Of Std 45 ⁰
35	ea	- Inclined Extension w/ 81 XH Chain & 3/8" UHMW Paddles
1	ea	- TA6307H25 Gear Reduction Drive (25Hp)
59	ea	- 3/16" AR Steel Bottom Liner In Lieu Of Galv. (\$/Ft)
1	ea	- 25Hp. 3Ph. 1800Rpm. TEFC Weg Motor
1	ea	- 24" Inlet Flange To Receive From Hopper Tank Reclaim Drag
2	4' x 8'	- 12" x 12" Drag Inspection Port (Bolt-On)
1.5	20'	- 1/4" AR400 Plating (4' x 8') F/ Transitions To The Elevator & For The Rail Hopper
1	ea	- 1-1/2" x 1-1/2" x 1/4" Galv. Angle Iron (20') F/ Transition Flanges
1	ea	- 8" x 8" Inspection Door F/ Discharge Transition
5	20'	- Collect-A-Sample Kit
1	20'	- 3" x 3" x 1/4" Galv. Angle Iron (20') F/ Bracing
1	4' x 8'	- 16" x 77#Wide Flange Black Beam (20') F/ Rail Hopper Inlet
4	Ea	- 10ga. Galv. Sheet (4' x 8') F/ 4' Rail Bypass Hopper
10	Ea	- 3-1/2" x 5/8" Drive-over Bar Grating (\$/Ft)
1	ea	- Drive-Over Solid Plating (\$/Ft)
		Labor & Equipment To Assemble & Install The Drag Conveyor F/ Rail Receiving. Also, Includes The Labor To Design & Supply Foundation Drawings.

SJE EXPANSION PROJECT #3

1	ea	Lambton Galvanized Bucket Elevator (Model 4216X812140) Capacity: 10,000 BPH Discharge Height: 140' Head Shaft: 3-15/16" Boot Shaft: 2-7/16" speed: 660 FPM / 60 RPM Product: Canola Meal (35 PCF)
		Elevator Materials Include:
1	ea	- ga. Galv. Trunk Sections In Lieu of 12ga.
1		- Winged Boot Pulley
1	ea	- 1/4" Urethane Head Lining
301		- 16" x 8" Buckets w/ #3 Venting On 12" Centers
1	ea	- 17" 440# Rubber Belting
1		- TA8407 Shaft Mount Reducer w/ Sheaves & Guard (60Hp)
1	ea	- Head Service Platform F/ 42" Pulley Elevator
1	ea.	- Large Work Platform F/ Distributor
4	ea	- Step-Over Rest Platform
1	ea	- Square To 16" Round Discharge Transition (Kryptane-Lined)
1		- Single Feed Boot Hopper
4	ea	- Guy Wire Brackets
1	ea	- Head Exhaust Vent
140	ea	- Ladder (S/Ft)
135	ea	- Safety Cage (S/Ft)
	ea	- Fall Protection Kit w/ 40' Wire Rope
4	ea	- 3' Lanyard, Fall Protection Harness, & Rope Grab
	ea	- 60Hp. 3Ph. 1800Rpm. TEFC Weg Motor
1	ea	- 1/4" AR400 Plating (4' x 10') F/Custom Intake Hopper
1	4' x 10'	Mated To Recv. Drag Discharge
1		- Maxi-Splice Belt Clamps w/ 9/16" x 5" Hex Bolt & Nutrition
9	ea	- Complete Flex 125 Auto Greaser
2	24'	- 4" x 2" x 1/4" Rect. Tubing (24') F/ Keeping Boot Off Concrete
0.5	20'	- 16" x 77# Wide Flange Black Deadman Anchor (20')
4	ea	- Guying Materials w/ 3/8" Galv. Cable, 3/4" Turnbuckles, & 3/8"
1		Clamps
1	ea	Honeyville 16" 6-Hole 60 ⁰ Flatback Distributor w/ Pipe Controls
1	ea	- 5/16" Urethane Liner F/ Nose & Extension
	ea	- Upgrade To 3/8" HR F/ 16" In-spout
1	ea	- Back Support F/ 16" Distributor To Elevator
	ea	- Distributor Door Platform Assembly
1	ea	- Group 3 Dist Door Platform Mount 118 ⁰ (L&R)

SJE EXPANSION PROJECT #3

12	ea	-	Pipe Guide F/ 1" Control Pipe
7		-	1" Sch.40 Galv. Pipe (21
			16" Round Spouting & Accessories For Spouts To (1) 30' Tank & (1) Truck Loadout
200	ft	-	16" IOga. Galv. Round Spouting (S/Ft)
12	ea	-	16" Angle Flange Ring
12	ea	-	16" 22.5° Galv. Round Elbows
30	ea	-	16" Clamp Band
2	ea	-	16" x 24" Weld-Style Pipe Sleeve
1	ea	-	16" Galv. Flat Top Adapter
1	ea	-	16" x 60' Truss Kit w/ Cable
3	ea	-	16" 7ga. Galv. Spout End w/o Baffle F/ Feed Material
4	ea	-	16" Round Galv. Spout Cap
1	ea	-	Materials To Brace & Support The Distributor & Loadout Spout As Needed
1	hr		Labor & Equipment To Install The Elevator, Distributor, & (2) Spouts Shipping

SJE EXPANSION PROJECT #3

1	ea	<p>Sukup 30' 12 Ring 45° H.D. Hopper Tank Capacity: 37,974 Cu.Ft. (664 Ton @ 35 PCF) Eave Height: 65'-3" Fill Height: 73'-11" Outlet Diameter: 32" RNP Clearance: 86" Roof Capacity: 15,000 Lbs (55# GSL) Shell Weight: 55,800 Lbs. Product: Canola Meal Model Number: BH03012QPSX6</p> <p>Holding Tank Includes:</p> <ul style="list-style-type: none"> - Powder Coat, Weld & Handling Fee
1	ea	<ul style="list-style-type: none"> - 54" Landing Platform w/ Cage
1	ea	<ul style="list-style-type: none"> - Outside Ladder, Cage, Transfer Platform, & Eave Platform
1		<ul style="list-style-type: none"> - Fall Protection Kit w/ 40' Wire Rope
1		<ul style="list-style-type: none"> - 18" 80° Poly Roof Vent w/ Screen
3	ea	<ul style="list-style-type: none"> - Cutout Roof Panel F/ Vent
4		<ul style="list-style-type: none"> - Manway Guardrail
4		<ul style="list-style-type: none"> - Roof Stairs w/ Handrail
1	ea	<ul style="list-style-type: none"> - 9' Peak Walkaround Platform w/ Handrail
1	ea	<p>Flying Dutchman Bin Unloader (Model 17130) Pole Shaft Size: 7" Drive System: Belt & Chain Hopper Angle: 45° Bin Diameter: 30' Material: Canola Meal</p>
1	ea	<ul style="list-style-type: none"> - Soybean-Style Slide Gate (Build Into Unloader) N/C - 7" Flat Top Style Hopper Weldment - Recycling Timer - Vibrator & Mounting Plate Assy. - H.D. Access Door F/ Hopper Panel
1		<ul style="list-style-type: none"> - 20Hp. 3Ph. 1800Rpm. TEFC Weg Motor
1		<ul style="list-style-type: none"> - 1" Anchor Bolt Kit
16	ea	<ul style="list-style-type: none"> - Hilti Hy 200-A Epoxy Adhesive 16.90z (Per Piece)
1	ea	<p>Labor, Crane Erect The Holding Tank, & Install The Flying Dutchman Unloader. Also Includes The Print For Hopper Tank Foundation. Shipping</p> <p>Customer Responsible For Concrete Work (146Yds), Backfill, & Electrical Wiring.</p>

SJE EXPANSION PROJECT #3

1	ea	<p>Honeyville Galvanized Incline Drag Conveyor Model: HD-F221CT Capacity: 10,000 BPH speed: 34.5Rpm / 157.7Fpm Overall Length: 36'-1 " Discharge Ht: 4'-9" (At Grade) Purpose: Reclaim Canola Meal (35PCF) From A 30' 12RW Tank</p> <p>Conveyor Includes:</p> <ul style="list-style-type: none"> - HD-F221CT Incline Base Unit w/ 3-7/16" Head Shaft & 2-3/16"
1	ea	<ul style="list-style-type: none"> - Tail Shaft - 8ga. Head & Tail Sections
1	ea	<ul style="list-style-type: none"> - 5' Wide x 3' Long Bypass Inlet Hopper F/ 30' Tank Reclaim
1	ea	<ul style="list-style-type: none"> - (In Lieu Of Std. 10')
	ea	<ul style="list-style-type: none"> - 5' Wide x 3' Long Bypass Inlet Hopper F FUTURE 30' Tank Reclaim
4		
1	ea	<ul style="list-style-type: none"> - Horizontal Extension w/ 81 XH Chain & 3/8" UHMW Paddles
8		
1		<ul style="list-style-type: none"> - 15° Bend Section In Lieu Of Std 45°
	ea	<ul style="list-style-type: none"> - Inclined Extension w/ 81XH Chain & 3/8" UHMW Paddles
35		
1		<ul style="list-style-type: none"> - TA6307H25 Gear Reduction Drive (20Hp)
1	20'	<ul style="list-style-type: none"> - 3/16" AR Steel Bottom Liner In Lieu Of Galv. (Sift)
	Ea	<ul style="list-style-type: none"> - 20Hp. 3Ph. 1800Rpm. TEFC Weg Motor
2	4'x8'	<ul style="list-style-type: none"> - 12" x 12" Drag Inspection Port (Bolt-On)
		<ul style="list-style-type: none"> - 1/4" AR400 Plating (4' x 8') F/ Transitions To The Receiving Drag Incline & From The Flying Dutchman Unloader
1.5	20'	<ul style="list-style-type: none"> - 1-1/2" x 1-1/2" x 1/4" Galv. Angle Iron (20') F/ Transition
1		<ul style="list-style-type: none"> - Flanges
4	hr	<ul style="list-style-type: none"> - 8" x 8" Inspection Door F/ Discharge Transition
1	ea	<ul style="list-style-type: none"> - Collect-A-Sample Kit
1		<ul style="list-style-type: none"> - 3" x 3" x 1/4" Galv. Angle Iron (20') F/ Bracing
0.5	hr	<ul style="list-style-type: none"> - IOga. Galv. Sheet (4' x 8') F/ 2nd Bypass Hopper Cover
	ea	
		<p>Labor & Equipment To Assemble & Install The Drag Conveyor For Hopper Tank Reclaim Shipping</p>

INSTRUCTIONS TO BIDDERS

1. FORWARD

The Bidding Documents and Specifications include the following sections:

- Request for Bids
- Instructions to Bidders
- Proposal
- Addenda Acknowledgment
- E.E.O. Requirements
- Non-Collusion Affidavit
- Plant and Equipment Schedule
- Bidder's Qualifications
- Contract Agreement
- General Conditions
- Special Provisions
- Technical Specifications

All Bidders shall fully and carefully read the entire Bidding Documents before submitting Proposals and shall comply with all the instructions and requirements as specified.

The Bidding Documents and Specifications are complementary and whatever is called for by anyone shall be as binding as if called for by all.

Persons desiring to bid shall use this Proposal. THE NYSDOT SPECIFICATIONS PUBLICATION CURRENT EDITION, INCLUDING ALL ADDENDA, AS SPECIFICALLY AMENDED HEREIN ARE TO BE CONSIDERED AS AND SHALL FORM A PART OF THE AGREEMENT. However, the attention of the Bidder is directed by the fact that the County of Clinton Industrial Development Agency, acting through its duly authorized officers, is the contracting party herein, and the Specifications above referred to shall be read accordingly. The time for which Proposals will be received will be found in the Request for Bids calling for Proposals. Any Proposal received after the hour specified shall not be accepted.

Whenever the following words and expressions are used in the New York Department of Transportation Specifications Publication, it is understood that they shall have the meanings defined below:

Agency – County of Clinton Industrial Development Agency.

Chief Engineer — South Junction Enterprises.

Wherever in the Contract the following terms, and/or pronouns in place of them, are used, their intent and meaning shall be interpreted as follows:

Owner – South Junction Enterprises, or its representative.

Operator - South Junction Enterprises.

Railroad - South Junction Enterprises, or its representative.

DEFINITIONS

The definitions and terms of the New York Department of Transportation Specifications Publication shall apply except as modified herein.

NYSDOT – New York Department of Transportation.

Specifications - The general term comprising all requirements contained in these Bidding Documents, including Instructions to Bidders, Proposals, Technical Specifications, Special Provisions and other Supplemental Specifications issued pertaining to the method or manner of performing the work and/or the qualities and quantities of materials to be furnished for the project.

At the exception of quality control and inspection measures, all other provisions of the NEW YORK DEPARTMENT OF TRANSPORTATION SPECIFICATIONS PUBLICATION, current edition, including all addenda, as specifically amended herein shall apply.

The quality control measures specified therein as being done by the NYSDOT department will not be done by NYSDOT and are the responsibility of the grantee railroad or their designated engineer. They should comply with their respective QA/QC plans.

Working Day - A working day shall be any day, other than a legal holiday, Saturday or Sunday, on which the normal working forces of the Contractor may proceed with regular work for at least six (6) hours toward completion of the Contract, unless work is suspended for causes beyond the Contractor's control. Saturdays, Sundays, and holidays on which the Contractor's forces engage in authorized work, requiring the presence of an Inspector, will be considered as working days.

ANSI - American National Standards Institute, Inc. (formerly USASI)

All other terms not defined herein before but never the less used in these documents shall conform to the definition of terms prescribed in Section 101 of the General Provisions.

2. STATE LABOR LAW

The Bidder must comply with all the provisions of the Labor Law of State of New York in the performance of this Contract.

3. EQUAL EMPLOYMENT OPPORTUNITY

Attention of Bidders is particularly called to the requirements for ensuring that employees and applicants for employment are not discriminated against because of their race, color, religion, sex or national origin.

4. NOTICE OF REQUIREMENTS FOR CERTIFICATION OF NON-SEGREGATED FACILITIES

Bidders are cautioned as follows: By signing this Proposal, the Bidder will be deemed to have signed and agreed to the provisions of the "Certification of Non-Segregated Facilities" in this solicitation. The Certification provides that the Bidder does not maintain or provide for his employee's facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by direction or on de facto basis. The Certification also provides that he will not maintain such segregated facilities. Failure of Bidder to agree to the certificate of Non-Segregated Facilities will render his bid non-responsive to the terms of solicitations involving awards of Contracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause.

5. FORM OF AND DELIVERY OF PROPOSAL

Each Proposal shall be submitted on the form provided by the Agency and shall be enclosed together with the required Proposal security in a sealed envelope with the following plainly marked on the outside:

- Proposal for County of Clinton Industrial Development Agency.
- **South Junction Enterprises Expansion Project #3**
- Bidders Name
- Business Address
- Date and Time of Bid Opening

The sealed envelope shall be enclosed in an outer sealed envelope and delivered to the address specified in the Request for Bids.

When sent by mail, preferably Certified Mail, the sealed Proposal, marked as indicated above, shall be enclosed in an additional envelope. No Proposal will be considered unless received at the place specified in the advertisement before the time specified for opening all bids. Proposals received after bid opening time shall be returned to the Bidder unopened.

6. PREPARATION OF PROPOSAL

The Bidder shall state, in ink, in the space allotted for the same on the Proposal Form a certain sum, in words and in figures, for which they propose to furnish all material, labor and plant necessary for the construction and completion of the work set forth in the Plans and Specifications. In case of conflict between words and numerals, the words, unless obviously incorrect, shall govern.

Bids will be received on a unit and/or lump-sum price basis for the full and satisfactory completion and acceptance of the work herein specified, shown upon the Contract Plans, and contemplated by the Bidding Documents and Specifications of which these instructions form a part.

The Bidder shall extend the estimated quantities at the unit price submitted and the sum of these products for accomplishing work will determine the lowest bid, and the gross sum shall be specified on the Proposal sheet in words and in figures by the Bidder.

All forms and related information to be submitted by the Contractor relating to affirmative minority business enterprise action requirements have been outlined in the section entitled "PROPOSAL."

The blank spaces in the Proposal Forms, excepting as otherwise noted, must be filled in by the Bidder, and no change shall be made by the Bidder in the phraseology of the Proposal or in the items mentioned therein.

The Contract sum must be plainly stated in figures and words. In case of conflict, words will take precedence over figures. Proposals that contain any omission, erasure, alterations or additions, or that contain irregularities of any kind, may be rejected as informal.

Erasures or other changes in the Proposal must be explained or noted over by the signature of the Bidder.

Permission will not be given to modify or explain any Proposal after it has been deposited with the Agency.

7. SIGNATURE ON PROPOSALS

If the Proposal is made by an individual, it shall be in ink and signed by the individual, giving the individuals full name and address; if the Proposal is made by a firm or partnership, its name and the principal office address of such firm or partnership shall be stated, and the Proposal shall be signed by one or more of the partners, and the names of all the partners shall be listed; and if the Proposal is made by a corporation, it shall be signed with the name of the corporation and attested to by the corporate seal thereof, and the principal office address of the corporation and the State of incorporation shall also be entered thereon.

If a group of Bidders wish to submit a single Proposal as part of a Joint Venture, they will be required to complete and execute the Joint Venture Statement bound with their documents.

8. COMPETENCY OF BIDDERS

Each Bidder shall furnish the Agency with satisfactory evidence of competency to perform the work contemplated upon request from the Agency. The Agency reserves the right to reject a Proposal if the Bidder does not submit an adequate statement of his qualifications within **5 days** of request from the Agency.

Bidders may be required to furnish a statement covering experience on similar work, a list of machinery, plant and other equipment available for the proposed work, and a statement on financial resources dated within thirty (30) calendar days prior to the date of the opening of the bids. The Agency reserves the right to make an investigation of information submitted, and to reject the bid submitted by any Bidder if deemed in the best interest of the Agency.

The financial statement, if required, shall be dated within **thirty (30) calendar days** prior to the date of opening of the bids, shall show the financial condition of the Bidder as of December 31 of the year preceding the date for the call for bids, or as of the end of the fiscal operating year, qualified by sufficient supplementary information to show approximately the condition at the time of submitting the statement. If no important change has occurred, the Bidder shall certify on the statement that the Bidder's financial condition has remained substantially unchanged since the date of the annual statement.

With each financial statement filed with the Agency, as herein before outlined, the Bidder shall also submit a statement relating to experience in performing construction work similar to that for which the Bidder is offering a Proposal, and also file with the Agency a statement relating to the amount and condition of equipment as often as may be required by Agency. Both the experience and equipment statements herein referred to shall be submitted in a manner acceptable to the Agency.

9. DISQUALIFICATION OF BIDDERS

Any one or more of the following causes may be considered as sufficient for the disqualification of a Bidder and the rejection of his/her bid or bids:

- More than one Proposal for the same work from an individual firm, partnership, or corporation under the same or different names;
- Evidence of collusion among Bidders. Participants in such collusion may not receive recognition as Bidders for any future work;
- Unbalanced Proposals in which the prices for some items are out of proportion to the prices for other items;
- Failure to submit a unit price for each item of work for which a bid price is required by the Proposal;
- Failure to submit the financial statement, experience, or plant and equipment statements.

- Lack of competency as revealed by the financial statement, experience, or plant and equipment statements submitted;
- Lack of responsibility as shown by past work judged from the standpoint of workmanship and progress;
- Uncompleted work which, in the judgment of Agency, might hinder or prevent the prompt completion of additional work if awarded;
- If the Proposal is not accompanied by the Proposal Security specified by the Agency.
- If the Proposal is on a form other than that furnished, or if the furnished form is altered, or if any part of the Proposal Form is detached;
- If there are unauthorized additions, conditional or alternate pay items, or irregularities of any kind which make the Proposal incomplete, indefinite, or otherwise ambiguous.

10. REJECTION OF PROPOSALS

The Agency reserves the right to waive any informalities or to reject any or all bids.

11. INFORMAL PROPOSALS

Any Proposal which fails to name a price, written in both words and figures, may be held to be informal and may be rejected. The wording of the Proposal shall not be changed, nor shall any addition be made thereto. Any alteration, omission or addition, or any unauthorized conditions, limitations or provisions attached to a Proposal may render it informal and may be sufficient cause for its rejection. No Proposal received after the time named or at any place other than that stated in the formal advertisement will be considered.

The Agency may also consider a Proposal to be informal and may be rejected:

- if the Proposal form furnished by the Agency is not used or is altered;
- if there are unauthorized additions, omissions, limitations, provisions, alterations, conditions, alternate bids not called for or irregularities of any kind which may tend to make the Proposal incomplete, indefinite, or ambiguous as to its meaning;
- if the prices contained in the bid schedule are obviously unbalanced either in excess or below the reasonable cost analysis values;
- if the Proposal fails to contain a unit or lump sum price for every pay item indicated; and
- if any documents necessary for bidding purposes are not completed, are improperly executed, or are missing (including Non-Collusion Affidavit).

12. INTERPRETATION OF ESTIMATED PROPOSAL QUANTITIES

An estimate of quantities of work to be done and materials to be furnished under these Bidding Documents and Specifications is given in the Proposal. It is the result of careful calculations and is believed to be correct. It is given only as a basis for comparison of Proposals and the award of the Contract. The Agency does not expressly or by implication agree that the actual quantities involved will correspond exactly therewith; nor shall the Bidder plead misunderstanding or deception because of such estimates or quantities, or of the character, location, or other conditions pertaining to the work. Payment to the Contractor will be made only for the actual quantities of work performed or materials furnished in accordance with the Contract Plans and Specifications. It is understood that the quantities may be increased or decreased as hereinafter provided in the NYSDOT specifications.

13. ACCURACY OF CONTRACT PLANS AND SPECIFICATIONS (CONTRACT DOCUMENTS)

The Contract Plans and Specifications (Contract Documents) for the project have been prepared with care and are intended to show as clearly as is practicable the work anticipated to be done. The Contractor must realize, however, that construction details cannot always be accurately anticipated and that in executing the work, undetermined conditions may require a variation. Work under all items in the Contract must be carried out to meet the field conditions to the satisfaction of the Owner, the Chief Engineer and/or Construction Manager in accordance with their instructions and the Contract Specifications.

The Bidder is expected to carefully examine the site(s) of the proposed work, the Proposal, Contract Plans, Specifications, and Contract Forms and shall become acquainted with the work to be performed (including quantity and quality), materials to be furnished, and as to the requirements of the proposed Contract. The submission of a Proposal shall be prima facie evidence that the Bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements of the proposed Contract Agreement, Contract Plans and Specifications.

The Contractor must assume all risk of variance in any computation or statement of amounts of quantities necessary to complete the work required by the Contractor by whomsoever made, and fully complete said work in accordance with the Contract Plans and Specifications for the price bid. Any items of work contained either in the Specifications, or on the Contract Plans but omitted from the others respectively will be considered part of the work.

14. REQUESTS FOR INTERPRETATION AND ADDENDA

All questions as to the interpretation of the Contract Plans and Specifications shall be submitted in writing to the Chief Engineer at its offices located at: [REDACTED] or via email at: [REDACTED]. [SOUTH JUNCTION PLEASE FILL IN]

The Chief Engineer will answer such questions if received not later than **five (5) business days** before the time of the opening of the bids by issuing addenda to the Specifications, and such

addenda will become part of the Bidding Documents and Specifications. The Chief Engineer will not make or be responsible for any oral instructions.

Addenda will be emailed by the Chief Engineer to every individual or firm on record as having a set of Contract Documents not later **than two (2) business days** prior to the date fixed for the opening of bids. Contractors are advised to reply to the Chief Engineer's email confirming receipt of any transmitted addenda as having been received. Failure of the Chief Engineer to send, or of any Bidder to receive, such addenda will not relieve any Bidder from any obligation under his bid as submitted. Issued addenda will be on file at the office of the Owner and Chief Engineer. All Addenda so issued shall become part of the Contract Documents.

15. COLLUSIVE AGREEMENTS

Each Bidder submitting a bid to the Agency for any portion of the work contemplated by the documents on which bidding is based shall execute and attach thereto, an affidavit substantially in the form herein provided, to the effect that the Bidder has not entered into a collusive agreement with any other person, firm, or corporation in regard to any bid submitted. Before executing any subcontract, the successful Bidder shall submit the name of any proposed subcontractor for prior approval and a non-collusion affidavit substantially in the form provided in the Bidding and Contract Documents.

16. TIME OF RECEIVING BIDS

Bids received prior to the advertised hour of opening will be securely kept sealed. The individual whose duty it is to open them will decide when the specified time has arrived, and no bid received thereafter will be considered; except that when a bid arrives by mail after the time fixed for opening, but before the reading of all other bids is completed, and it is shown to the satisfaction of the Agency that the non-arrival on time was due solely to delay in the mails for which the Bidder was not responsible, such bid will be received and considered.

17. OPENING OF BIDS

At the time and place fixed for the opening of bids, the Agency will cause to be opened and publicly read aloud every bid received within the time set for receiving bids, irrespective of any irregularities therein. Bidders and other persons properly interested may be present in person or by representation.

18. WITHDRAWING OF PROPOSAL

A Proposal, after having been submitted, may be withdrawn by the Bidder, provided that the request for such withdrawal is received by the Agency in writing and signed by a person qualified for the execution of the Proposal not less **than one (1) hour** prior to the time set for receiving the Proposals. The Proposal Security of any Bidder withdrawing their bid in accordance with the foregoing conditions will be returned promptly.

19. AWARD OF CONTRACT

Award of the Contract, if awarded, will be made only to the lowest responsible Bidder whose bid shall comply with all the provisions required. To the fullest extent permitted by law the Agency reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, non-responsive, unbalanced, or conditional Bids, and to reject the Bid of any Bidder if the Agency believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsible, or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the Agency. The Agency also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate, to the extent permitted by law, contract terms with the Successful Bidder. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

The Agency may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

The Agency may conduct such investigations as the Agency deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications, and financial ability of Bidders, to perform and furnish the Work in accordance with the Contract Documents to the Agency's satisfaction within the prescribed time.

It is anticipated that all items on the proposal sheet will be contracted. No contract will be executed until the award has been approved by the Agency with concurrence with the New York Department of Transportation.

The Agency reserves the right to award certain items only, and the Contractor will have no claim against, the Agency, the State of New York, or Chief Engineer if all items are not approved and awarded.

All bids shall remain in force for a period of thirty (30) calendar days from the date established for the opening of bids.

20. EXECUTION OF AGREEMENT

The Bidder whose Proposal is accepted shall enter into a written Contract Agreement for the performance of the work and improvement within **ten (10) calendar** days after written notice by the Agency, or their representative, has been served on such Bidder personally or by Certified Mail, at the address given in the Proposal, that the Contract has been awarded to him/her.

21. FAILURE TO EXECUTE CONTRACT AGREEMENT

Any Bidder who shall fail to enter into a Contract Agreement for the doing of the work or to furnish the required Insurance Certificates after **ten (10) calendar days'** notice being given as above

provided, shall forfeit their claim to the work, and the Proposal Security accompanying their Proposal shall be and become the property of the Agency as the agreed minimum amount of damages suffered by the Agency as liquidated damages caused by such failure.

22. EXAMINATION OF DOCUMENTS AND SITE

Each Bidder should visit the site of the proposed work and fully acquaint himself with the existing conditions there relating to construction and labor and shall fully be informed as to the facilities involved, the difficulties and the restrictions attending the performance of the Contract. The Bidder shall thoroughly examine and be familiar with the Contract Plans, Specifications and all other Contract Documents. The Contractor, by the execution of the Contract Agreement, shall in no way be relieved of any obligation under it due to a failure to receive or examine any form or legal instrument or to visit the site and be acquainted with the conditions there existing, and the Agency will be justified in rejecting any claim based on facts regarding which the Contractor shall have been on notice as a result thereof.

The attention of Bidders is specifically called to that paragraph of the Contract which debars a Contractor from pleading misunderstanding or deception in regard to anything relating to the work, or the location and ground where it is to be executed.

23. CONTRACT COMPLETION TIME

All work associated with this contract shall be completed the earlier of (a) three-hundred sixty (360) days from the receipt by the Contractor of the Notice to Proceed, or (b) October 30, 2025.

In the event the Contractor is denied access to the site for reasons the Chief Engineer agrees are beyond the Contractor's control, the completion time shall be extended a number of days equal to the time access was denied. The Contractor must obtain from the Chief Engineer a written agreement for any extension of time.

24. LIQUIDATED DAMAGES FOR FAILURE TO COMPLETE WORK

Liquidated damages shall be assessed for each calendar day that any work shall remain uncompleted after the scheduled completion date, provided that due account shall be taken of any extension of time granted by the Agency. The liquidated damages and engineering charges shall be assessed as provided in the New York Department of Transportation Specifications. The number of days of liquidated damages and engineering charges levied against the Contractor will be dependent upon how much the late completion of the Contractor's activities contributes to the delay in completing the Contract.

25. CONTRACTOR QUALIFICATIONS

Prospective Bidders are hereby advised that in the event they are the low Bidder they may be requested to submit to the Agency the following data:

1. A tabulation of the jobs performed by the Bidder during the last **five (5) years** that required railroad work consisting of either construction or maintenance activities,

including the following data: Contractor status (prime or sub), general scope of and dollar amount of work and the identity of the individual who accepted these projects.

2. A resume of experience for the key personnel who would be in charge of construction on the project and be at the work sites daily during the performance of the work.
3. A listing of equipment, tools and vehicles which will be available and utilized during the performance of the work.

26. NOTICE OF SPECIAL CONDITIONS

Attention is particularly called to those parts of the Bidding Documents and Specifications, which deal with the following:

- a. Equal Employment Opportunity Requirements

27. LAW AND REGULATIONS

The Bidder's attention is directed to the fact that all applicable State Laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout and they will be deemed to be included in the Contract the same as though herein written out in full.

28. BASIS OF AWARD

Award of this Contract will be made only to the lowest responsible Bidder as will best promote the public interest. The Agency reserves the right to reject any and all bids, to award to other than the low Bidder, or to waive minor informalities, if the Agency's best interest will be thereby promoted.

29. SECURING COPIES OF REFERENCED NEW YORK DEPARTMENT OF TRANSPORTATION DOCUMENTS

Bidders are specifically advised that specifications are New York Department of Transportation Specifications. Copies of these documents are available on the New York Department of Transportation website.

PROPOSAL

PROPOSAL

**To: County of Clinton Industrial Development Agency
137 Margaret Street, Suite 209
Plattsburgh, NY 12901**

Bidders:

The undersigned proposes to furnish all the materials and perform all the work required to complete the Construction Work, in accordance with Contract Documents prepared by the County of Clinton Industrial Development Agency (the “Agency”) for the Contract Sum specified below, subject to additions and deductions as provided in the Conditions of the Contract.

1. CONTRACT SUM

Refer to ‘Bid Summary Sheet’ for the proposed contract gross sum.

2. BID PRICES

The undersigned submits the following lump sum and unit bid prices which shall govern the cost of the work. Lump sum and unit bid prices shall include all necessary machinery, tools, labor and other means of construction, and to do all work and furnish all materials to perform and complete the said construction work within the prescribed time and as required, in accordance with the requirements of the Agency of the named unit and lump sum prices for the various items.

The Contractor is also responsible for obtaining the work permits from the owners of the Right-of-Way affected by their work.

3. WORK DESCRIPTION

Below is the work description associated with the project:

A railcar unloading system will be constructed consisting of an galvanized incline drag conveyor, a receiving and reclaim drag conveyor, and a 30’ 12RW storage tank w/ flying dutchman for the purpose of receiving and storing canola meal from railcar unloading. Required Pre-construction Notifications to the district engineer and compliance with all permit General Conditions will be the responsibility of the contractor. It is expected that bidding bridge repair contractors will be familiar with these Nationwide Permit requirements and bid accordingly. In accordance with the above information, conformance to the Nationwide Permit requirements is the responsibility of the contractor and incidental to the work described.

See separate section titled Permitting and Detailed Summary of Work immediately following the invitation for a more complete description of the required work.

An increase or decrease in the quantity for any item will not be regarded as a sufficient ground for an increase or decrease in the unit prices, nor in the time allowed for the completion of the work, except as provided for in the section “General Provisions.”

The cost of any work performed, materials furnished, services provided, or expenses incurred, which are not specifically delineated in the Contract Documents, but which are incidental to the scope, intent, and completion of the Contract, shall be deemed to have been included in the prices bid for the various items scheduled herein before.

4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

The undersigned agrees that before making their Bid that they have carefully examined the Contract Documents, together with the site of the proposed work, as well as its surrounding territory, and is fully informed regarding all of the conditions affecting the work to be done and labor and materials to be furnished for the completion of this Contract, including the existence of poles, wires, pipes and other facilities and structures of municipal and other public service corporations on, over or under the site, and that this information was secured by personal investigations and research and not from the estimates or records of the Agency and that they will make no claim against the Agency by reason of estimates, tests or representations of any officer or agent of the Agency.

5. EXECUTION OF AGREEMENT

In submitting this Bid, the Bidder understands that the right is reserved by the Agency to reject any and all Bids. If written notice of the acceptance of this Bid is mailed, telegraphed or delivered to the undersigned within thirty (30) calendar days after the opening thereof, or at any time thereafter before this Bid is withdrawn, the undersigned agrees to execute and deliver a Contract Agreement in the prescribed form and furnish the required Insurance Certificates within ten (10) calendar days after the Agreement is presented to him/her for signature.

6. TIME OF COMPLETION

Time is of the essence for the work to be performed under this Contract. The work to be performed shall be commenced at the time stipulated by the Chief Engineer in the Notice to Proceed (the “NTP”). It is the intent of this Contract to complete all work the earlier of the following:

Work shall not begin until the Contractor is given the written NTP.

7. NON-COLLUSION AFFIDAVIT

Attached hereto is an affidavit in proof that the undersigned has not entered into a collusive agreement with any person in respect to this Bid or any other Bid or the submitting of Bids for the Contract for which this Bid is submitted.

8. EXPERIENCE STATEMENT

The low bidder may be required to submit an experience statement to Agency if requested.

9. CERTIFICATION OF NON-SEGREGATED FACILITIES

The Bidder certifies that they do not maintain or provide for their employee(s) any segregated facilities at any of their establishments, and that they do not permit their employees to perform their services at any location, under their control where segregated facilities are maintained. The Bidder agrees that a breach of this certification will be a violation of the Equal Opportunity clause in any contract resulting from acceptance of this Bid. As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, and transportation provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.

The Bidder agrees that (except where they have obtained identical certification from proposed subcontractors for specific time periods) they will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that they will retain such certifications in their files.

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. § 1001.

Date _____, 20_____

(Name of Bidder)

Official Address (Including Zip Code)

(Signature of Bidder)

(Title)

_____ (Corporate Seal)

Any Proposal not complying with any of the above requirements may be declared informal and may be rejected. **NON-COLLUSION AFFIDAVIT STATEMENT OF NON-COLLUSION IN BIDS OR PROPOSALS**

Every Bid or Proposal hereafter made for work or services performed or to be performed, or goods sold or to be sold, shall contain the following statement subscribed by the Bidder and affirmed by such Bidder as true under the penalties of perjury: non-collusive bidding certification:

“By submission of this Bid, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

“(1) The prices in this Bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

“(2) Unless otherwise required by law, the prices which have been quoted in this Bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; “(3) No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not submit a bid for the purpose of restricting competition.”

I further certify that I am authorized to sign and submit this Bid and Non-Collusion Affidavit.

Contractor

By:

Print
Name

Title

Subscribed and sworn to before me
this _____ day of _____, 20____
(SEAL OF CORPORATION)

(L.S.)
(Title)

Subscribed and sworn to before me this _____ day of _____, 20____

Seal of Notary

Notary Public

ADDENDA ACKNOWLEDGMENT

Acknowledgment is hereby made of the following Addenda received since issuance of Bidding and Contract Documents:

<u>ADDENDA NO.</u>	<u>DATE RECEIVED</u>
_____	_____
_____	_____
_____	_____
_____	_____

Bidders are required to acknowledge receipt of Addenda by including this signed acknowledgment with the Proposal.

Dated: _____

By _____

10. STATEMENT OF BIDDER'S QUALIFICATIONS

(To be submitted by the Bidder only upon the specific request of the Agency)

All questions must be answered, and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The Bidder may submit any additional information that they consider necessary.

1. Name of Bidder.
2. Permanent Main Office address.
3. When organized.
4. If a corporation, where incorporated.
5. How many years have been engaged in the contracting business under your present firm or trade name?
6. Contracts on hand: (Schedule these, showing amount of each contract and the appropriate anticipated dates of completion).
7. General character of work performed by your company.
8. Have you ever failed to complete any work awarded to you? If so, where and why?
9. Have you ever defaulted on a contract? If so, where and why?
10. List the more important projects recently completed by your company, stating approximate cost for each, and the month and year completed.
11. List your major equipment available for this Contract.
12. Experience in construction work similar in importance to this project.
13. Background and experience of the principal members of your organization, including the officers.
14. Credit available: \$ _____
15. Give Bank reference: _____
16. Have you filled out a detailed financial statement?
17. The undersigned authorizes and requests any person, firm, or corporation to furnish any information requested by the Agency in verification of the recitals comprising this Statement of Bidder's Qualifications.

12. PLANT AND EQUIPMENT SCHEDULE AVAILABLE FOR USE ON THE WORK

No.	Type	Capacity	Manufacturer	Age and Location	Location
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CONTRACT AGREEMENT

FORM OF GENERAL CONSTRUCTION CONTRACT AGREEMENT

THIS CONTRACT AGREEMENT made this

_____ day of _____, 20____ by
and among _____ (a Corporation/Partnership/individual organized and
existing under the laws of the State of _____), hereinafter called the
“CONTRACTOR,” South Junction Enterprises, hereinafter called the “OWNER,” or “CHIEF
ENGINEER,” and the County of Clinton Industrial Development Agency hereinafter called the
“AGENCY”, for the amount of \$ _____.

WITNESSETH, that the CONTRACTOR, the OWNER and the AGENCY for the considerations
stated herein mutually agrees as follows:

ARTICLE 1. STATEMENT OF WORK

The CONTRACTOR shall furnish all supervision, technical personnel, labor, materials,
machinery, tools, equipment and services to perform and complete all work required for the
following project:

SJE EXPANSION PROJECT #3 in Clinton County

in strict accordance with the Bidding and Contract Documents including all Addenda thereto,
numbered:

_____ dated _____
_____ dated _____
_____ dated _____
_____ dated _____

all as prepared by/for the Agency dated June __, 2024.

ARTICLE 2. CONTRACT DOCUMENTS

The executed Contract Documents shall consist of the following:

- This Contract Agreement
- All addenda
- Request for Bids
- Instructions to Bidders
- Signed copy of Proposal
- Conditions of the Contract
- General Provisions of the Contract
- General Conditions of the Contract
- Special Provisions
- Technical Specifications

This Contract Agreement, together with other documents enumerated in this ARTICLE, which said other documents are as fully a part of the Contract Agreement as if hereto attached or herein repeated, forms the Contract Agreement between the parties hereto. In the event that any provision in any component part of this Contract Agreement conflicts with any provision of any other component part, the provision of the component part first enumerated in this ARTICLE shall govern, except as otherwise specifically stated.

ARTICLE 3. EXAMINATION OF DOCUMENTS AND SITE

The Contractor agrees that before making this Proposal he carefully examined the Contract documents, together with the site of the proposed work to be done and labor and materials to be furnished for the completion of this Contract, including the existence of poles, wires, pipes, ducts, conduits and other facilities and structures of municipal and other public service corporations on, over or under the site, and that his information was secured by personal investigation and research and not from the estimates or records of the Agency, and that he will make no claim against the Agency by reason of estimates, tests or representations of any officer or agent of the Agency.

ARTICLE 4. TIME OF COMPLETION

The Contractor further agrees that he will begin the work herein embraced within ten (10) calendar days of the effective date hereof unless the consent of the Agency in writing, is given to begin at a later date, and that he will execute the same so that it shall be entirely completed and performed the earlier of (a) three-hundred sixty (360) days from the Notice to Proceed, or (b) October 30, 2025.

No extension beyond the date of completion fixed by the terms of this Contract shall be effective unless in writing signed by the Agency and the Owner. Such extension shall be for such time and upon such terms and conditions as shall be fixed by the Agency and the Owner, which may include a charge for engineering and inspection expenses actually incurred upon the work, including engineering and inspection expenses incurred upon the work by railroad companies on Contract work. Notice of application for such extension shall be filed with the Agency and the Owner at least fifteen (15) days prior to the date of completion fixed by the terms of this Agreement.

ARTICLE 5. ALTERATIONS AND OMISSIONS

The said work shall be performed in accordance with the true intent and meaning of the Contract Documents without any further expense of any nature whatsoever to the Agency other than the consideration named in this Agreement.

The Agency reserves the right, at any time during the progress of the work, to alter the Contract Plans or omit any portion of the work as it may deem reasonably necessary for the Agency's interest; making allowances for additions and deductions, with compensation made in accordance with the Standard Specifications, for this work without constituting grounds for any claim by the Contractor for allowance for damages or for loss of anticipated profits, or for any variations between the approximate quantities and the quantities of the work as done.

ARTICLE 6. NO COLLUSION OR FRAUD

The Contractor hereby agrees that the only person or persons interested as principal or principals in the Bid or Proposal submitted by the Contractor for this Contract are named therein, and that no person other than those mentioned therein has any interest in the above mentioned Proposal or in securing the award, and that this Contract has been secured without any connection with any person or persons other than those named, and that the Proposal is in all respects fair and was prepared and the Contract was secured without collusion or fraud and that neither any officer nor employee of the Agency has or shall have a financial interest in the performance of the Contract or in the supplies, work or business to which it relates, or in any portion of the profits thereof.

ARTICLE 7. PAYMENTS OF ESTIMATES

No payments for estimated work shall be made except as outlined in “Payment for Completed Work” as stated in the Special Provisions.

ARTICLE 8. FINAL ACCEPTANCE OF WORK

When in the opinion of the Chief Engineer, a Contractor has fully performed the work under the Contract, the Chief Engineer shall recommend to the Agency the acceptance of the work as completed. If the Agency accepts the recommendation of the Chief Engineer, the Agency shall thereupon by letter notify the Contractor of such acceptance, and copies of such acceptance shall be sent to other interested parties.

ARTICLE 9. FINAL PAYMENT

After the final acceptance of the work, the Chief Engineer shall prepare a final agreement of the work performed and the materials placed and shall compute the value of such work and materials under and according to the terms of the Contract, taking into consideration retained percentage and previous payments. The agreement shall be certified, as to its correctness, by the Chief Engineer and submitted to the Agency for final approval. The right, however, is hereby reserved to the Agency to reject the whole or any portion of the final agreement, should the said certificate of the Chief Engineer be found or known to be inconsistent with the terms of the agreement or otherwise improperly given. All certificates, upon which partial payments may have been made being merely estimates, shall be subject to correction in the final certificate or final agreement.

The balance, as determined above, shall be paid to the Contractor as soon thereafter as practical, provided, however, before such final payment shall be made, the Contractor shall furnish satisfactory evidence that all payrolls, bills for material and other indebtedness or suits for labor performed or material furnished in connection with the project covered by this contract have been made. The Contractor expressly agrees to reimburse the Agency for any amounts that the latter may be compelled to pay in satisfying such actions.

Final payment will not be made until the Contractor has been supplied an Engineers Certification that the following project:

SJE Expansion Project #3 in Clinton County, NY

has been completed in accordance with all the appropriate standards, specifications and Contract Documents. Final payment will not be made until the work of the project has been approved by the New York Department of Transportation.

ARTICLE 10. **RIGHT TO SUSPEND WORK AND CANCEL CONTRACT**

It is further mutually agreed that if at any time during the prosecution of the work the Agency shall determine that the work upon the Contract is not being performed according to the Contractor or for the best interest of the Agency, the execution of the work by the Contractor may be temporarily suspended by the Agency, who may then proceed with the work under his own direction in such manner as will accord with the Contract Specifications and be for the best interest of the Agency; or he may terminate the Contractor's employment under the Contract while it is in progress, and thereupon proceed with the work, in accordance of the Contract, by Contract negotiated or publicly let, by the use of his own forces, by calling upon the Surety to complete the work in accordance with the Contract Plans and Specifications or by a combination of any such methods; or he may cancel the Contract and either re-advertise or re-let as provided under the State of New York Law, or complete the work under his own direction in such a manner as will accord with the Contract Specifications and be for the interest of the Agency; any excess in the cost of completing the Contract beyond the price for which it was originally awarded shall be charged to and paid by the Contractor failing to perform the work or his Surety.

Whenever the Agency determines to suspend or stop work under the Contract, a written notice sent by mail to the Contractor at his address and to the Sureties at their respective addresses shall be sufficient notice of its action in the premises.

ARTICLE 11. **DETERMINATION AS TO VARIANCES**

In any case of any ambiguity in the plans, Specifications or maps, or between any of them, the matter must be immediately submitted to the Agency, who shall adjust the same, and his decision in relation thereto shall be final and conclusive upon the parties.

ARTICLE 12. **REMOVAL OF REJECTED WORK AND MATERIAL**

The Contractor agrees that all work or material which may be rejected by the Agency or its representative, shall be at once removed from the site of the work by the Contractor at his own expense, and replaced by work or material satisfactory to the Agency, without extra charge. If the Chief Engineer determines that the defect is not of sufficient enough importance to require the Contractor to rebuild or replace the imperfect work or material, the Chief Engineer shall have the power, and is hereby authorized, to make equitable deduction from the stipulated price.

Any omissions or failure on the part of the Chief Engineer to disapprove or reject any work or material shall not be construed to be an acceptance of any defective work or material.

ARTICLE 13. **LIQUIDATED DAMAGES FOR FAILURE TO COMPLETE**
WORK

Liquidated damages shall be assessed for each calendar day that any work shall remain uncompleted after the scheduled completion date, provided that due account shall be taken of any extension of time granted by the Agency. The liquidated damages will be established at the daily rate listed in the New York Department of Transportation Specifications. The number of days of liquidated damages and engineering charges levied against the Contractor will be dependent upon how much the late completion of the Contractor's activities contributes to the delay in completing the Contract.

ARTICLE 14. SUCCESSORS AND ASSIGNS

This agreement shall bind the successors, assigns and representatives of the parties hereto.

ARTICLE 15. HOLD HARMLESS PROVISIONS (A) The Contractor hereby releases the Agency and its members, officers, agents and employees from, agrees that the Agency and its members, officers, agents and employees shall not be liable for and agrees to indemnify, defend and hold Agency and its members, officers, agents and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking of or providing assistance in connection with the SJE Expansion Project #3 (the "Project"), including, but not limited to, (1) liability for loss or damage to property or bodily injury to or death of any and all persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project or arising by reason of or in connection with the occupation or the use thereof or the presence of any person or property on, in or about the Project site, (2) liability arising from or expense incurred by the Agency's as a result of the execution and delivery by the Agency of this Agreement, the Agency's obligations under this Agreement or the enforcement of or defense of validity of any provision of the Agreement, and (3) all causes of action and reasonable attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(B) In the event of any claim against the Agency or its members, officers, agents or employees by any employee of the Contractor or any contractor of the Contractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Contractor hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(C) Notwithstanding any other provisions of this Agreement, the obligations of the Contractor pursuant to this Section 4.1 shall remain in full force and effect after the termination of this Agreement until the expiration of the period stated in the applicable statute of limitations

during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency or its officers, members, agents or employees, relating thereto; provided, that any such claim, cause of action or prosecution was commenced within the period of the applicable statute of limitations.

ARTICLE 16. NO RECOURSE; SPECIAL OBLIGATION (A) The obligations and agreements of the Agency contained herein and any other instrument or document executed in connection therewith or herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent or employee of the Agency in his individual capacity, and the members, officers, agents and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(B) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State of New York or Clinton County, New York, and neither the State of New York nor Clinton County, New York shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the Grant.

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend and hold harmless the Agency and its members, officers, agents and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in six (6) original signature(s) copies by their duly authorized officials on the date first written above.

**County of Clinton
Industrial Development Agency**

BY: _____

Name:
Title:

[CONTRACTOR]

BY: _____(Contractor)

Name:
Title:

AGENCY OFFICIAL/OFFICER ACKNOWLEDGMENT

STATE OF _____)
: ss.
COUNTY OF _____)

On this ____ day of _____, 20 _____

before me, personally came _____, to me known, who being by me duly sworn did depose and say that he/she resided in _____; and is the authorized Official or Officer of the Agency described in and which executed the above instrument; and is charged with the execute of the matter herein provided for, and signed and acknowledged the said instrument pursuant to the Charter of the Agency.

Notary Public

_____ County, _____

CONTRACTOR ACKNOWLEDGMENT

STATE OF _____)
: ss.
COUNTY OF _____)

On this ____ day of _____, 20 _____

before me, personally came _____, to me known, who being by me duly sworn did depose and say that he/she resided in _____; and is the _____ of the _____ the Corporation described in and which executed the above instrument; knew the seal of such corporation; that the seal affixed to said instrument was such corporate seal; and that it was so affixed by order of the Board of Directors of said Corporation; and signed thereto by like order.

Notary Public

_____ County, _____

CERTIFICATE OF INSURANCES

The Contractor and all subcontractors must procure and maintain until final acceptance of the Project by the NYSDOT and the Agency, insurance of the kinds and in the minimum amounts hereinafter provided in insurance companies authorized to do businesses in the state of New York, covering all activities in this project. Policies may not be changed or canceled until **thirty (30) days** written notice has been given to the NYSDOT and Agency.

Policy(s) must state the name of the insured and a description of the project.

Contractor must provide proof of the following kinds and types of insurance

a. **Insurance: Workman's Compensation; Employers Liability Occupational Disease**

Single-Limit Liability: In accordance with Insurance requirements of the New York Department of Transportation Standard Specifications.

b. **Insurance: Contractor's Public Liability**

Contractor's Public Liability Insurance for a limit of not less than \$2,000,000 Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

c. **Insurance: Protective Public Liability Insurance**

With respect to the operations performed, subcontractors provide regular Contractor's Protective Public Liability Insurance for a limit of not less than \$2,000,000 Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

d. **Insurance: Motor Vehicle Liability Insurance**

The Contractor shall maintain a policy(s) as required by the Motor Vehicle Laws of the State of New York to bear license plates. With minimum \$1,000,000 single limit liability.

e. **Insurance: Umbrella Form Excess Liability**

Single Limit Liability: \$2,000,000

f. **Insurance: Railroad Protective Public Liability Insurance**

Contractor shall provide Railroad Protective Liability Insurance for any work performed by the Contractor and for any of the Contractor's subcontractors. Railroad protective liability insurance (AAR-AASHTO form) in the name of all Railroad Companies operating at the locations of the Project Facilities providing for a limits of not less than **\$2,000,000**

Single Limit, Bodily Injury and/or Property damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property including the loss of use thereof in any one occurrence. Such insurance shall be furnished with an aggregate of not less than **\$6,000,000** for damages as a result of more than one occurrence.

Certificates and/or policies indicating such coverage are to be furnished for the files of the Agency.

The insured to be named in the insurance policy and certificates shall include: the Contractor; the Western New York and Pennsylvania Railroad (WNYP), its officers, employees, representatives or agents, both officially and personally; the People of the State of New York and the New York Department of Transportation, its officers, employees, representatives or agents, both officially and personally, as an additional interest in said insurances, with respect to all operations under the Agreement by the Contractor or his subcontractors including omissions and supervisory acts of the Agency.

All policies must be endorsed to provide that the insurance company shall give thirty (30) calendar days written notice prior to the Agency if the policies are to be terminated or if any changes are to be made in them during the performance of the work, which will affect in any way the insurance requirements of the Agreement.

The insurance herein before specified shall be carried until all work required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted. Failure to carry or keep such insurance in force until all work is satisfactorily completed shall constitute a violation of the Agreement.

The Contractor shall furnish to the Agency signed certificate(s) as evidence of adequate (& current) Contractor's Public Liability Insurance. If any work is subcontracted, the Contractor shall furnish a signed certificate as evidence of adequate (& current) Contractor's Protective Liability Insurance. In addition, the Contractor shall furnish a signed certificate as evidence of adequate (& current) Motor Vehicle Liability Insurance.

APPROVAL OF SUBCONTRACTOR

Contract No.	County	Job Description	Page No._ of ____ ____	Date Submitted
Contractor Name and Address (w/zip code)			Subcontractor Name and Address (w/zip code)	
Tel. No. (include area code):			Tel. No. (include area code):	
The Contractor shall inform the Engineer in Charge, who will note in the project diary, the dates when the Subcontractor starts and completes all work under the subcontract. When work performed by the Subcontractor is included in an estimate for payment,			Federal Identification No.	
			Est. Beginning Date (Mo. & Yr.)	Est. Completion Date (Mo. &

SJE EXPANSION PROJECT #3

labor affidavits, etc., are to be submitted in the same manner and number as required of the Prime Contractor	Yr.)		
*A Minority Business Enterprise (MBE) is a small business with at least 51% ownership by one or more socially and economically disadvantaged individuals (See instructions for full definition).			
This approval will be rescinded at any time in the progress of the work if performance by the Subcontractor is determined unsatisfactory.			
No work shall be started by the Subcontractor prior to taking the required insurances. The Contractor and Subcontractor hereby certify that the subcontract contains all the pertinent provisions of the prime contract in regard to Federal and State Laws and Regulations.			
Signature _____ _____ Contractor Date	Signature _____ _____ Subcontractor Date		
Item No. and Name	AMOUNT Specialty Non-Specialty		
Original Total Contract Price (Less Specialty Items) \$ _____ TOTAL	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; height: 40px;"></td> <td style="width: 50%; height: 40px;"></td> </tr> </table>		
Percent of Original Total Contract Price (above) approved this date	_____		
Percent of Original Total Contract Price previously approved	_____		
Percent of Original Total Contract Price approved to date	_____		
The Subcontractor named above is authorized to perform work on the above noted contract and is approved for the times and in the amounts listed herein. However, this subcontract shall be of no force and affect until approved below.			
Approved by:	Date Approved		

GENERAL CONDITIONS

1. GENERAL

Although bid items are separated for convenience, proposals must include bids for all Bid items. The successful Bidder will be the low overall acceptable Bidder and only one Contract will be awarded for this work. Whenever in this document the gender term of he; his; himself’ are used, it shall also be construed to also mean ‘she; her; herself’.

Wherever the term “Chief Engineer” is used in this document it means South Junction Enterprise or such other person as the Agency may designate (in writing addressed to the Contractor) as his authorized representative. All correspondence or communications directed to the Agency and in any manner relating to, or affecting, the obligations of either the Contractor or the Agency under this Agreement **MUST BE ADDRESSED DIRECTLY TO THE ENGINEER.**

All directions, explanations and instructions referred to in or required by this Agreement will be given by the Chief Engineer. The Contractor may at any time require any instructions to be stated in writing. It is also agreed that the functions and powers of any Assistant Engineers and Inspectors designated as Chief Engineer’s representatives are limited to the monitoring of the Contractor’s operations in executing the work pursuant to this Agreement, and that no authority is given the said Assistant Engineers or Inspectors to make, permit or authorize and they are hereby expressly prohibited from making, permitting, or authorizing any alternations, changes or departures in or from the terms and provisions of this Agreement or said Contract Plans and Specifications, unless determined appropriate by the New York Department of Transportation & Railroad.

2. WORK AFFECTING RAILROADS

Because of railroad involvement, the Contractor’s attention is directed to Section 105-06, Utility Infrastructure and Utility Adjustments, in the New York Department of Transportation, Publication 408 Specifications, current version, as amended, and as supplemented herein.

With the respect to the use of a flagman, the Contractor is advised that the purpose of a railroad flagman is to protect rail operations from the Contractor’s activities occurring on this project. It is therefore up to the sole discretion of the railroad representative (Project or Field Engineer, or Construction Inspector) when a flagman is necessary. Generally, one or more flagmen will be required where a track is/or may be fouled by the Contractor’s equipment and/or personnel. A track is generally considered to be fouled when personnel and/or equipment are **within fifteen feet (15) of center of track.** A track is also considered fouled when equipment which is more than fifteen feet from the center of track may infringe upon this fifteen-foot area due to operator error or equipment failure.

3. CONTRACTOR QUALIFICATIONS

Prospective Bidders are hereby advised that in the event they are the low bidder, they may be required to submit to the Agency, the following data:

- a. A tabulation of the work performed by the Bidder during the last five (5) years requiring railroad signal design, construction or maintenance work, and including the

following data: contractor status, prime or sub, general scope and dollar amount of work and the identity of individual who accepted these projects.

b. A resume of experience for the key personnel who would be in charge of this work and be at the work site during the performance of the work.

c. A listing of equipment, tools and vehicles which will be available and utilized during the performance of the work.

The Contractor is reminded of the provisions of Section 103, "Award and Execution of Contract" in the Standard Specifications.

4. EXISTING UTILITIES COORDINATION

Prior to commencement of work under this Contract, the Contractor shall determine the exact location of all electric, gas distribution, transmission lines, storm and sanitary sewer lines within the work site(s); and shall instruct personnel concerning these and shall take all appropriate safety steps to ensure that these lines are protected from contact or physical damage during the Contractor's operations. The Contractor shall determine the exact location of all underground and overhead utilities in the area by contacting the appropriate owners.

All existing utilities, whether public or private, shown on the Contract Plans or not, shall be maintained in proper working order by the Contractor. Any damage caused by construction work shall be the sole responsibility of the offending Contractor to repair, replace or otherwise return to service as soon as possible to the satisfaction of the utility owner.

Field stakeout of existing underground utilities required within the project limits shall be accomplished by the utility owner provided the Contractor notifies the proper authorities in advance of any excavation, probing, or construction activities.

Utilities requiring relocation or removal for work to begin or progress shall be planned and coordinated with the respective owner in accordance with the necessary prior notification requirements for each respective utility.

The Contractor shall investigate and satisfy himself/herself that all utilities, above ground and underground, have been identified and coordination developed with its respective owner(s).

5. SAFETY

The Contractor shall be responsible, at all times, for the safety and protection of persons who may for any reason enter within the limits of the work site(s).

The Contractor shall comply with the appropriate provisions of law issued by the State of New York regarding the safety and protection of persons employed in construction work, and with Federal Railroad Administration (FRA) Track Safety Standards and Roadway Worker Protection Regulations CFR29 Subpart 214.

The Contractor shall perform all work in the Contract in a workmanlike manner with due regard to the safety of the employees and of the public.

Where a difference exists between such standards and rules and Title 29 Code of Federal Regulations, Part 1926, Safety and Health Regulations for Construction, the more stringent requirements shall apply.

The Contractor shall furnish and maintain, at their own expense, and the satisfaction of the Chief Engineer, all requisite watchmen, lights, barricades, safeguard, fences and other facilities for the protection of the work, and the safety of the general public and of employees of the Railroad and of the Contractor. Precaution shall be exercised at all times for the protection of persons and property. Machinery and equipment and other hazards shall be guarded in accordance with the safety provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, to the extent that such provisions are not inconsistent with applicable laws or regulations.

6. GENERAL RAIL YARD WORK REQUIREMENTS

Hauling of materials or movement of equipment over any active track will not be permitted, except as approved and/or directed by the railroad, subject to the control which the railroad stipulates.

It is the option of the Contractor to provide radios for supervisory personnel for direct communication between the Contractor's on-site project operations and the railroad(s) Dispatcher(s) and maintain these radios in good physical and operating condition for the term of the Contract.

The Contractor shall mark obstructions, excavations and, in general, all hazards located in the work areas with flashing lights and flags in such a manner that they are plainly visible at all times, day or night. Such lights and markings shall be serviced by the Contractor day and night when winds are strong, visibility is low, and during rainfall and snowfall, to the satisfaction of the Chief Engineer.

7. MAINTENANCE OF RAILROAD TRAFFIC/RAILROAD FACILITIES

The Contractor must conduct his work so as not to interfere with the operations of the railroad. The railroad will not issue any slow order restricting the speed of trains.

Should the Contractor damage any active railroad facilities (including power and control cables), telephone, water, gas, sewer or public power lines, the Contractor shall arrange for the repair of the damages immediately. Such repair or replacement shall be performed at the Contractor's sole expense and is to continue on a 24-hour basis until completed to the satisfaction of the Chief Engineer and the owning or operating agency.

8. ORDER FOR CARRYING OUT THE WORK

Prior to beginning any physical construction work, the Contractor shall submit, for approval of the Chief Engineer, all schedules, certificates of material compliance, samples, shop drawings, Engineering Drawings, circuit drawings and all the required data.

The Contractor's schedule of construction activities shall be so developed and coordinated with the railroad operations so that delays are kept to an absolute minimum. Requests for occupancy of track areas shall be coordinated and approved with the owning railroad(s)

The Contractor shall submit to the Chief Engineer and appropriate New York Department of Transportation representatives at least five (5) days prior to starting work at any crossing, their schedule for work at that crossing. The Agency reserves the right to limit the Contractor's operations to the number of locations deemed reasonable by the Agency.

The Contractor is responsible to notify the proper company agent at the start of each work day as to the location of construction activities.

9. CONTRACT PLANS

The Agency reserves the right to make any reasonable alterations it may deem necessary in the Contract Plans, in part or altogether, during the progress of the work without constituting grounds for any claim by the Contractor for payment or extension of Contract completion time, other than is provided for under this Contract.

The Contract Plans, Specifications and quantities noted thereon contain information relating to conditions that may be encountered in the proposed work, but such information is furnished by the Agency without expressed or implied guarantee as to its being complete or correct.

The Contractor shall assume all risks and responsibility and shall complete the work under whatever conditions encountered or created, without any extension of the Contract completion time or extra cost to the Agency.

The Contract Plans and Specifications are intended to complement and supplement each other. Any work required by either one shall be performed. Should any work be required which is not noted in the Specifications or on the Contract Plans, but which is nevertheless necessary for the proper completion of the Project, such work shall be performed as fully as if it were described and delineated. The Chief Engineer will make a determination as to whether such work is included in the prices bid for the various items. If a determination is made that such work is not included in the prices bid for the various items, the procedures outlined in "Measurement of Quantities", Section 109 of the New York Department of Transportation Standard Specifications.

Figured dimensions on all scale drawings shall govern in laying out work, and no work shall be executed from dimensions obtained by scale except in the absence of dimensions and as approved by the Chief Engineer. If any discrepancy is found between the Contract Plans and the Specifications, the requirements of the Contract Plans shall govern unless otherwise decided by the Chief Engineer. If a discrepancy exists between any of the applicable Specifications listed hereinafter and the Special Provisions, the requirements of the Special Provisions shall govern. The Chief Engineer shall have the right to correct apparent errors or omissions in the Contract

Plans and Specifications and to make such interpretations as deemed necessary for the proper fulfillment of the intent of the Contract Plans and Specifications.

10. VARIATIONS

Undetermined conditions may require a variation. Minor variations in the lump-sum items of work shall not constitute extra work and no extra payment will be allowed therefore. If the actual quantity of any major item overruns or under runs the original bid quantity by more than twenty five percent (25%) of such original bid quantity, an increase or decrease in the Contract unit price may be authorized by the Chief Engineer in accordance with these provisions. (A major item shall be construed to be any item, the total cost of which is equal to or greater than ten percent (10%) of the total Contract amount, computed on the basis of the Proposal quantity and the Contract unit price.) Revised Contract unit prices pertaining to overruns of Contract items will be applicable only to that portion of the overrun which is in excess of twenty-five percent (25%) of the original bid quantity. Revised Contract unit prices pertaining to under runs of Contract Items will be applicable to the entire quantity of the affected Contract item. Work under all items in the Contract must be carried out to meet the field conditions to the satisfaction of the Chief Engineer and in accordance with his/her instructions and the Contract Specifications.

The Contractor assumes all risk of variance in any computation or statement of amounts or quantities necessary to complete the work required by the Contract by whomsoever made, and fully complete said work in accordance with the Contract Plans and Specifications for the price bid.

11. SUPPLY OF DOCUMENTS

Within ten (10) calendar days after the execution of the Contract, the Agency will furnish to the Contractor, without charge, five (5) copies of the Contract Plans and Specifications. At least one complete set of the Plans and Specifications shall be kept at all times at the project site by the Contractor. All drawings and Specifications furnished to the Contractor are the property of the Agency and must be returned or satisfactorily accounted for before final payment is made.

12. PROGRESS SCHEDULE

The Contractor shall, within five (5) calendar days after the date of written notice of award of Contract, furnish to the Chief Engineer a progress schedule described herein below showing the times intended by the Contractor for commencing and completing the various elements included in the Project.

The schedule must meet with the Chief Engineer's approval before work will be permitted to begin. if the initial schedule is not approved, the Contractor shall make revisions as required and resubmit such schedule until approved. The schedule may be modified from time to time during the course of construction, as directed or approved by the Chief Engineer. When activities fall behind schedule, the Chief Engineer may order the Contractor to increase the working force and/or construction plant, employ additional shifts, and take other steps on certain portions of the work to place the Contract on its original schedule if specifically requested by the Chief Engineer for a particular phase(s), the Contractor shall also indicate the quantities, equipment and labor force which Contractor intends to use for that phase(s).

The schedule shall consist of a bar chart that clearly shows the sequence of work in the various areas of the work and the period of time needed to complete each work operation by the completion time stipulated in the Contract, Space shall be provided to show actual work progress. The schedule shall show an overall composite of the Contract work and separate detailed schedules for: Contract Administration Phase, Procurement Phase; and Construction Phase.

Three (3) copies of this updated chart, together with a written explanation of any deviations from the schedule shall be transmitted to the Chief Engineer on the first business day of each month.

The requirements of this paragraph shall apply unless the Special Provisions require the Contractor to provide Critical Path Method (CPM) schedule of his work.

13. LINES AND GRADES

The Contractor assumes full responsibility for keeping alignment and grades; and shall at all times furnish appropriate facilities to the Chief Engineer for checking such lines and grades and for making all necessary measurements.

The Contractor shall, at his/her own expense, establish all working or construction lines and grades as required, in accordance with the Contract Plans and shall be solely responsible for the accuracy thereof. The full responsibility for keeping alignments and grades for all work shall rest upon the Contractor.

The Contractor shall, if necessary, re-establish any survey required to properly locate the project work area. The Contractor shall furnish, at his/her own expense, all stakes, pins, templates and such temporary structures as may be necessary for marking and maintaining points and lines for the work.

The Contractor shall safeguard all points, stakes, grade marks, monuments and bench marks made or established by the Contractor as well as baseline stakes established by the Chief Engineer, reestablish same if disturbed, and bear the entire expense of rectifying work improperly installed due to not maintaining or protecting, or for removing without authorization, such established points, stakes and marks.

All work under the Contract shall be built in accordance with the lines and grades shown on the Contract Plans or established by the Chief Engineer.

The Contractor shall be responsible for the accuracy of their work and shall maintain all reference points, stakes, etc. throughout the life of the Contract. Damaged or destroyed points, bench marks or stakes, or any referenced points made impassible by the progress of the construction shall be replaced or transferred by the Contractor before they are damaged or destroyed. All control points shall be referenced by ties to acceptable objects and recorded. Any alterations or revisions in the ties shall be noted and the information furnished to the Chief Engineer immediately. All stake-out survey' work shall be referenced to the baseline shown on the Contract Plans.

All computations necessary to establish the exact position of the work from control points, shall be made and preserved by the Contractor. All computations, survey notes and other records necessary to accomplish the work shall be neatly made.

Such computations, survey notes and other records shall become the property of the Agency and delivered to the Chief Engineer not later than the date of acceptance of the Contract.

All existing stakes, iron pins, survey monuments or other markers defining property lines which may be disturbed during construction, shall be properly tied into fixed reference points before being disturbed and accurately reset in the proper position upon completion of the work.

14. CONTRACTOR'S ACCESS AND PARKING AREAS

The Contractor shall be responsible for making all necessary traffic arrangements for vehicles beyond the work area boundaries. The Agency shall provide the land upon which the work under this contract is to be done. Beyond this, the contractor shall provide, at his cost and expense, any additional land required.

Also prior to entering upon or making use of any private property adjoining the work, the Contractor, at their expenses, shall obtain and file with the Chief Engineer, the written permission of the owner such property, and subsequent to vacation of premises, shall furnish the Chief Engineer a properly executed release from all damages.

15. CONTRACTOR'S PERSONNEL VEHICLES

The Contractor shall be responsible for transporting all personnel between the parking area and the work site.

The Contractor shall erect approved signs at all entrances in use by traffic, restricting entry to authorized vehicles, and all entrances shall be closed off by barriers when not in use.

An area within the Contract property limits will be made available to the Contractor for the erection of offices, storage, plant yard and parking areas, as determined by the Agency.

16. APPROVAL OF SOURCES OF SUPPLY OF MATERIALS

The sources of supply of each of the materials required shall be approved by the Chief Engineer before delivery is started, Representative preliminary samples may be submitted by the Contractor, producer or supplier for inspection of tests. The results obtained from testing such samples may be used for preliminary approval but will not be used as a final acceptance of the materials. All materials proposed to be used may be tested at any time during their preparations and use. If it is found that sources of supply which have been approved do not furnish a product of uniform quality, or if the product from any source proves unacceptable at any time, the Contractor shall furnish approved material from another source at no additional cost to the Agency.

17. APPROVAL AND ACCEPTANCE OF MATERIALS

Samples of all materials for test upon which is to be based on acceptance or rejection, shall be taken by the Chief Engineer or authorized representative at the discretion of the Chief Engineer. Materials may be sampled either prior to shipment or after being received at the place of construction. All sampling, inspection and testing shall be done in accordance with the methods hereinafter prescribed.

The Contractor shall provide such facilities as the Chief Engineer's representative may require for conducting field tests and for collecting and forwarding samples. The Contractor shall not use or incorporate into the work any materials represented by the samples until tests have been made and the material found to be acceptable. Only materials conforming to the requirements of these Specifications and which have been approved by the Chief Engineer shall be used in the work. Any material which, after approval, has for any reason become unfit for use shall not be incorporated into the work.

18. METHODS OF SAMPLING AND TESTING

Except as otherwise provided, sampling and testing of all materials, and the laboratory methods and testing equipment required under these Specifications shall be in accordance with the latest "Standard Specifications for Highway Materials and Methods of Sampling and Testing" of A.A.S.H.T.O. Sampling and testing of materials not covered by A.A.S.H.T.O. Specifications and not otherwise provided for, shall be in accordance with the latest "Standards and Testing Methods of the A.S.T.M."

Except as otherwise specifically stated in the Contract, cost of sampling and testing will be divided as follows:

- a. The Contractor shall furnish without extra cost, including packing and delivery charges, all samples required for testing purposes, except those samples taken on the Project by the Chief Engineer;
- b. The Contractor shall assume all cost of retesting materials which fail to meet Contract requirements;
- c. The Contractor shall assume all cost of testing materials offered in substitution of those found deficient.

19. CERTIFICATES OF COMPLIANCE

Certification of compliance with the requirements of these Specifications will be required from the manufacturers or producers of certain products, proposed to be furnished, listed elsewhere in these Specifications.

Any product, for which the prescribed materials certification or satisfactory test results have not been submitted and accepted, shall not be incorporated in the work without the specific written

authorization of the Chief Engineer. Such authorization, however, shall not relieve the Contractor from any obligation under the terms of this Contract.

The Contractor shall submit all material or equipment samples, certificates, affidavits, etc. as called for in the Contract Documents or required by the Chief Engineer, promptly after award of the Contract. No such material or equipment shall be manufactured or delivered to the site, except at the Contractor's risk, until the required samples or certificates have been approved in writing by the Chief Engineer.

Any delay in the work caused by late or improper submission of samples or certificates for approval shall not be considered just cause for an extension of the Contract time. Each sample submitted by the Contractor shall carry a label giving the name of the Contractor, the project for which it is intended, and the name of the producer. The accompanying certificate or letter from the Contractor shall state that the sample complies with Contract requirements, shall give the name and brand of the product, its place or origin, the name and address of the producer and all Specifications or other detailed information which will assist the Chief Engineer in passing upon the acceptability of the sample promptly. It shall also include the statement that all materials or equipment furnished for use in the project will comply with the samples and/or certified statements.

Approval of any materials shall be general only and shall not constitute a waiver of the Agency's right to demand full compliance with Contract requirements. After actual deliveries, the Chief Engineer will have such check tests made as deemed necessary in each instance and may reject materials and equipment and accessories which fail approval. If materials, equipment and accessories which fail to meet check tests have been incorporated in the work, the Chief Engineer will have the right to cause their removal and replacement by proper materials or to demand and secure and reparation by the Contractor as is equitable.

No payment will be made for any item until the prescribed materials certification or satisfactory tests results have been submitted by the Contractor and accepted by the Chief Engineer.

The Agency reserves the right, however, to amend or to waive any of these requirements (testing or certification of compliance) prior to or after the award of the Contract and further reserves the right to test any other material not listed above.

Any certificates required for demonstrating proof of compliance of materials with Specification requirements shall be executed in six (6) copies, each individually signed. Each Certificate shall be signed by an official authorized to certify on behalf of the manufacturing company and shall contain the name and location, and the quantity and date or dates of test to which the reports apply. Certification shall not be construed as relieving the Contractor from furnishing satisfactory material; if, after tests are performed on selected samples, the material is found not to meet the specific requirements, the material will be rejected.

20. STANDARD PUBLICATIONS

Whenever a reference is made in the Specifications to a Federal Specification, to an ASTM, AASHTO, ANSI, AREMA, or a publication of an association of like import, it shall be understood

that such reference is intended to refer to the edition of such publication in effect on the date the Contract Documents are made available for bidding.

21. CLEANING UP AND RESTORATION

The site(s) of the work and adjacent areas shall be kept as free from material, debris, coffee cups, and other rubbish as is practical. All coffee cups, rubbish, debris and surplus material that may accumulate during the work must be removed by the Contractor as the work progresses. Any material, debris, coffee cups or other rubbish which, in the opinion of the Chief Engineer, constitutes a nuisance or is objectionable shall be immediately removed by the Contractor upon notice to do so.

All temporary structures, equipment, materials, implements, barricades, signs, debris and rubbish connected with or caused by the work shall be removed immediately upon the completion of the work, and the premises shall be left in perfect condition insofar as affected by the work.

Any existing and/or finished construction, damaged as a result of the work of this Contract, shall be repaired and/or restored to the satisfaction of the Chief Engineer, without added cost to the Agency.

The Contractor shall neatly pile, store and protect all materials in locations on the premises where approved and directed. During work operation all refuse and debris shall be removed daily, and the areas left clean.

All tools, appliances, materials and equipment shall be removed from the premises, by the Contractor, as soon as possible upon completion of the work of this Contract.

The Contractor shall daily remove from the work site(s) all rubbish, or debris, resulting from operations and dispose of it in conformity with local and State ordinances and/or laws. No burning of any brush, rubbish or other material will be permitted. Prior to final acceptance, all work done by the Contractor shall be cleaned up and the premises occupied by the work left in a neat and orderly condition, satisfactory to the Chief Engineer.

22. SUBSTANTIAL COMPLETION

The work shall be deemed substantially complete when in the opinion of the Chief Engineer (whose judgment shall be conclusive) so much thereof has been completed in accordance with the terms of the Contract Documents that the Agency may occupy the site of the work for the purpose of which they are intended. Upon such substantial completion the Chief Engineer shall issue a Certificate of Substantial Completion. The issuance of this Certificate shall not relieve the Contractor from its obligation hereunder to finally complete all the work of the Contract.

The work remaining to be completed after substantial completion for the Contractor to fulfill its obligations to fully complete the Work in accordance with the Contract shall be known as the "Remaining Work", The Remaining Work shall generally be limited to minor defects or omissions ("Punch List Work"). However, the Chief Engineer may include as part of Remaining Work, work which would ordinarily be required for substantial completion. Nothing herein, however, shall

diminish the right of the Chief Engineer to determine what is necessary for substantial completion in accordance with the first paragraph of this Article.

The Chief Engineer shall advise the Contractor of the time required to complete Punch List Work and the time required to complete all other Remaining Work. Failure to complete any Remaining Work other than Punch List Work will result in the Contractor being liable for liquidated damages as set forth in the New York Department of Transportation Specifications. As an additional remedy for such failure, and not in lieu of liquidated damages, the Agency may complete the Remaining Work including Punch List Work, either by its own forces or by other Contractors. The Contractor shall be entitled to payment according to the Contract Price upon such completion, subject however to the Agency's right to reimbursement for its cost of payments due the Contractor, and if such costs exceed the amount due the Contractor, the Contractor shall pay such excess to the Agency. The Agency's entitlement to such reimbursement shall in no respect relieve the Contractor of its obligation to timely complete the Remaining Work.

Upon substantial completion, the Contractor shall remove its tools, materials and equipment from the job site unless otherwise authorized in writing by the Chief Engineer.

23. FINAL INSPECTION

Upon completion of the work under this Contract and when clean-up is accomplished as provided in the preceding paragraph, a final inspection of the same will be made. If the work is not found satisfactory, the Chief Engineer may require repairs, adjustments and further cleaning; when these are completed the work will again be inspected.

The Contractor is not released from obligations under this Contract until the final inspection of the entire work has been made and the Chief Engineer is satisfied that the entire work is properly and satisfactorily constructed in accordance with the requirements and intent of the Plans and Specifications.

24. FINAL PAYMENT

When all work required under the Contract has been completed and, in the opinion of the Chief Engineer, is ready for final acceptance by the Agency, a final certificate of cost of the project will be made by the Chief Engineer, based on the actual as-built quantities of authorized work done under each item scheduled in the various schedules in the Proposal and under Supplemental Agreements, if any, at the lump-sum and unit price or prices stipulated therein.

The money due to the Contractor for the construction of the project (as determined by the final certificate) will be paid when the following conditions shall be satisfied:

- a. The final certificate is approved;
- b. Deduction has been made of previous payment on account and any amounts of liquidated damages, if any, assessed against the Contractor have been paid;
- c. There shall be no outstanding claims against the Contractor filed with the Agency;

- d. The Contractor shall have paid all due obligations and shall have furnished, when directed by the Chief Engineer, receipted bills or other satisfactory evidence that all obligations incurred by him/her and by his/her subcontractors in carrying out the project have been satisfied; and
- e. The Contractor shall execute and deliver a release substantially in the following form:

“In consideration of the above payment, (I) (we) hereby release the Agency and its officers, agents, and employees from all claims, demands and liability of whatsoever nature for anything done or furnished or in any manner growing out of the performance of the project.”

The acceptance by the Contractor of payment of the final certificate shall operate as and shall be a release to the Agency and its agents from all claims of, or liability to, the Contractor for anything done or furnished or omitted to be done or furnished for or relating to the project, or any act or neglect of the Agency or any person relating thereto.

25. BRANDS OR APPROVED OTHER

When in the Plans and Specifications a particular brand name of manufacturer, make of material, device or equipment is shown or specified such material, device or equipment is to be regarded merely as a standard of comparison. Any other make or brand, which, in the opinion of the Chief Engineer, is equal to that specified in quality or workmanship and will perform its intended purpose as that specified, will be accepted.

26. TIME OF COMPLETION

The Contractor shall not order materials or commence work prior to the date specified and transmitted in writing to the Contractor by the Agency.

Time is of the essence in this Contract. All the work under the Contract shall be completed, by Schedules, within the time stipulated in the Contract, from the date specified by the Agency for commencing, unless such period of time shall be extended by the Agency. The work shall be deemed completed when it has been finally accepted by the Agency or, at the sole option of the Agency on such earlier date, as the Agency determines the work is sufficiently complete to permit beneficial use of the facility by the Agency. In the event the Agency elects to accept the partially completed work as sufficient to provide beneficial use of the facility, the Contractor will advise in writing. Such use and partial acceptance by the Agency will not serve to relieve the Contractor from any responsibilities under the terms of the Contract. The Contractor is advised that the sole purpose of such early partial acceptance is to permit the beneficial use and occupancy of the Project by the Agency, but it shall not be construed as relieving the Contractor of any obligation under the requirements of the paragraph entitled “Liquidated Damages for Failure to Complete Work” of these Instructions to Bidders.

27. EQUAL OPPORTUNITY AND NONDISCRIMINATION

During the performance of this agreement, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.
- b. If directed to do so by the Commissioner of Human Rights, the Contractor will send to each labor union or representative of workers with which the Contractor has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commissioner of Human Rights, advising such labor union or representative of the contractor's agreement under clauses (a) through (g) (hereinafter called 'non-discrimination clauses'). If the Contractor was directed to do so by the Agency as part of the Bid or negotiation of this Contract, the Contractor shall request such labor union or representative to furnish a written statement that such labor union or representative will not discriminate because of race, creed, color, sex, national origin, age, disability or marital status, and that such labor union or representative will cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses and that it consents and agrees that recruitment, employment and the terms and conditions of employment under this Contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the Contractor shall promptly notify the State Commissioner of Human Rights of such failure or refusal.
- c. If directed to do so by the Commissioner of Human Rights, the Contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of clauses (a) and (h) and such provisions of the State's laws against discrimination as the State Commissioner of Human Rights shall determine.
- d. The Contractor will state, in solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability or marital status.
- e. The Contractor will comply with the provisions of Sections 290299 of the Executive Law and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to the Contractor's books, records, and accounts, by the State Commissioner of the purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.
- f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted

construction contracts in accordance with procedures authorized in Executive Order 11,246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

- g. General Conditions (GC3-12) part, by the Agency upon the basis of a finding made by the State Commissioner of Human Rights that the Contractor has not complied with these non-discrimination clauses, and the Contractor may be declared ineligible for future contracts made by or on behalf of the State of a public authority or agency of the State, until the Contractor satisfies the State Commissioner of Human Rights that the Contractor has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the Commissioner have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commissioner, notice thereof has been given to the Contractor and an opportunity has been afforded the Contractor to be heard publicly in accordance with the Executive Law. Such sanctions may be imposed, and remedies invoked independently of, or in addition to, sanctions and remedies otherwise provided by law.
- h. The Contractor will include the provisions of clauses (a) through (f) in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The Contractor will take such action in enforcing such provisions of such subcontract or purchase order as the State Commissioner of Human Rights or the contracting agency may direct, including sanctions or remedies for non-compliance. If the Contractor becomes involved in or is threatened with litigation with the subcontractor or vendor as a result of such direction by the State Commissioner of Human Rights or the contracting agency, the Contractor shall promptly so notify the Attorney General, requesting the Attorney General to intervene and protect the interests of the state of New York and the Agency.

28. LIABILITY FOR TAXES, PENSIONS, ANNUITIES, ETC.

The Contractor agrees to, and does, hereby accept full and exclusive liability for the payment of any and all contributions or taxes for unemployment insurance, medical and old age retirement benefits, pensions or annuities now or hereinafter imposed under any state or federal laws which are measured by the wages, salaries or other remuneration paid to persons employed by Contractor, on work performed under the terms of this agreement. Contractor also agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by duly authorized state or federal officials. The Contractor shall accept full and exclusive liability for the payment of any tax on materials entering into the construction.

29. CONTRACTUAL STATUS AND DIRECTION

In performing services under this project, the Contractor shall operate as, and have the status of an independent contractor and shall not act as, or be, an employee or agent of the Agency. The Contractor shall employ, pay from funds, and discharge all persons engaged in the performance of the work to be performed hereunder, and such persons shall be under Contractor's supervision, direction and control subject to the general oversight and guidance of the Chief Engineer or whomever he may appoint.

30. TEMPORARY WORK, SIGNS AND ADVERTISEMENTS

The Contractor shall, unless otherwise specified, furnish at no cost or risk to the Agency all pumping, bailing, false-work cribbing sheet-piling, coffer-dam, shoring, temporary bridging or other temporary work of any nature whatsoever required for the work herein described.

The Contractor shall not place or permit advertisements other than the name and address of Contractor on any structure or equipment used on this work. On permanent structures name plates or maintenance signs will be permitted only where specifically authorized by the Chief Engineer.

31. REGULATIONS AND PERMITS

Unless provided for in the Special Provisions, wherever in the performance of work embraced within this project it may be necessary to temporarily occupy, use or obstruct any street, highway, or public place, or to do anything whatsoever in connection with public property, to wherever it be necessary in order to comply with building laws or other local, state or national ordinances or enactments or regulations, the Contractor shall, at no cost to the Agency, procure all necessary approvals and permits therefore; and in performing such work shall be governed by and comply with the laws, rules and regulations of the proper local, municipal, state, national or other authorities. The Contractor shall be responsible for and save the Agency harmless from and against any and all violations of said laws, rules and regulations.

Wherever the doing of the work embraced within this Agreement in any manner affects the use or operation of lines of railroad of other railroad corporations, the Contractor shall, at no cost to the Agency, comply with all the conditions that may be imposed by such railroad corporations.

32. INTOXICATING LIQUORS AND SANITATION

The Contractor, insofar as his authority extends, shall not permit the sale, distribution, possession or use of any intoxicating liquors or narcotics upon or adjacent to the work or allow any such to be brought upon, to or near the property of the Agency.

The Contractor shall provide necessary sanitary facilities for employees on this work wherever needed, properly screened from public observation and kept in a clean and sanitary condition satisfactory to the Chief Engineer and public authorities and shall remove the same when directed.

33. APPLIANCES

Only suitable and safe appliances and machinery shall be used on the right-of-way or premises of the Agency in the work hereby contracted, and any appliance or machine which the Chief Engineer deems to be unsafe or unsuited for the work to be performed shall be removed from the work.

No stationary boiler or other appliances shall be used by or on behalf of the Contractor or any subcontractor on the right-of-way or premises of the Agency until, unless or except as such device, its parts and appliances shall be in conformity with, and shall have been inspected and tested in conformity with, any and every, state, departmental and municipal rule, regulation and requirement applicable thereto at the place of such use.

Save and except only as and when the Agency shall otherwise agree in writing, every examination, inspection and test and the specification cards and reports thereon required under this Section shall be made certified and authenticated by a reliable company carrying on the business of such examination, inspection and certification.

The Contractor shall furnish, bear and pay, and shall save the Agency free of, any and all labor and expense of any incident to compliance with all aforementioned rules, regulations and requirements.

34. NIGHT AND DAY WORK

If so required, the work shall be carried on night and day in order to complete the same within the time specified herein, and no extra charge shall be made by the Contractor for such night work.

35. SUPERINTENDENCE AND WORKMEN

The Contractor shall at all times be represented on the work by a competent superintendent, who shall be satisfactory to the Chief Engineer. Copies of approved plans and Specifications shall be kept on the work site at all times.

The Contractor shall employ experienced workmen and shall promptly discharge any employee whom the Chief Engineer considers to be incompetent or disorderly or a hindrance to the progress of the work herein provided for. The foregoing is intended, and shall not be deemed, to limit or modify Contractors status as an independent Contractor.

36. INTERFERENCE

In agreeing upon the price to be paid for the work to be performed under this Agreement, due consideration has been given to the fact that said work must be performed in a manner that will not interfere with the operation of the Agency and also in such a manner as to enable the Agency, or its agents, employees or contractors, to perform other and contiguous work; and the price specified in this Agreement to be paid by the Agency to the Contractor has been agreed upon and made after such due consideration.

37. CONTIGUOUS WORK

The work herein contracted shall be so prosecuted that the progress of contiguous work shall not be delayed.

38. PATENTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend at the Contractor's expense any action brought against the Agency, to the extent that such action claims that any equipment used in the performance of the work provided for in this Agreement, or the operation of any such equipment infringes a patent, copyright or similar property right of any country, nation, international body or organization. The Contractor will pay any costs and damages finally awarded against the Agency its assignees or successors.

39. RISKS

The Contractor shall assume all responsibility for any damage which may happen to the work provided for in this Agreement from fire, floods, storms or any cause whatsoever prior to the final completion and acceptance thereof.

All loss or damage arising out of the nature of the work to be done under this Agreement or from any unforeseen obstructions, difficulties or conditions which may be encountered in the prosecution of the same or from the action of the elements or from encumbrances on the line of the work or from any act or omission not authorized by this Agreement on the part of the Contractor or any person or agent employed by Contractor, shall be borne by said Contractor.

Contractor assumes the responsibility for damage to and loss of any material which is under its control and was furnished and delivered by the Railroad or the Chief Engineer, of any term, provision or covenant of this contract, shall not constitute a precedent, nor bind the Railroad or the Chief Engineer,

to a waiver of any succeeding breach of the same or any other of the term, provisions or covenants of this contract.

The Contractor shall not be entitled to claim or receive from the Agency any sum whatsoever in excess of the contract price for the work provided for herein by reason or on account for any delay caused in such work by the Agency.

40. INDEMNITY; DAMAGE CLAIMS

The Contractor will be responsible for, and shall release, protect, defend, indemnify and save harmless the Agency, its officers and employees, representatives or agents, both officially and personally, the People of the State of New York, the Commissioner of Transportation and all employees of the commissioner of Transportation both officially and personally, and their subsidiaries from and against any and all loss, damage, cost and expense and all claims, actions and demands arising out of:

- a. Personal injuries (including death) to any person and losses of a damage to the property of any person during or arising out of the performance of this Agreement except when caused in whole by the fault (or by the joint fault), failure or negligence of the Agency and/or subsidiary of the Agency; and
- b. The Federal Employer's Liability Act and any amendments thereto (notwithstanding the provisions of subparagraph a. above) based on allegations to the effect that the Agency failed to correct or guard against unsafe conditions or failed to furnish a safe place to work.

The Contractor shall familiarize themselves with applicable industry safety rules, which are incorporated herein by reference and made a part of this Agreement. The Contractor also agrees to comply with the industry safety rules, together with all applicable safety requirements contained in the laws, regulations or ordinances of any federal, state or local governmental authority hand to require employees to comply therewith and agrees to release, protect, defend, indemnify and save harmless the Agency from and against any and all loss, damage, cost and expenses and all claims actions and demands arising out of violation of any of said safety rules and requirements.

Indemnifiable costs shall include, but not be limited to fees of attorneys, investigators and experts. As used above, the terms "the Agency" and "Agency's subsidiaries" include the officials or officers, directors, agents and employees of the Agency and any subsidiaries.

41. MATERIALS, SUPPLIES AND EQUIPMENT PURCHASED BY CONTRACTOR

The Contractor shall advise the Chief Engineer in writing of all subcontracts made for materials, supplies and equipment to be used in this Agreement, giving the date of subcontract, name of party with whom made, and date agreed upon for delivery of material covered thereby. In making purchases of materials to be used in connection with this Agreement, insofar as compliance with the

provisions of this Agreement permit, preference shall be given in selecting vendors to companies located within the community and/or state of the project work site.

Except by written permission of the Chief Engineer, only materials produced or manufactured in the United States shall be used in the carrying out of this work. If requested by the Chief Engineer, the Contractor shall submit, for tentative approval, a list of all materials to be used in carrying out this work, giving the names of the dealers and manufacturers and the anticipated date of delivery.

42. MATERIAL PURCHASED FROM THE AGENCY BY THE CONTRACTOR

Any material of any nature whatsoever furnished by the Agency upon request of the Contractor shall be paid for by the Contractor at the time of the delivery of the said material to said Contractor and the market price of said material to be determined by the Agency plus the cost to the Agency of handling the transporting said material, and if not so paid shall be satisfied in manner provided in Section 43 hereof.

If any of the said material so purchased from the Agency by the Contractor is returned to the Agency at any time during the progress of the work, or at the time of the completion of the same, the Agency will purchase such material at the prices paid by the Contractor, deducting there from depreciation due to usage (as determined by the Agency) and the cost for handling same.

43. CHARGES ON FREIGHT, LABOR, MATERIALS AND SUPPLIES

The Agency shall have the right to apply any sums due or to become due to the Contractor under this Agreement to payment of any liabilities of the Contractor, or of any subcontractor, to the Agency for freight charges or for furnishing labor, materials or supplies.

44. PAYMENT FOR LABOR, SUPPLIES AND MATERIAL

The Contractor shall be responsible for the prompt payment for all labor, supplies and material furnished for any of the work covered by this Agreement, whether such work is done directly by Contractor or by any subcontractor engaged by the Contractor. In the event the Contractor fails to cause to be paid or pay for such labor, supplies or material promptly after payment is due, the Agency shall have the right to apply any funds which may be or might become payable to said Contractor to the payment of such liabilities and the amount of such payments shall be considered and accepted as payment pursuant to this Agreement.

**45. SITE RESTRICTIONS AND SAFETY DURING CONSTRUCTION ACTIVITY
LIMITATIONS ON CONSTRUCTION**

The following restrictions shall apply at all times for construction work:

- a. When jacking or tunneling under any railroad tracks, temporary track supporting structures shall be installed at the direction of the Chief Engineer.
- b. The crossing over of railroad tracks by Contractor's equipment, without benefit of protection by flagman and protection of the ties and rail, will not be permitted.
- c. Construction alongside an occupied railroad track will not be permitted without the written permission of the Chief Engineer.

46. SUBCONTRACTORS

The Contractor shall submit for approval a list of subcontractors showing the work assigned to each, and no subcontract for any part of the work shall be awarded to any party not acceptable to the Chief Engineer and approved by him/her. Such approval shall not release or relieve the Contractor from any of his obligations and liabilities under this contract. Upon written request of the Chief Engineer, the Contractor shall terminate employment on this work of any subcontractor who shall, in the opinion of the Chief Engineer, fail to perform the work undertaken by him/her in a satisfactory manner and appropriate provisions to this effect shall be incorporated, by reference in all subcontracts and the Contractor shall furnish to the Chief Engineer a written statement, properly endorsed by the subcontractor in question, that this has been done, before any subcontractor shall begin work.

47. NOTICE

Any notice to be given by the Railroad to the Contractor under this contract shall be deemed to be served if the same be delivered to the person in charge of the office used by the Contractor, or to his representative at or near the work, or deposited in the Post Office, postpaid, addressed to the Contractor at his last known place of business.

48. REPORTING ERRORS AND DISCREPANCIES

Before starting the work, the Contractor shall examine and compare the plans and specifications and shall report to the Chief Engineer, any errors or discrepancies found therein. If the Contractor, in the course of the work, finds any discrepancy between the plans and the physical conditions of the locality or any applicable building codes or ordinances, or any errors or omissions in plans or in the layout as given by said points and instructions, it shall be their duty to inform the Chief Engineer immediately, and the Chief Engineer shall promptly verify the same. Any work done after such discovery, until authorized by the Chief Engineer, will be done at the Contractor's risk.

49. AUTHORITY OF CHIEF ENGINEER

The Chief Engineer is authorized to reject or condemn all work or material which does not conform to this contract.

50. CHANGE OF FACILITIES OF OTHERS

If in the conduct of the work, any temporary changes or alterations in water, oil or gas pipelines, sewers, drains, conduits, fences, trolley tracks, electric line or power lines, telephone or telegraph or other wires, poles, etc. of others are necessary, either for the convenience of the Contractor for the performance of the work, the responsibility for making such changes will rest with the Contractor unless otherwise provided elsewhere in this AGREEMENT; and they shall arrange for such changes to be made at their own expense.

If such changes are of a permanent character and made necessary solely by the improvement itself and not incident to the performance of the work, then, in that case, such changes will be arranged

for by the Agency or others without cost to the Contractor, except changes shown on the plans will be made by the Contractor under this AGREEMENT.

51. RIGHTS OF VARIOUS INTERESTS

Wherever WORK being done by AGENCY's forces or by other contractors is contiguous to WORK covered by this contract, the respective rights of the various interests involved shall be established by the CHIEF ENGINEER, to secure the completion of the various portions of the project in general harmony.

52. ORDER OF COMPLETION USE OF COMPLETED PORTIONS

The Contractor shall complete any portion or portions of the Work in such order of time as the Chief Engineer may reasonably require. The Agency shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding the time for completing the entire Work or such portions thereof may not have expired; but such taking possession and use shall not be deemed an acceptance of the Work so taken or used or any part thereof.

Contractor acknowledges that the Work under this Agreement must be done "under traffic", that they have made allowances in the prices bid for delays due to traffic, and that no claim for additional monies will be made as a result of such traffic delays.

53. CHANGES

The Agency shall have the right to make any changes that may be hereafter determined upon, in the nature or dimensions of the Work, either before or after its commencement, and such changes shall in no way affect or void the obligations of this contract. If such changes make any change in the cost of the Work, an equitable adjustment shall be made by the Chief Engineer to cover the same, but the Contractor shall not claim compensation for anticipated profits. If such changes appreciably affect the cost of the Work to the Contractor, he shall, before proceeding with the Work, notify the Chief Engineer in writing, and the difference shall be equitably adjusted by the Chief Engineer.

If said changes warrant, the Chief Engineer may, at his option, require an increase in the amount of coverage afforded by the Insurance.

54. EXTRA WORK

If in the opinion of the Chief Engineer, any Work should be done or material furnished which is not included, contemplated or classified in this contract the Contractor shall upon written order of the Chief Engineer do such extra Work or furnish such extra material. By Agreement between the Contractor and the Chief Engineer, such extra Work or material may be paid for on a lumpsum basis or on the basis of unit prices, or other method as agreed upon by the Chief Engineer and the Contractor, No bill or claim for extra work or material shall be allowed or paid unless done or furnished on written order from the Chief Engineer. Bills or claims for extra work or material shall be presented to the Chief Engineer at the time of making the first monthly estimate such work or

material has been done or furnished, and such bills or claims must be accompanied by a copy of the Chief Engineer's order covering such work or material, Any such extra work done or material furnished under the provisions of this paragraph shall be covered, governed and controlled by all the terms and provisions of this contract, subject to such prices as may be agreed upon or fixed by the Chief Engineer. The Contractor shall furnish the Chief Engineer reports in the number, form, and detail prescribed by the Chief Engineer of all work done or material furnished.

No extra work will be paid for without prior approval by the Chief Engineer.

55. REMOVAL OF EQUIPMENT

Upon completion of the Work, or in case of annulment of this contract before completion for any cause whatever, the Contractor, if notified to do so by the Agency, shall promptly remove any part or all of his equipment, material, tools and supplies from the property of the Agency, failing which the Agency shall have the right to move such equipment, material, tools and supplies at the expense of the Contractor.

56. CHARGES AGAINST CONTRACTOR

The Agency shall have the right to apply any sums due or to become due to the Contractor under this contract, to payment of any liabilities of the Contractor, or of any Subcontractor, for freight charges, rental of equipment, furnishing labor, materials or supplies, or for any other charges originating from this contract.

57. WITHHOLDING OF PAYMENT

If the Contractor fails to meet and pay all of their just obligations outstanding for labor, materials or supplies at the time when an estimate for payment is due, or if any liens, claims or demands arising out of or in connection with the Work or its performance shall be outstanding at the time any payment may be due or is likely to be made thereafter, or if any claims arising out of or in connection with the Contractor's operations under this contract are made against the Agency by any other person than the Contractor, or, if in the opinion of the Chief Engineer, the Contractor is not proceeding with the Work in accordance with the provisions of this contract, the Agency shall have the right to withhold out of any payments, final or otherwise, such sums as the Chief Engineer may deem ample to protect it against any delay or loss or to assure the payment of just claims of third persons, and at its option, as agent for the Contractor, to apply such sums in such manner as the Chief Engineer may deem proper to secure such protection or to satisfy such claims. Such applications shall be deemed payments for the Contractor's account. The Chief Engineer may

withhold payments to the Contractor on account of the failure of the Contractor to fully comply with any requirement of this contract.

58. EXAMINATION & AUDIT

The Contractor shall:

- (A) During the effective term of this Agreement and for three (3) calendar years after final payment is made to the Contractor under this Agreement, or such longer period as maybe required for final disposition of the items mentioned in subsection (C) below, establish and maintain relevant books records, payroll records, receipts, documents, papers, and any other data or information which support and substantiate the charges made to and payments received from the Agency under this Agreement.
- (B) During this time, unless a longer period of time is required in order to comply with subsection below, the Agency or its duly authorized representatives shall have access to and the right to examine any relevant books, records, documents, papers, receipts, and any other data or information of the Contractor relating to this Agreement.
- (C) With respect to (1) litigation or the settlement of claims arising out of performance of this Agreement, or (2) charges by the Contractor to which the Agency takes exception, Railroad's right of access and examination, as well as the duty of the Contractor under subsection (A) above, shall continue until disposal of such litigation, claims or exceptions.

Contractor shall furnish the Railroad, if required, such itemization or subdivision of all sums for which it bills the Railroad for Work done under this Agreement as may be reasonable for accounting or other purposes.

59. ADJUSTMENTS OF DISPUTES

It is agreed that the decision of the Chief Engineer shall be final and conclusive in any dispute which may arise between the parties to this Agreement relative to or touching the same. Notwithstanding the preceding sentence and the provisions of this contract, the Contractor shall have the right to invoke the arbitration provisions contained in Section 60 of this Agreement in order to resolve any dispute arising out of this Agreement, the interpretation of the provisions thereof or the exercise of discretionary or subjective authority of the Chief Engineer hereunder.

60. ARBITRATION

The parties agree that any disagreement, dispute, or claim relating to this Agreement, including but not limited to breach or termination of this Agreement, and all others arising between the parties with respect to the work, shall be submitted to arbitration under the rules of the American Arbitration Association in effect at the time of the arbitration. Said arbitration shall take place in **Olean, New York**, or at such other location as the parties may mutually agree. The parties shall make a reasonable effort to agree upon a single member of the Association to act as arbiter. In the event they are unable to agree, each party shall nominate an arbiter. The two arbiters so chosen shall appoint a third arbiter and the matter shall be decided by a majority decision of said three arbiters. The award rendered, including any decision as to payment of all costs and expenses of the arbitration (including attorneys' fees), shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

61. ANNULMENT WITHOUT FAULT OF CONTRACTOR

The Agency shall have the right at any time, for reasons which appear good to it, to annul this contract upon giving written notice to the Contractor, in which event, the Contractor shall be entitled to the full amount of the estimate for the Work done under this contract up to the time of such annulment including the retained percentage. The Contractor shall be reimbursed by the Agency for such expenditures as in the judgment of the Chief Engineer are not otherwise compensated for, and as are required in preparing for and moving to and from the Work; the intent being that an equitable settlement shall be made with the Contractor.

62. EFFECTIVE DATE OF AGREEMENT

This Agreement shall become effective on the date the State of New York, after having entered into an Agreement with the Agency for the Work shall give its approval to this Agreement. The parties understand hereto that the approval by the State of New York is a condition precedent to this Agreement between the Contractor and the Agency.

63. REQUIRED STATE AND FEDERAL CLAUSES

In recognition of the use of State and/or Federal monies in funding this project, the Contractor and the Agency agree to observe and be bound by the required State and Federal contract clauses and affirmative action requirements annexed to this Agreement as in Appendices. This Agreement shall inure to the benefit of and be binding upon the legal representatives, successors and assigns of the parties respectively.