

WATER PERMIT NO. 2632-2

Name of Applicant: Colonial Pine Hills Sanitary District

Address: 4605 Dunsmore Rd, Rapid City SD 57702 Phone: 605 348-3113

Amount of Water Claimed: additional 0.07 cfs Total Acres: NA

Source of Water Supply: groundwater (one existing well)

Water to be used for: suburban housing development County: Pennington

Type of Waste Disposal System: individual septic tanks

Location:

PRIORITY Date Received: 1-10-08 Application/License Fee: \$50

Corrected Application Received: Period of Annual Use: January 1 – December 31

Remarks: Increase the diversion rate authorized by Water Permit No. 2461-2 from 0.33 cfs to 0.40 cfs

Diversion Point: SE ¼ NE ¼ Sec 32-T1N-R7E

Land to be Irrigated:

Depth of Well: 1052 feet deep

Well Driller: : Taylor Drilling

Remarks:

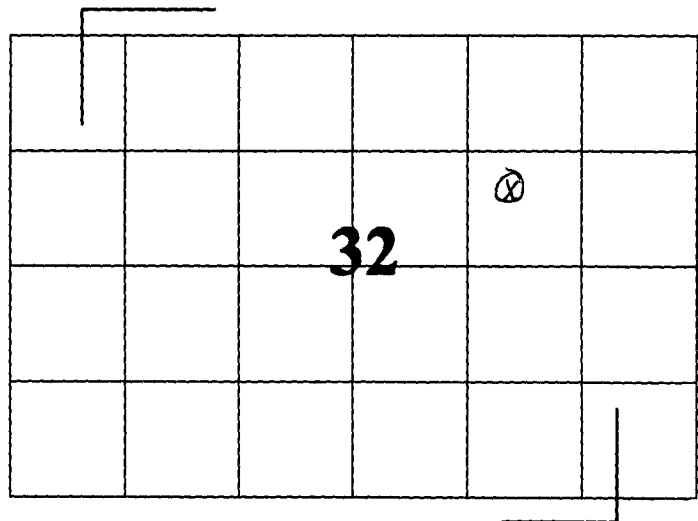
Type of Map: plat

Prepared by: Theodore Schultz, PE

Reviewed and the Number Assigned on: 1-10-08

By: Karen Schlaak

Notice of Hearing - date to intervene: _____



FORM 2: Application for uses other than irrigation
(type or print)

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>2623-2</u> (office use only)	Hydrologic Unit <u>10/20110</u>
	Basin <u>Upper Cheyenne</u>	
	Newspaper <u>Rapid City Journal P.O. Box 450</u>	
	<u>605-394-8300</u>	<u>57709</u>

RECEIVED
JAN 10 2008
WATER RIGHTS
PROGRAM

Application For Permit To Appropriate Water Within The State Of South Dakota

Check use(s) of water:

☐ Municipal	☒ Suburban Housing	☐ Recreational	☐ Institutional
☐ Rural Water System	☐ Commercial	☐ Fish & Wildlife	☐ Geothermal Heat
☒ Domestic (over 18 gpm)	☐ Industrial	☐ Other _____	

Type of Application: (check one)

☐ New ☐ Vested Right (Use predates Mar. 2, 1955) ☐ Future Use Reservation

☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____

☒ Amendment/Correction to Permit No. 2461-2

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.)

The Colonial Pine Hills Sanitary District proposes to increase the water right production limit to 0.4 cfs or 180 gpm to existing Nonanna water right Permit No. 2461-2. Current rate is 0.33 cfs or 150 gpm.

- Name of Applicant Colonial Pine Hills Sanitary District Phone 605-348-3113
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address 4605 Dunsmore Road, Rapid City State SD 57702
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed 0.07 0.40 *CFS or 180 30 **GPM AF
(*Cubic Feet per Second) (**Gallons per Minute) (**Acre Feet - storage capacity of dam/dugout or annual use if applicable)
- Source of water supply Madison Fm.
- Location of point of diversion (example - 3 wells in SW 1/4 NE 1/4 section 12-T104N-R53W) County Pennington
Nonanna Well in SE 1/4 of the NE 1/4 of Section 32, T1N, R7E, BHM, Pennington County, SD. Approximate well location 850 feet west and 1,600 feet south of the northeast corner of Section 32, T1N, R7E.
- County or counties where water will be used Pennington
- Annual period during which water is to be used Yearly (Jan. 1 to Dec. 31)
- Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

The existing Nonanna well is owned by Colonial Pine Hills Sanitary District and is located at the intersection of Nonanna Street and Dunsmore Road in the eastern portion of the District. The purpose of the Nonanna Street Well upsizing is to increase supply for the District and to allow the District to be less dependent on poor quality wells.

STATE OF SOUTH DAKOTA)

SS

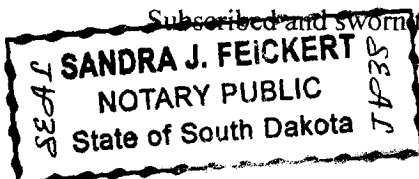
County of Pennington)

Attachments: Attach Form 2A if diversion is from a well or dugout, or if storage of water is proposed. Attach map and any other technical information. (see instructions)

I, Jim Martin, Manager of CPHSD, the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Applicant's signature Jim Martin

Subscribed and sworn to before me this 9th day of January 20 08



Notary Public signature Sandra J. Feickert

My Commission Expires 12-02-2009

SOUTH DAKOTA
WATER PERMIT NO. 2623-2

Date of first receipt of application January 10, 2008.

The Water Management Board approved Water Permit No. 2623-2 on May 7, 2008 for Colonial Pine Hills Sanitary District, 4605 Dunsmore Rd, Rapid City SD 57702 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 2623-2 appropriates an additional 0.07 cubic feet of water per second (cfs) by increasing the diversion rate authorized by Water Permit No. 2461-2. Water Permit No. 2461-2 appropriates 0.33 cfs (150 gallons per minute) from one well completed into the Madison Aquifer (1052 feet deep) located in the SE ¼ NE ¼ Section 32-T1N-R7E. This permit increases the water appropriation from the existing well from 0.33 cfs to 0.40 cfs (an additional 30 gallons per minute).
2. The water appropriated shall be used for a suburban housing development and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The date from which applicant may claim right is January 10, 2008.
5. One-fifth of the construction is to be completed on or before November 7, 2010.
6. All construction is to be completed on or before May 7, 2013.
7. Water is to be put to beneficial use on or before May 7, 2017.
8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2623-2 is issued for a 20-year term. Pursuant to SDCL 46-2A-21, the 20-year term may be deleted at any time during the 20-year period or following its expiration. If the 20-year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2623-2 may also be cancelled for nonconstruction, forfeiture, abandonment, or three permit violations pursuant to SDCL 46-1-12, 46-5-37, 46-5-37.1 and ARSD 74:02:01:37.
2. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
3. Colonial Pine Hills Sanitary District shall report to the Chief Engineer annually the amount of water withdrawn from the Madison Aquifer.

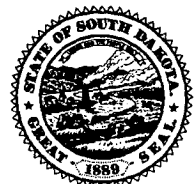
WATER MANAGEMENT BOARD

By: Garland Erbele

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

JUN 16 2008

date



(type or print in ink)

1. Well Information – Proposed Construction – Nonanna existing well conditions – (See Schematic).

- a) Drill Hole Diameter 9-7/8" Depth 1,052 feet
- b) Casing Type New Steel Diameter 7" O.D. Thickness 0.25"
- c) Screen Type None Diameter None Thickness None
- d) Gravel Pack None Length of Gravel Pack None
- e) Depth to Top of Water Bearing Material 680 feet
- f) Depth to Water (ground surface to water level) 466 feet
- g) Distance to nearest existing domestic well:
- On applicant's property 1,100 feet ± On property owned by others 1,300 feet ±
*Well will be used for back-up on Nikolas property.

2. Wastewater Disposal System Information

- a) Type of System (i.e. septic tank, drain field) Septic Tank with Drainfields on Individual Lots
- b) System Capacity (gallons) Varies Year Constructed Various
- c) Connected to the City of N/A Sanitary System

3. Dugout Information

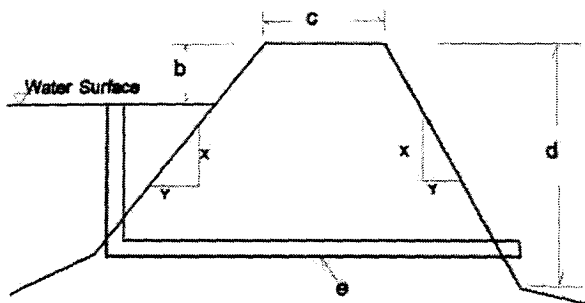
- a) Surface Dimensions N/A Depth N/A
- b) Depth to water (ground surface to water level) N/A

4. Water Storage Dams

If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to be shown on the map submitted with the application.

- a) If a private engineering firm or government agency was involved in the design of this dam, please give their name and address:

N/A



- b) Freeboard _____
- c) Crest Width _____
- d) Height _____
- e) Primary Outlet Capacity _____
- f) Secondary Spillway Capacity _____
Spillway Width _____
- g) X & Y Slope _____
Upstream _____
Downstream _____
- h) Surface Area of Impoundment _____
- i) Storage _____ Acre Feet
- j) Drainage Area Above Dam _____ Acres



1830 West Fulton Street
P.O. Box 9014
Rapid City, SD 57709
Phone (605) 341-7800
Fax (605) 341-7864
www.cetecengineering.com

Letter of Transmittal

DATE: 01-11-2008	JOB NO: 07194.00
ATTENTION:	
RE: Nonanna Well Pump Upgrades	

TO: ALL PLANHOLDERS

RECEIVED

JAN 14 2008

WATER RIGHTS
PROGRAM

WE ARE ☒ FAXING and SENDING
☐ HAND DELIVERING

☒ Attached ☐ Under separate cover via _____ the following items:
☐ Shop drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications
☐ Copy of letter ☐ Change Order ☐ _____

COPIES	DATE	NO.	DESCRIPTION
1	01-11-2008	1	Addendum No. 1.

THESE ARE TRANSMITTED as checked below:

☐ For approval ☐ Reviewed ☐ Revise and resubmit
☐ For your use ☐ Rejected ☐ Resubmit _____ copies for approval
☐ As requested ☐ Make corrections noted ☐ Return _____ corrected prints
☐ For review and comment ☒ Other For Bids due January 15, 2008 at 2:00 P.M. MDT

REMARKS:

COPY TO: _____

SIGNED: Ted Schultz
Ted Schultz, P.E.

RECEIVED

JAN 14 2008

WATER RIGHTS
PROGRAM

ADDENDUM NO. 1

PROJECT: **Nonanna Water Well Pump Upgrades
Colonial Pine Hills Sanitary District**

BID LETTING: January 15, 2008 at 2:00 P.M. MDT

LOCATION: CETEC Engineering Services, Inc.
1830 West Fulton Street
Rapid City, SD 57702

SCOPE: This Addendum consists of one page, A1.1 plus attached
Revised Bid Schedule.

ACKNOWLEDGMENT: Bidder shall acknowledge receipt of this Addendum in the
Bid Proposal form on page 00310.1.

DATE: Friday, January 11, 2008

CHANGES / CLARIFICATIONS / DELETIONS / ADDITIONS TO PROJECT
SPECIFICATIONS AND CONTRACT DOCUMENTS DATED JANUARY 4, 2008.

- Item 1.1** Change proposed well pump size to a Grundfos 50-HP – 150 S 500-27 stage as shown on drawing Sheet 4.
- Item 1.2** Reduce the length of pump lowering to set the pump 42 feet lower than the existing pump or at about 712 feet below the surface. See the revised quantities in the new Bid Schedule.
- Item 1.3** Add closed circuit television video to the well project. Remove all equipment and perform CCTV to 1,050 feet below the surface. Provide a video tape to the Owner upon completion. Monitor and evaluate open-hole and casing conditions in the well. Payment for all work will be paid for by the linear foot of video.

CETEC Engineering Services, Inc.

By: Ted Schultz
Ted Schultz, P.E., Project Manager

Date: 1/11/08

1830 West Fulton St.
PO Box 9014
Rapid City, SD
57709-9014

www.cetecengineering.com

REVISED
BID SCHEDULE
per Addendum No. 1

Nonanna Well Pump Replacement
Colonial Pine Hills Sanitary District
Pennington County, South Dakota

Bid Item	Item Description	Estimated Quantity	Units	Unit Price	Extended Price
1	Mobilization	1	LS		
2	Well Disinfection	1	LS		
3	Furnish 3" Column Drop Pipe	42	LF		
4	Furnish 3" Check Valves	4	EA		
5	Pump Cable, #2	50	LF		
6	Junction Box and Wire Splicing	1	LS		
7	Air Line, 1/4" Diameter (Double)	1,450	LF		
8	Furnish 50-HP Well Pump and Motor	1	LS		
9	Install Well Pump and Accessories	1	LS		
10	Well CCTV	1,050	LF		
Total Bid:				\$	

**PROJECT SPECIFICATIONS
and
CONTRACT DOCUMENTS
for
NONANNA WATER WELL
PUMP UPGRADES**

RECEIVED

JAN 10 2008

**WATER RIGHTS
PROGRAM**

**Colonial Pine Hills Sanitary District
8251 Dunsmore Road
Rapid City, SD 57702**

PREPARED BY:



**1830 West Fulton Street
P.O. Box 9014
Rapid City, South Dakota
57709-9014**

January 4, 2008

7

**PROJECT SPECIFICATIONS
and
CONTRACT DOCUMENTS
for
NONANNA WATER WELL
PUMP UPGRADES**

**Colonial Pine Hills Sanitary District
8251 Dunsmore Road
Rapid City, SD 57702**

Board of Trustees

Bob Evans, President
Bob Truman
Rolf Lunde
Gerald Burdick
Linda Iverson

OPERATOR

Jay Chittim

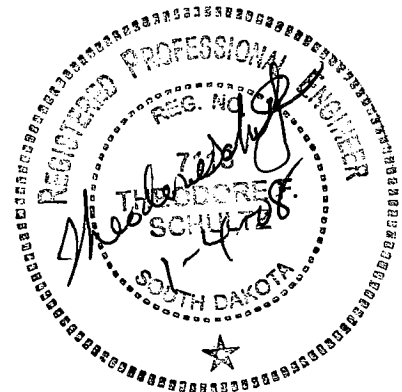
MANAGER

Jim Martin

ENGINEER

CETEC Engineering Services, Inc.
1830 West Fulton Street
P.O. Box 9014
Rapid City, South Dakota
57709-9014

January 4, 2008



PROJECT DIRECTORY

NONANNA WATER WELL PUMP UPGRADES

COLONIAL PINE HILLS SANITARY DISTRICT

OWNER:

Colonial Pine Hills Sanitary District
8251 Dunsmore Road
Rapid City, SD 57702

Contact: Jim Martin, Manager
Jay Chittim, Operator
Telephone: (605) 348-3113 Fax (605) 348-4253

ENGINEER:

CETEC Engineering Services, Inc.
1830 West Fulton Street
P.O. Box 9014
Rapid City, SD 57709-9014

Contact: Ted Schultz, P.E., Project Engineer
Telephone: (605) 341-7800 Fax (605) 341-7864
Jeb Rieb, Construction Observer
Cell Phone: (605) 209-0920

PROJECT SURVEYOR:

CETEC Engineering Services, Inc.
1830 West Fulton Street
P.O. Box 9014
Rapid City, SD 57709-9014

Contact: Keith S. Peterson, L.S.
Mobile Phone: (605) 381-1051

**CONTRACT DOCUMENTS AND SPECIFICATIONS
FOR
NONANNA WATER WELL PUMP UPGRADES
COLONIAL PINE HILLS SANITARY DISTRICT
PENNINGTON COUNTY, SD**

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BID REQUIREMENTS

00001	Cover Page
00002	Project Directory
00005	Table of Contents
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00100	Information and Instructions to Bidders
00310	Bidders Proposal
00320	Bid Schedule

CONTRACT DOCUMENTS

00510	Contract
00610	Performance and Payment Bond
00630	Notice of Award
00640	Notice to Proceed
00650	Change Order
00700	Standard General Conditions of the Construction Contract
00800	Supplemental Conditions

SPECIFICATIONS

DIVISION 2 SITE WORK

02580	Water Well Construction and Drawings 1 - 4
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APPENDICES

Appendix A	Water Rights Permit No. 2461-2
Appendix B	Grundfos Pump Curve

SECTION 00006 - LIST OF DRAWINGS

DRAWINGS

The plans for Nonanna Water Well Pump Upgrades, Colonial Pine Hills Sanitary District, Pennington County, South Dakota consist of the following:

<u>Sheet No.</u>	<u>Description</u>
1	Vicinity Map
2	Nonanna Well Site
3	Existing Well Construction Schematic
4	Proposed Well Pump Schematic

Drawings are located at the end of Section 02580.

**NOTICE FOR BIDS
FOR
NONANNA WATER WELL PUMP UPGRADES
COLONIAL PINE HILLS SANITARY DISTRICT
PENNINGTON COUNTY, SOUTH DAKOTA**

Sealed bids will be received by the Board of Trustees, Colonial Pine Hills Sanitary District, Pennington County, South Dakota, until 2:00 P.M., MDT, January 15, 2008, at the office of CETEC Engineering Services, Inc., 1830 West Fulton Street, P.O. Box 9014, Rapid City, SD 57709-9014, and will be publicly opened and read for "Nonanna Water Well Pump Upgrades", Colonial Pine Hills Sanitary District, Pennington County, South Dakota. All proposals shall be made on the forms furnished by the Owner.

Plans and specifications may be obtained from CETEC Engineering Services, 1830 West Fulton Street, P.O. Box 9014, Rapid City, South Dakota 57709-9014, on or about January 3, 2008. No payment or cash deposit for plans and specifications is required. Unsuccessful bidders shall return plans and specifications to CETEC Engineering Services, Inc.

Each bid envelope shall contain one Bid Proposal only and shall be marked with the words, "Sealed Bid – Nonanna Water Well Pump Upgrades, Colonial Pine Hills Sanitary District, Pennington County, South Dakota."

The principal items of work for this project are as follows:

- Mobilize and remove 670 feet of existing drop pipe and existing 40-HP well pump and accessories.
- Furnish and install 50-HP well pump and motor with accessories.
- New 3-inch column drop pipe – 120 LF.
- 3-inch check valves.
- Pump cable and junction box.
- ¼-inch air lines.
- Well disinfection.

No bid bond is required, but a performance bond will be required. The Owner reserves the right to reject any or all bids or to waive any informality and to accept the bid that is to the advantage of and is in the best interest of the Colonial Pine Hills Sanitary District. The Contractor must hold a current South Dakota state well driller's license per SDCL 46-6-9 and 46-6-9.2. The Contractor shall be able to demonstrate that he has successfully completed municipal well drilling work of a similar nature and scope as that required for the project.

Jim Martin, Manager
Colonial Pine Hills Sanitary District

INFORMATION AND INSTRUCTIONS TO BIDDERS

1. PROPOSAL REQUIREMENTS

All proposals must be made on the forms provided in the specifications and contract stipulations hereto attached. All proposals must be legibly written in ink. No alterations in proposals or in the printed forms will be permitted by erasures or interlineation. Each proposal shall be enclosed in a sealed envelope, addressed to the Colonial Pine Hills Sanitary District, Pennington County, South Dakota, and endorsed on the outside with the bidder's name and with the words, "Sealed Bid - Nonanna Water Well Pump Upgrades, Colonial Pine Hills Sanitary District, Pennington County, South Dakota," and filed at CETEC Engineering Services, Inc., Rapid City, South Dakota, prior to the hour set for the opening of the bids. Facsimile bids will be accepted for this project at 605-341-7864. A facsimile bid receipt shall be confirmed by the bidder.

Proposals shall be strictly in accordance with the prescribed forms. Proposals carrying riders or qualifications of the bids as submitted may be rejected. The proposals shall be based on the Contractor furnishing all of the necessary labor, tools, materials and equipment to fully complete the project items in accordance with the detailed specifications covering the work.

Each proposal must be signed in ink by the bidder with his full name and with his full address. In the case of a firm, the name and residence of each member must be inserted, and, in case the proposal is submitted by or in behalf of a corporation, it must be signed in the name of such corporation by an official authorized to bind the bidder.

No bidder may submit more than one proposal. Two or more proposals under different names will not be received from one firm or association.

2. ADDENDA AND INTERPRETATIONS

No interpretation of the meaning of the plans, specifications or other pre bid documents will be made to any bidder orally.

Every request for such interpretation should be in writing addressed to CETEC Engineering Services, Inc., 1830 West Fulton Street, P.O. Box 9014, Rapid City, SD 57709-9014. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be mailed to all prospective bidders, at the respective addresses furnished for such purposes. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the contract documents.

3. TIME OF COMPLETION

The time of completion of the work is of vital importance and the Contractor will be required to complete the work within the time stipulated in the proposal. It will be necessary for the Bidder to satisfy the Owner of his ability to execute the work within the stipulated time.

4. MODIFICATION OF BIDS

No modification of bids already submitted will be considered unless such modifications are received prior to the hour set for opening. Telegraphic modifications will be rejected unless they conform to SDCL 5-18-8 and are confirmed in writing over signature of the bidder within forty-eight (48) hours of the time set.

5. WITHDRAWAL OF BID

A bidder may withdraw his proposal at any time prior to the expiration of the period during which proposals may be submitted. Proposals may be withdrawn by letter, telegraphic communication or in person before the time specified in the advertised notice. No bidder may withdraw a proposal after the date and hour set for bid opening as noted in the advertised notice.

6. REJECTION OF BIDS

The Owner reserves the right to award the work as is most advantageous to the Owner or reject any or all bids.

7. PERFORMANCE BOND REQUIREMENTS

The Contractor to whom the work is awarded will be required to give a surety bond to the Owner, in accordance with SDCL 5-21-1.1, executed by a reliable and accredited surety authorized to do business in the State of South Dakota; acceptable to the Owner; signed by an "Attorney in Fact" of residence in South Dakota and in an amount equal to the total of the contract as a guarantee of the full performance and completion of the contract and payment of all labor and all material bills. The bond shall be in the form provided.

8. CONTRACT AWARD

No contract or other contract documents shall be executed until the proposal and qualifications of bidders have been examined and the award of the contract authorized by the Owner. No such document shall be effective until it has been approved by the Owner as to final execution.

9. EXAMINATION OF PROJECT SITE

The bidder shall make careful examination of the project site. This shall include conditions to be encountered, access to work areas, improvements to be protected, disposal sites for waste materials, methods of ingress and egress and all other matters which influence the work.

It is expressly understood that by submitting a bid for this project that the bidder declares that he/she has examined the site of the work, and has informed himself/herself fully in regard to all conditions pertaining to the place where the work is to be done; that he/she has examined the plans and specifications for the work and the other contract documents relating thereto; and that he/she has satisfied himself/herself relative to the work to be performed.

10. INSURANCE REQUIREMENTS

Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall provide and maintain, until the work is completed and accepted by the owner, minimum insurance coverages in accordance with the requirements established in the Insurance Form, which is included in Section 00800.

Proof of insurance coverage must be furnished to the Owner by the Contractor's insurance carrier in sufficient time prior to the start of the work to allow the Owner to review and approve the insurance coverage.

11. TAXES

A. Contractors will be liable for City, County, State and Federal use, sales and excise taxes due under South Dakota law.

B. Excise Tax Liability:

The Contractor or Subcontractors shall be liable for payment of any State excise tax required for realty improvements under SDCL 10-46A-1 or SDCL 10-46B-1. In order to assist the Contractor in determining their tax liabilities, the Engineer has made the following determination:

(a) This project is not a qualifying utility project and is subject to the excise tax described in SDCL 10-46A-1.

(b) This project is a qualifying utility project and is subject to the alternate contractor's XXXX tax of SDCL 10-46B-1.

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The time of completion of the work is of vital importance and the Contractor will be required to complete the work within the time stipulated in the proposal. It will be necessary for the Bidder to satisfy the Owner of his ability to execute the work within the stipulated time.

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The Owner reserves the right to award the work as is most advantageous to the Owner or reject any or all bids.

7. PERFORMANCE BOND REQUIREMENTS

The Contractor to whom the work is awarded will be required to give a surety bond to the Owner, in accordance with SDCL 5-21-1.1, executed by a reliable and accredited surety authorized to do business in the State of South Dakota; acceptable to the Owner; signed by an "Attorney in Fact" of residence in South Dakota and in an amount equal to the total of the contract as a guarantee of the full performance and completion of the contract and payment of all labor and all material bills. The bond shall be in the form provided.

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The Owner reserves the right to award the work as is most advantageous to the Owner or reject any or all bids.

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(b) This project is a qualifying utility project and is subject to the alternate contractor's tax of SDCL 10-46B-1. XXXX

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**BIDDERS PROPOSAL
FOR
NONANNA WATER WELL PUMP UPGRADES
COLONIAL PINE HILLS SANITARY DISTRICT
PENNINGTON COUNTY, SOUTH DAKOTA**

PLACE: CETEC Engineering Services, Inc.
1830 West Fulton Street
Rapid City, South Dakota 57702

DATE: January 15, 2008

TIME: 2:00 P.M. MDT

TO: Colonial Pine Hills Sanitary District
8251 Dunsmore Road
Rapid City, South Dakota 57702-8950

Ladies and Gentlemen:

In compliance with your invitation for bids to furnish all necessary labor, tools, materials and equipment to perform in all detail the "Nonanna Water Well Pump Upgrades", Colonial Pine Hills Sanitary District, Pennington County, South Dakota, complete and ready for use as described by the detailed specifications as prepared by CETEC Engineering Services and now on file at CETEC Engineering Services, Inc., Rapid City, South Dakota, the undersigned Bidder:

(1) A Corporation organized and existing under the laws of the State of _____

(2) A Partnership consisting of _____

(3) An Individual trading as _____

of the City of _____ State of _____ having examined the detailed specifications and contract with bond hereto attached, and being fully advised of the services to be furnished and the work to be done in connection with "Nonanna Water Well Pump Upgrades", Colonial Pine Hills Sanitary District, Pennington County, South Dakota, does hereby propose to furnish all of the necessary labor, tools, materials and equipment and do all the work as specified to fully complete said work as described by said specifications at the following unit prices, to wit:

Bidder acknowledges receipt of the following Addenda:

Addendum No.

Date

IN SUBMITTING THIS PROPOSAL, BIDDER ACKNOWLEDGES THE FOLLOWING:

1. Bids shall include all applicable State and Local Sales and Use Taxes on materials, and State Excise Taxes, and all other applicable State, Local and Federal Taxes or Fees that will affect the amount of the Bid.
2. In accordance with SDCL 34-44-8, all bidders and contractors are hereby notified that this project does not involve asbestos-containing materials. Bidders are further instructed that no asbestos-containing materials are to be installed on the project.
3. It is understood that the Owner regards this as a single project and will not separate contract awards by proposal items to more than one contractor.
4. Bid award will be on the basis of the lowest total bid price or the advantage of the Owner.
5. The Bidder must provide a list of previous work experience, equipment, personnel and other information as requested by the Engineer. The Owner may declare the Bidder non-responsive if the Bidder fails to furnish such information upon request. The Owner reserves the right to reject any bid if the Contractor is deemed non-responsive.
6. In the case of a discrepancy in the bid amount written in words and the amount indicated by Arabic numerals, the amount written in words shall govern.
7. The Bidder, by signing below, agrees and states that he has read the advertisement for bids, has studied the Contract Documents, if familiar with the terms and conditions stipulated therein, agrees to enter into the attached contract, and acknowledges the receipt of addenda listed herein.
8. Work under this contract shall be performed in accordance with the following schedule. If the Contract award is made after January 16, 2008, the completion milestones will be extended one day for each day after January 16, 2008.

Contract Completion Schedule: Notice of Contract Award:..... January 16, 2008
Final Completion and Restoration: March 14, 2008

9. Liquidated Damages: \$500 per calendar day.

NAME OF COMPANY - Party of the Second Part

AUTHORIZED SIGNATURE AND TITLE

CORPORATE SEAL

ADDRESS

DATE _____

BIDDER MUST FILL IN ALL SPACES PROVIDED ABOVE

BID SCHEDULE

**Nonanna Well Pump Replacement
Colonial Pine Hills Sanitary District
Pennington County, South Dakota**

Bid Item	Item Description	Estimated Quantity	Units	Unit Price	Extended Price
1	Mobilization	1	LS		
2	Well Disinfection	1	LS		
3	Furnish 3" Column Drop Pipe	120	LF		
4	Furnish 3" Check Valves	4	EA		
5	Pump Cable, #2	140	LF		
6	Junction Box and Wire Splicing	1	LS		
7	Air Line, 1/4" Diameter (Double)	1,620	LF		
8	Furnish 50-HP Well Pump and Motor	1	LS		
9	Install Well Pump and Accessories	1	LS		
Total Bid:				\$	

**SECTION 00510 – CONTRACT
BETWEEN CONTRACTOR
AND
COLONIAL PINE HILLS SANITARY DISTRICT**

THIS AGREEMENT, made this _____ day of _____, 2008 by and between
Colonial Pine Hills Sanitary District, Pennington County, South Dakota (Name
of Owner), hereinafter called "OWNER" and _____ doing
business as a corporation hereinafter called "CONTRACTOR".

That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of _____
Nonanna Water Well Pump Upgrades
2. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor, and other services necessary for the construction and completion of the PROJECT described herein.
3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS within 10 calendar days after the date of the NOTICE TO PROCEED and will complete the same by _____, as detailed in Section 00310:
4. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS and comply with the terms therein for the sum \$ _____ as shown in the BID schedule.
5. The term "CONTRACT DOCUMENTS" means and includes the following:
 - (A) NOTICE FOR BIDS
 - (B) INFORMATION FOR BIDDERS
 - (C) BIDDERS PROPOSAL
 - (D) BID SCHEDULE
 - (E) CONTRACT
 - (F) PAYMENT AND PERFORMANCE BOND
 - (G) NOTICE OF AWARD
 - (H) NOTICE TO PROCEED
 - (I) CHANGE ORDER
 - (J) SUPPLEMENTAL GENERAL CONDITIONS
 - (K) SPECIAL CONDITIONS
 - (L) DRAWINGS prepared by Ted Schultz, P.E., of CETEC Engineering Services, Inc.
 - (M) SPECIFICATIONS prepared or issued by CETEC Engineering Services, Inc.

(N) ADDENDA:

No. _____, dated _____, 20____.

No. _____, dated _____, 20____.

6. The OWNER will pay to the CONTRACTOR in the manner at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS.
7. The Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in 3 (Number of copies) each of which shall be deemed an original on the date first above written.

ATTEST

OWNER Colonial Pine Hills Sanitary District,
Pennington County, South Dakota

BY _____

BY _____

NAME _____

NAME _____

TITLE _____

TITLE President

DATE _____

DATE _____

(SEAL)

ATTEST

CONTRACTOR _____

BY _____

BY _____

NAME _____

NAME _____

TITLE _____

TITLE _____

DATE _____

DATE _____

(SEAL)

SECTION 00610 - PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, THAT WE, _____ (Contractor)
hereinafter call the "Principal", and _____

_____, (Surety)
a corporation, organized and existing under the laws of the State of _____, and
duly authorized to transact business in the State of South Dakota, Surety, hereinafter called "Surety", are held and
firmly bound unto the Colonial Pine Hills Sanitary District as obligee and hereinafter called "Obligee",
in the just and full sum of _____ Dollars (\$ _____)
) lawful money of the United States of America to be paid to the said Colonial Pine Hills Sanitary
District which payment well and truly to be made, we bind ourselves,
our heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that:

WHEREAS, the above Principal has entered into the Contract with the said Obligee, dated this _____
day of _____, 20____, for the construction of Nonanna Water Well Pump Upgrades which Contract is herein
referred to and made a part hereof as fully and to the same extent as if the same were entirely written herein, and

WHEREAS, it was one of the conditions of the award of the said Obligee pursuant to which said Contract was
entered into, that these presents should be executed.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulated and agrees that no change,
extension of time, alteration or addition of the terms of the Contract or to the work to be performed thereunder or the
Specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive
notice of any such change, extension of time, alternation or addition to the terms of the Contract or to the work or to
the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right
of any beneficiary hereunder, whose claim may be unsatisfied.

NOW THEREFORE, if the above Principal shall in all respects comply with the terms and conditions of said
Contract, and his (their or its) obligations thereunder, including the specifications therein referred to and made a part
thereof, and such alteration as may be made in such Specifications and herein and therein provided for, then this
obligation to be avoid, or otherwise to be and remain full force, effect and virtue.

And the further condition of this bond is that in the event said Principal shall fail to pay all just claims and
demands on the part of any employee, person, firms or corporations for labor and materials furnished for or used in
connections with the prosecution of the work under said Contract, or pay all taxes which may accrue to the State of
South Dakota under the provisions of the "Use Tax Act of 1939" and the Excise Tax on Realty Improvements under
SDCL 10-46A," and Sections 5-21-3 and 5-21-4 of the South Dakota Compiled of 1967, as amended, then this
bond and the sureties thereon shall be responsible to such persons, firms or corporations, and the State of South
Dakota for the full payment of the full value of such labor and materials so furnished including the payment of South
Dakota Use Tax and the Excise Tax on realty improvements.

Signed and sealed this _____ day of _____, 20____.

In the presence of:

WITNESSES:

1. _____
2. _____
3. _____

INDIVIDUAL PRINCIPAL

as to _____ (SEAL)
as to _____ (SEAL)
as to _____ (SEAL)

ATTEST:

CORPORATE PRINCIPAL

Business Name

Business Address

By _____

Affix Corporate Seal

Title _____

ATTEST:

CORPORATE SURETY

Business Name

Business Address

By _____

Title _____

Countersigned by _____

South Dakota Resident Agent

**ACKNOWLEDGMENT OF PRINCIPAL
(Individual)**

State of _____)
County of _____)

On this _____ day of _____, 20____, before me personally appeared _____, known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

Notary Public

My commission expires _____.

**ACKNOWLEDGMENT OF PRINCIPAL
(Partnership)**

State of _____)
County of _____)

On this _____ day of _____, 20____, before me personally appeared _____, who acknowledged himself to be one of the partners of _____, a partnership, and that he, as such partner, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the partnership by himself as a partner.

Notary Public

My commission expires _____.

**ACKNOWLEDGMENT OF PRINCIPAL
(Corporation)**

State of _____)
County of _____)

On this _____ day of _____, 20____, before me personally appeared _____, who acknowledged himself to be the _____ of _____, a corporation, and that he, as such _____ being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as _____.

Notary Public

My commission expires _____.

**ACKNOWLEDGMENT OF SURETY
(Corporate Officer)**

State of _____)
County of _____)

On this _____ day of _____, 20____, before me, a Notary Public in and for said County, personally appeared _____, personally known to me, who being by me duly sworn, did say that he is the aforesaid officer of the _____ a corporation duly organized and existing under the laws of the State of _____, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that the said instrument was signed, sealed and executed in behalf of said corporation by authority of its Board of Directors, and further acknowledges that the said instrument and the execution thereof to be the voluntary act and deed of said corporation.

IN WITNESS WHEREOF, I hereunto subscribed my name and affixed my official seal at _____, the day and year last above written.

Notary Public

My commission expires _____.

**ACKNOWLEDGMENT OF SURETY
(Attorney-In-Fact)**

State of _____)
County of _____)

On this _____ day of _____, 20____, before me personally appeared _____, known to me or satisfactorily proven to the person whose name is subscribed as attorney in fact for _____, and acknowledged that he executed the same as the act of his principal for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto subscribed my name and affixed my official seal at _____, the day and year last above written.

Notary Public

My commission expires _____.

SECTION 00630 - NOTICE OF AWARD

(To be executed after bid is awarded)

TO: _____

PROJECT DESCRIPTION: Nonanna Water Well Pump Upgrades
Colonial Pine Hills Sanitary District

The OWNER has considered the BID submitted by you for the above-described WORK in response to its Notice for Bids dated January 4, 2008, and Information and Instructions to Bidders.

You are hereby notified that your BID has been accepted for items in the amount of \$_____.

You are required by the Information for Bidders to execute the Agreement and furnish the required CONTRACTOR's Performance BOND, Payment BOND, and certificates of insurance within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish the BONDS within ten (10) calendar days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER's acceptance of your BID as abandoned and as a forfeiture of your BID BOND. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this _____ day of _____.

Colonial Pine Hills Sanitary District
(Owner)

BY: _____

TITLE: President

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged by _____,
this, the _____ day of _____, 20____.

BY: _____

TITLE: _____

SECTION 00640 - NOTICE TO PROCEED

(To be executed after Contract Bonds and Insurance Certificates are approved)

TO: _____

DATE: _____

PROJECT: Nonanna Water Well Pump Upgrades

Colonial Pine Hills Sanitary District

Pennington County, SD

You are hereby notified to commence WORK in accordance with the Agreement dated _____,
on or before _____, 20____, and you are to complete the substantial completion of WORK
by _____ and final completion of Work by _____.

Colonial Pine Hills Sanitary District
(Owner)

BY: _____

TITLE: President

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by _____

this, the _____ day of _____, 20____.

BY: _____

TITLE: _____

SECTION 00650 - CHANGE ORDER

Order No. _____

Date _____

Agreement Date _____

NAME OF PROJECT Nonanna Water Well Pump Upgrades, Colonial Pine Hills Sanitary District

OWNER Colonial Pine Hills Sanitary District

CONTRACTOR _____

THE FOLLOWING CHANGES ARE HEREBY MADE TO THE CONTRACT DOCUMENTS

Justification:

Change to CONTRACT AMOUNT: \$ _____

Original CONTRACT AMOUNT: \$ _____

Current CONTRACT AMOUNT adjusted by previous CHANGE ORDER \$ _____

The CONTRACT AMOUNT due to this CHANGE ORDER will be (increased/decreased) by
\$ _____

The new CONTRACT AMOUNT including this CHANGE ORDER will be \$ _____

Change to CONTRACT TIME _____

The CONTRACT TIME will be (increased/decreased) by _____ calendar days.

The date for completion of all work will be _____ (date).

APPROVALS REQUIRED

To be effective, this Order must be approved by the appropriate state or Federal agencies if it changes the scope or objective of the PROJECT, or as may otherwise be required by the SUPPLEMENTAL GENERAL CONDITIONS.

Requested by _____

Recommended by _____

Accepted by _____

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and



AMERICAN CONSULTING
ENGINEERS COUNCIL

Issued and Published Jointly By



**National Society of
Professional Engineers**
Professional Engineers in Private Practice



AMERICAN SOCIETY OF
CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General



Contractors of America

Construction Specifications Institute



Advancement
of Construction
Technology

These General Conditions have been prepared for use with the Owner-Contractor Agreements (No. 1910-8-A-1 or 1910-8-A-2) (1996 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition).

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.

3. *Application for Payment*--The form acceptable to ENGINEER which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

9. *Change Order*--A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the

Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

13. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

16. *Cost of the Work*--See paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *ENGINEER*--The individual or entity named as such in the Agreement.

20. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *Field Order*--A written order issued by ENGINEER which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

24. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

25. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

37. *Resident Project Representative*--The authorized representative of ENGINEER who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.

43. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

44. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

45. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases,

steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

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

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

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The

use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. Day

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

C. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. Furnish, Install, Perform, Provide

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CONTRACTOR, "provide" is implied.

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

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds*

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 *Copies of Documents*

A. OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

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

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

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

B. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise specified

in the General Requirements), CONTRACTOR shall submit to ENGINEER for its timely review:

1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

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

3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance:* Before any Work at the Site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with Article 5.

2.06 *Preconstruction Conference*

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor.

2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

3.02 *Reference Standards*

A. *Standards, Specifications, Codes, Laws, and Regulations*

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids),

except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

3.05 *Reuse of Documents*

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaption by ENGINEER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

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

4.01 *Availability of Lands*

A. OWNER shall furnish the Site. OWNER shall notify CONTRACTOR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CONTRACTOR must comply in performing the Work. OWNER will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If CONTRACTOR and OWNER are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in OWNER's furnishing the Site, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

B. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *ENGINEER's Review:* After receipt of written notice as required by paragraph 4.03.A, ENGINEER will promptly review the pertinent condition, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto, and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

C. *Possible Price and Times Adjustments*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must meet any one or more of the categories described in paragraph 4.03.A; and

- b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, OWNER, ENGINEER, and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities, including OWNER, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

2. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

4.05 *Reference Points*

A. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property

monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the ENGINEER in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous

Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefor as provided in paragraph 10.05.

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing

in this paragraph 4.06.E shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.F shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements

of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

A. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain.

5.04 *CONTRACTOR's Liability Insurance*

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

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

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

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

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be

correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and

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

5.05 *OWNER's Liability Insurance*

A. In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.04, OWNER, at OWNER's option, may purchase and maintain at OWNER's expense OWNER's own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

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

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER;

5. allow for partial utilization of the Work by OWNER;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR, and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work

at the Site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

5.07 Waiver of Rights

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

B. OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by OWNER; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.05, after Substantial Completion

pursuant to paragraph 14.04, or after final payment pursuant to paragraph 14.07.

C. Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against CONTRACTOR, Subcontractors, ENGINEER, or ENGINEER's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. OWNER shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

B. OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either OWNER or CONTRACTOR has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required

of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

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

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

6.02 Labor; Working Hours

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

6.03 Services, Materials, and Equipment

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

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with

any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 Substitutes and "Or-Equals"

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to ENGINEER for review under the circumstances described below.

1. "Or-Equal" Items: If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under

paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR.

c. The procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

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

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly

required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

C. *Engineer's Evaluation:* ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until ENGINEER's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." ENGINEER will advise CONTRACTOR in writing of any negative determination.

D. *Special Guarantee:* OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

E. *ENGINEER's Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

F. *CONTRACTOR's Expense:* CONTRACTOR shall provide all data in support of any proposed substitute or "or-equal" at CONTRACTOR's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or

entities to be submitted to OWNER in advance for acceptance by OWNER by a specified date prior to the Effective Date of the Agreement, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor

or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

6.07 *Patent Fees and Royalties*

A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits

and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.09 *Laws and Regulations*

A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not

unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work CONTRACTOR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.12 *Record Documents*

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work

Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ENGINEER for OWNER.

6.13 *Safety and Protection*

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

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

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

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and

responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CONTRACTOR is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample

submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

D. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop

Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

E. ENGINEER's Review

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. Resubmittal Procedures

1. CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.18 Continuing the Work

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except

as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19 *CONTRACTOR's General Warranty and Guarantee*

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or
2. normal wear and tear under normal usage.

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

1. observations by ENGINEER;
2. recommendation by ENGINEER or payment by OWNER of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;
4. use or occupancy of the Work or any part thereof by OWNER;
5. any acceptance by OWNER or any failure to do so;
6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;
7. any inspection, test, or approval by others; or
8. any correction of defective Work by OWNER.

6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from

and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and
2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 7 - OTHER WORK

7.01 *Related Work at Site*

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to CONTRACTOR prior to starting any such other work; and

2. if OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

A. If OWNER intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility for such coordination.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.02 *Replacement of ENGINEER*

A. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer to whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.03 *Furnish Data*

A. OWNER shall promptly furnish the data required of OWNER under the Contract Documents.

8.04 *Pay Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations

and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

8.06 *Insurance*

A. OWNER's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. OWNER's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 *Limitations on OWNER's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *OWNER'S Representative*

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

9.02 *Visits to Site*

A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If OWNER designates another

representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.05 *Authorized Variations in Work*

A. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

9.06 *Rejecting Defective Work*

A. ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

9.08 *Determinations for Unit Price Work*

A. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding (except as modified by ENGINEER to reflect changed factual conditions or more accurate data) upon OWNER and CONTRACTOR, subject to the provisions of paragraph 10.05.

9.09 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 *Limitations on ENGINEER's Authority and Responsibilities*

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority

or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

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

B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change

Directive, a Claim may be made therefor as provided in paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 *Execution of Change Orders*

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

1. changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 *Notification to Surety*

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

10.05 *Claims and Disputes*

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the ENGINEER and the other party to the Contract within 60 days after the start of such event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

B. *ENGINEER's Decision:* ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.

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

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

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

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

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable,

and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be

considered administrative costs covered by the CONTRACTOR's fee.

2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.

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

4. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

C. *CONTRACTOR's Fee:* When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

11.02 *Cash Allowances*

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

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

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allow-

ances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER subject to the provisions of paragraph 9.08.

B. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

C. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

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

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. **CONTRACTOR's Fee:** The CONTRACTOR's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

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

a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no

fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

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

f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by

Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

12.04 *Delays Within CONTRACTOR's Control*

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.05 *Delays Beyond OWNER's and CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 *Delay Damages*

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or

2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which OWNER or ENGINEER has actual knowledge will be given

to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

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

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

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection or approval.

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ENGINEER.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.04 Uncovering Work

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

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

13.05 OWNER May Stop the Work

A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop

the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 Correction or Removal of Defective Work

A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.07 Correction Period

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that

item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.09 *OWNER May Correct Defective Work*

A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.06.A, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In

connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and ENGINEER and ENGINEER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefor as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *Applications for Payments*

1. At least 20 days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. *Review of Applications*

1. ENGINEER will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

2. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

3. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. Neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.

5. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests,

revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Written Amendment or Change Orders;
- c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or
- d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by OWNER to CONTRACTOR.

D. *Reduction in Payment*

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

- a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;
- b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;
- c. there are other items entitling OWNER to a set-off against the amount recommended; or
- d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld.

OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.03 *CONTRACTOR's Warranty of Title*

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

14.04 *Substantial Completion*

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibility.

ties pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Use by OWNER at OWNER's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which OWNER, ENGINEER, and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

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

14.07 *Final Payment*

A. *Application for Payment*

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

B. Review of Application and Acceptance

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 Final Completion Delayed

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 OWNER May Suspend Work

A. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes a Claim therefor as provided in paragraph 10.05.

15.02 OWNER May Terminate for Cause

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;

3. CONTRACTOR's disregard of the authority of ENGINEER; or

4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate

the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

C. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.03 *OWNER May Terminate For Convenience*

A. Upon seven days written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of

engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *CONTRACTOR May Stop Work or Terminate*

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

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

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

SECTION 00800

SUPPLEMENTAL CONDITIONS

PART 1 - GENERAL

1.1 General

- A. These Supplemental Conditions amend or supplement the STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT (No. 1910.8, 1996 Ed.) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

1.2 Defined Terms (GC-1)

- A. The terms used in these Supplemental Conditions which are defined in the Standard General Conditions of the Construction Contract have the meanings assigned to them in the General Conditions.

1.3 Subsurface Conditions

- A. Refer to well schematic.

1.4 Contract Bonds, Workmen's Compensation and Insurance (Article 5)

- A. Contract Bond.
 - 1. The Contractor shall furnish a performance bond and a labor and material payment bond to the Owner for the full amount of the Contract price. This bond shall have a maintenance guarantee for a period of one year from final completion.
 - 2. Under this maintenance guarantee, the Owner shall waive subrogation rights against the Contractor, Subcontractors, and Engineer.
- B. Liability Insurance.
 - 1. The Contractor shall, as provided in the General Conditions, obtain insurance acceptable to the Owner in a company or companies acceptable to the Owner and shall furnish copies of all policies of insurance (except Workers Compensation Insurance, in which case a certificate of insurance is adequate) to the Owner at the time he executes the Contract.
 - 2. The Contractor shall not commence work nor shall allow his employees or subcontractors or anyone to commence work until all required insurance has been obtained and certificates of insurance submitted to the Owner.
 - 3. The Contractor shall take out and maintain at all times during the entire period of performance and until the work is accepted by the Owner under this Contract the required policies of insurance.
- C. The limits of liability for the insurance required by paragraph 5.02 and 5.03 of the General Conditions shall provide coverage for not less than the amounts stated in the Purchase Order Terms and Conditions or greater where required by Laws and regulations.

Schedule of Insurance Limits (minimums).

1. Commercial General Liability:

\$1,000,000 per occurrence.

\$2,000,000 general aggregate.

\$2,000,000 Products/Completed operations aggregate.

\$1,000,000 Personal and Advertising injury per occurrence.

The commercial general liability policy(s) shall include the Owner and Engineer as additional insureds.

The Products/Completed operations coverage shall be maintained for two years after final payment. Property damage liability coverage will include explosion, collapse and underground (X, C and U) coverage.

2. Workers Compensation Insurance:
 - a. As required by state statute.
 - b. Applicable federal (e.g. Longshoreman and Harbor workers) statutory.
 - c. Employer's liability:
 - \$1,000,000 each accident.
 - \$500,000 disease policy limit.
 - \$100,000 disease each employee.
 - d. Include waiver of subrogation against Owner or its employees for any injury to a covered employee while working on the Owner's premises.
3. Automobile Liability:
 - \$1,000,000 each accident.
 - \$1,000,000 each person.
 - \$1,000,000 property damage or
 - \$1,000,000 combined single limit.

Such policy shall include liability coverage for owned, non-owned, hired and leased vehicles at the above limits.
4. Umbrella/Excess Liability (optional):
 - \$1,000,000 per occurrence.
 - \$1,000,000 policy aggregate.
 - \$1,000 maximum retention for self-insured hazards each occurrence.

Umbrella/Excess Liability will be excess over the above-required coverages.

1.5 "Or Equal" Equipment or Substitution (GC-6.05)

- A. Major items of mechanical equipment, electrical equipment, and process equipment have been specified by name followed by the words "or equal." In all cases, the dimensions shown on the plans are based on the named equipment.
- B. It shall be fully acknowledged and understood that the furnishing and installing of any "or equal" equipment shall include the preparation and submission of all details, shop and construction drawings showing all modifications necessary of accommodate such equipment.
- C. It shall be further acknowledged and understood that if any "or equal" is bid, the bid shall include all costs necessary to make any and all architectural, structural, mechanical and electrical changes required to incorporate such equipment into the project. No extras will be allowed after the award of the Contract for any modifications required to install or properly operate "or equal" equipment.
- D. All "or equal" equipment shall conform to the requirements of the respective parts and sections of the plans and specifications. Guarantees shall also conform to the Contract Documents.
- E. The Contractor shall pay for all redesign costs associated with the retrofitting required for the installation and use of "or equal" equipment.

1.6 Subcontractors and Suppliers (GC-6.06)

- A. Refer to Instructions to Bidders for any further requirements regarding subcontractor and supplier approval.

1.7 Separate Contractor Claims

- A. Should Contractor cause damage to the work or property of any separate Contractor at the site, or should any claim arising out of Contractor's performance of the Work at the site be made by any separate Contractor against Contractor, Owner, Engineer, the Construction Coordinator or any other person, Contractor shall promptly attempt to settle with such other Contractor by agreement, or to otherwise resolve the dispute by arbitration or at law. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold Owner, Engineer and the Construction Coordinator harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate Contractor against Owner, Engineer or the Construction Coordinator to the extent based on a claim arising out of Contractor's performance of the Work. Should a separate Contractor cause damage to the Work or property of Contractor or should the performance of Work by any separate Contractor at the site give rise to any other claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer or the construction coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer or the Construction Coordinator on account of any such damage or claim. If Contractor is delayed at any time in performing or furnishing Work by any act or neglect of a separate Contractor and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Time attributable thereto, Contractor may make a claim for an extension of time. An extension of the Contract Time shall be Contractor's exclusive remedy with respect with respect to Owner, Engineer and Construction Coordinator for any delay, disruption, interference or hindrance caused by any separate Contractor. This paragraph does not prevent recovery from Owner, Engineer or Construction Coordinator for activities that are their respective responsibilities.

1.8 Engineer's Status During Performance of the Work (GC Article 9)

- A. This section is a supplement to Article 9-Engineer's Status During Construction of the General Conditions.
- B. Owner's Consultant
1. The Engineer, as the design professional will be the Owner's consultant during the performance of the work. The duties and responsibilities and the limitations of authority of the Engineer as the Owner's consultant during this period are set forth in these Contract Documents and will not be extended without written consent of the Owner and the Engineer. In the event of an extension of the Engineer's duties and responsibilities, the Contractor will provide with written notice of such amendment.
- C. Role as Interpreter
1. The Engineer will be the initial interpreter of the terms and conditions of the Contract Documents and the judge of the performance thereunder. All matters relating to the execution and progress of the work or the interpretation of or performance under the Contract Documents shall be referred initially to the Engineer for decision, which will be rendered promptly.
 2. The Engineer will issue such written interpretation of the Contract Documents (in the form of drawings or otherwise) as he may determine necessary which will be consistent with or reasonably inferable from the overall intent of the Contract Documents.
- D. Communications With Contractor
1. All communications with the Contractor pertaining to performance of the work will normally be issued through the Engineer.
- E. Resident Project Representative
1. The Resident Project Representative will be either the Engineer or the Engineer's agent, as so designated. The Resident Project Representative is responsible for assisting the Project Engineer in determining that the project is completed in accordance with the Plans and Specifications and Contract Documents.
 2. Communications pertaining to compliance submittals, written interpretations, and amendments shall be directed to the Engineer at his home office with copies to the Resident Project Representative.

3. Communications pertaining to day-to-day operations at the site shall be directed to the Resident Project Representative.
- F. Authority to Disapprove or Reject Defective work
1. All equipment and materials used and all work done with at all times will be subject to the inspection, tests, and approval of the Engineer or his authorized representatives.
 2. The Engineer has the authority to disapprove or reject any work which is "defective." He also has the authority to require special inspection or testing of the work.
 3. The Engineer has the authority to disapprove or reject any defective workmanship, equipment, or material.
 4. If the work is defective, or the Contractor fails to supply sufficient skilled workmen or suitable equipment or materials, the Engineer may order the Contractor to stop the work or any portion thereof until the cause for such order has been eliminated; however, this right of the Engineer to stop the work will not give rise to any duty on the part of the Engineer to exercise this right for the benefit of the Contractor or any other party.
- G. Limitations on Engineer's Responsibilities
1. This article states the limitations on the Engineer's responsibility as between the Engineer and the Contractor.
 2. Neither Engineer's authority to act under these Contract Documents nor any decision made by him in good faith either to exercise or not exercise such authority will give rise to any duty or responsibility of the Engineer to the Contractor, any subcontractor, supplier or manufacturer, any of their agents or employees, or any other person performing any of the work.
 3. The Engineer is not responsible for construction, safety precautions, and programs incidental thereto. Neither is he responsible for the Contractor's failure to perform the work in accordance with the Contract Documents.
 4. The Engineer is not responsible for the acts or omissions of any Contractor or any subcontractors, Contractor's supplier or manufacturer, or any of his or their agents or employees.
 5. The presence or absence of the Engineer or his representative will not relieve the Contractor of any responsibility or of any guarantee of his performance. Neither will observation by the Engineer or his representative in any way be understood to relieve the Contractor of any responsibility for proper supervision of the work at all times.
 6. The review and acceptance of the Contractor's compliance submittals by the Engineer will be understood to be only for conformance with the design concept, for compliance with the intent of the Contract Documents, and to assist the Contractor in interpreting the Contract Documents, so as to preclude delivery of the equipment or materials not acceptable for the work. The Engineer's acceptance of compliance submittals will not place upon him any responsibility for any deviations from the requirements of the Contract Documents unless the Contractor has in writing called the Engineer's attention to such deviation at the time of the submission and the Engineer has given written concurrence on the specific deviation. Such deviations will be included in a contract amendment.
- H. Engineer's Pay Estimates
1. Any Engineer's pay estimate will constitute a representation by the Engineer to the Owner that work has progressed to the extent indicated. To the best of his knowledge, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the amount shown in the Engineer's pay estimate.
 2. Rendering the Engineer's pay estimate is not an approval of the quality or quantity of the work, the means or methods of construction, or the monetary methods used by the Contractor.
 3. The Engineer may refuse to render an Engineer's pay estimate for the whole or any part of any payment if, in his opinion, it would be an incorrect representation to the Owner.

1.9 Application for Progress Payment (GC-14.02)

A. Change the last sentence to read as follows:

The Owner shall retain from each payment prior to final completion and acceptance of all works covered by the Contract Documents an amount as follows:

- 12% of the first \$50,000 of earned contract value.
- 5% of the next \$200,000 of earned contract value.
- 2 ½% of the earned contract value over \$250,000.

1.10 Arbitration (GC-16)

A. Add the following paragraph:

The Contractor will carry on the work and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

1.11 Conflict (GC-2.05)

- A. In case of conflict between the "General Conditions and Supplemental Conditions" and applicable federal regulations for federally assisted projects (including 40 CFR Part 31), the provisions of the federal regulations shall govern.

1.12 Contract Time and Liquidated Damages

- A. The contract time and liquidated damages are stated in the Agreement.
- B. Time being an essential element of the Contract, it is hereby agreed that the Owner will be entitled to damages for failure on the part of the Contractor to complete the work within the prescribed time. In view of the difficulty in making a precise determination of actual damages incurred, the Contractor will be assessed a daily charge in the amount stipulated, not as a penalty, but as liquidated damages to compensate for the additional costs incurred.
- C. In any suit involving assessment or recovery of liquidated damages, the reasonableness of daily charges shall be presumed and the amount assessed will be in addition to every other remedy not or hereinafter enforceable at law, in equity, by statute, or under the Contract.
- D. In the event that the work is not completed within the time constraints specified, the Contractor agrees to pay the Owner liquidated damages for each calendar day that all work is not completed within the time constraints specified in the Agreement. This amount is in addition to the liquidated damages specified for substantial completion, if applicable.
- E. No liquidated damages will accrue during periods of authorized suspension.
- F. Permitting the Contractor to continue to finish the work or any part of it after the time fixed for its completion shall not in any way operate as a waiver on the part of the Owner of any of its rights under the contract. Neither by the act of taking over the work nor by annulment of the Contract shall the Owner forfeit the right to recover liquidated damages from the Contractor or his Sureties.

1.13 Permits (GC-6.08)

- A. Contractor shall obtain dewatering and/or storm water permits for the construction site, if required, and shall be responsible for compliance with storm water regulations for construction sites.

1.14 Sales Tax (GC-6.10)

- A. Contractor shall include state sales tax, use tax and excise tax in the bid price and shall copy all supply invoices to Owner for Owner's use in collecting any tax refund.

1.15 Change In work and Contract Price (GC - 12.01)

- A. The Owner, without invalidating the Contract, may order extra work or make changes by altering, adding to, or deducting from the work, the Contract sum being adjusted accordingly. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time caused hereby shall be adjusted at the time of ordering such change.

In giving instructions, the Engineer shall have authority to verbally make minor changes in the work; but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order by the Engineer, and no claim for an addition to the Contract sum shall be valid unless so ordered and approved by the Common Council.

The value of any such extra work or change shall be determined in one or more of the following ways:

- (a) By estimate and acceptance in a lump sum.
- (b) By unit prices named in the Contract or subsequently agreed upon.
- (c) By cost and percentage.

If none of these methods is agreed upon, the Contractor, provided he receives an order as above, shall proceed with the work. In such case and also under case (c), he shall keep and present in such form as the Engineer may direct a correct account of the net cost of labor and materials, together with vouchers. In any case, the Engineer shall certify to the amount including reasonable allowance for overhead and profit, due to the contract, or pending final determination of value, payments on account of changes shall be made on the Engineer's estimate work done on a force account basis shall be as follows:

- B. Labor: For labor and supervisor in direct charge of the specific operations, the Contractor shall receive the rate of wage agreed upon in writing before beginning work or the actual rate paid in the event it is less than the agreed rate, for each and every hour that said labor and supervisor are actually engaged in such work. Overtime will not be paid for by the Owner.

In order that the Engineer may verify wages paid, the Contractor shall furnish to the Engineer certified payrolls during the period force account work is in progress.

An amount equal to ten percent (10%) of the sum for labor will also be paid the Contractor as compensation for administrative and overhead costs.

- C. Bond, Insurance, and Tax: In lieu of furnishing itemized statements to substantiate these costs, of property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions and Social Security tax, the Contractor shall receive an amount equal to fifteen percent (15%) of the actual labor costs (excluding the ten percent (10% for administrative and overhead costs) as compensation for those costs.
- D. Materials: For materials accepted by the Engineer and incorporated into the project, the Contractor shall receive the actual cost of such materials delivered onto the worksite, including transportation charges paid (exclusively of machinery rentals as hereinafter set forth), to which cost ten percent (10%) will be added as compensation for administrative and overhead costs.
- E. Equipment: For machinery or special equipment, including fuel and lubricants, plus transportation costs, the use of which has been directed or authorized by the Engineer, the Contractor shall be paid at an agreed upon rate; or, failing mutual agreement, in accordance with provisions and rates set forth in the current edition of the South Dakota Department of Transportation Equipment Rental Rates, for actual time such equipment is in operation on the work, except that standby costs will not be paid. Nor will additional amounts be added for administration and overhead cost.
- F. Miscellaneous: Additional allowance will not be made for general superintendence, cost of maintaining home office, standby costs, or other costs for which no specific allowance is herein provided.
- G. Compensation: The Contractor's representative and the Engineer shall compare records of the cost of work done as ordered on a force account basis.
- H. Statements: Payment will be made for work performed by force account based on itemized statements of the cost of such force account work detailed as follows:
- 1. Certified payrolls showing work name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman;

2. designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment;
3. quantities of materials, prices and extensions; and
4. transportation of materials.

Statements shall be accompanied and supported by receipted invoices for materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then, in lieu of the invoices, the Contractor shall furnish an affidavit certifying that such materials were taken from his stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

- I. To the sum of items A through C, shall be added ten percent (10%) for profit.

**** END OF SECTION ****

SECTION 02580

WELL PUMP REPLACEMENT

**DETAILED SPECIFICATIONS AND DRAWINGS
FOR
NONANNA WELL PUMP REPLACEMENT
COLONIAL PINE HILLS SANITARY DISTRICT**

Specifications

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**DETAILED SPECIFICATIONS
FOR
Nonanna Well Pump Replacement
Colonial Pine Hills Sanitary District**

1. SCOPE

The scope of work includes removing and replacing submersible pump equipment in the existing Nonanna Well located at the intersection of Dunsmore Road and Nonanna Street in the Whispering Pines Subdivision.

*The principal work items for include removing and stockpiling the existing submersible well pump and accessory equipment, furnishing and installing new submersible well pump and motor. Existing 3" column pipe will be salvaged and re-installed within the well. Additional 3" pipe will be furnished and installed to lower the setting depth of the new pump. The submersible pump cable shall be salvaged and reinstalled for this installation.

2. PUMP INSTALLER QUALIFICATIONS

The Contractor must be a licensed well driller or well pump installer in the State of South Dakota (SDCL 46-6-9) and must be able to demonstrate satisfactory experience and equipment to accomplish the work.

The CPHSD reserves the right to request documentation of qualifications after bid opening and to reject bids from unqualified Contractors.

3. COORDINATION AND SCHEDULING

A preconstruction conference will be held prior to construction for the purpose of initial project scheduling and coordination. Contractor and subcontractor key personnel will be required to attend this and other periodic meetings.

The Contractor shall be responsible for coordinating his work schedule with the Engineer and CPHSD Water Operator. The Contractor is responsible for contacting SD One-Call and all utility companies for the utility locations prior to any excavation work (if necessary).

The Contractor shall coordinate access to the site with the CPHSD. Work shall be coordinated to allow proper sequencing of construction.

4. MOBILIZATION

Project mobilization shall be paid for on the lump sum basis for all work under the bid item for Mobilization. The Mobilization item shall be taken to include compensation for mobilizing and demobilizing Contractor's equipment.

5. SEQUENCE AND SCHEDULE OF WORK

The Contractor shall arrange a work schedule with CPHSD Water Operator such that all work will be completed within a scheduled time period. The work shall be completed Monday through Friday, with work hours between 7:00 AM and 7:00 PM. Performance testing, flushing and disinfecting work shall be complete, and the well returned to service within these days and times unless the Contractor specifically requests and receives permission from the Owner to perform work at other times.

All necessary materials and equipment shall be delivered to the site or to an approved storage location and inspected and approved by the Owner and Engineer prior to commencing project work.

Scheduling of the work period will be subject to approval of the CPHSD. All work shall be completed on or before March 14, 2008. The Contractor shall be allowed to remove the well from production for a period of seven (7) consecutive working days to replace the pump and equipment.

6. SUBMITTALS

The Contractor shall submit a construction schedule and a list of key personnel, subcontractors, and suppliers to the Engineer at least five (5) days prior to the preconstruction conference.

Submittals are required for all materials shown in the list of construction submittals and as required in the Specifications. The list is for information purposes and may not necessarily include all submittals required for the project. The term "Submittal" includes drawings, diagrams, descriptive literature, illustrations, instructions, schedules, performance and test data, product data sheets, material safety data sheets, and similar materials by a Supplier or Contractor to illustrate material or equipment for some portion of the work. At least ten (10) working days before his need for approval, the Contractor shall forward to the Engineer a minimum of six (6) copies of submittals for all Contractor furnished products. The Engineer will review submittals within 5 working days from receipt. Submittals shall clearly identify any deviation from the Specifications, and shall be certified and dated by the Contractor. Submittals will be accepted only from the Contractor. The Contractor is solely responsible for the schedule of shop drawings and material order and delivery. The Contractor is advised to receive approvals prior to delivery of materials.

Delays caused by incomplete or incorrect shop drawing submittals are the responsibility of the Contractor. Contract time adjustments will not be made for delays as a result of Contractor or supplier order or delivery problems. The Contractor is advised to provide complete submittals by section of work.

Submittals Required

- Construction Schedule and Sequence
- Submersible Well Pump and Motor for Well
- Sample Warranty for Well Pump and Motor
- Column Pipe
- Check Valves
- Submersible Pump Cable
- Air Line
- Banding and Clamps
- Flushing and Disinfection Plan (including dechlorination method)

7. SUBMERSIBLE PUMP CABLE

A. Payment Conditions.

1. Salvage existing submersible cable #2, including junction box and splicing at the surface. Payment will be under the item "Salvage and Install Pump Cable with New Junction Box".

8. PUMP COLUMN PIPE

A. Black steel, seamless, API5, Grade A, 20' lengths, 3" dia. Schedule 40, 12' - 22' lengths.

B. Couplings: Threaded taper per ASA B2.1.

C. Payment Conditions.

1. Furnishing column pipe shall be measured by the linear foot of pipe, including measurement through couplings. Payment will be under the item "Furnish 3" Column Pipe".
2. Installation will be paid for under the item "Install Well Pump and Accessories".

9. COLUMN CHECK VALVES

- A. Four existing column check valves are installed on the well pump column. The Contractor shall remove existing check valves and shall install four (4) new check valves in the location shown on the drawing or directed by the Engineer.
- B. New check valves shall be Flomatic vertical Model 80 DI, epoxy coated, o.d. equal to that of column pipe couplings.
- C. Payment Conditions.
 - 1. Furnishing new column check valves shall be measured on a per-each basis for payment. Payment will be under the bid items "Furnish 3" Check Valves".
 - 2. Installation of existing check valves shall be under the item "Install Well Pump and Accessories".

10. AIR LINE

- A. 1/4" O.D. HDPE with 300-psi rating.
- B. Clamp two (2) air lines to pump column adjacent to transducer cable and terminate near pump intake. Install 10' of 1" PVC conduit at the top of the casing near the pitless adapter.
- C. Install the air line into the junction box at the well head and connect to the existing air line for the well house pressure system.
- D. Payment Conditions.
 - 1. Furnishing air line, 1" PVC conduit, and fittings will be measured by the linear foot and paid for under the items "Furnish Air Line".
 - 2. Installation and splicing of the air line will be paid for under the items "Install Well Pump and Accessories".
 - 3. Removal of the existing air line and disposal shall be incidental to the work.

11. REMOVE EXISTING PUMP AND MOTOR

Remove existing pump and motor after Owner shuts down electrical and piping systems per approved schedule.

Salvage the pump and motor, column pipe, and pump cable without unnecessary damage. Coil the cable neatly. Arrange pipe in neat bundles. Inspect the removed material for damage or defects and report any problems to the Owner and Engineer. The Contractor shall take ownership of the existing well pump and motor upon removal. The well pump and motor was installed in May 2003 and is still operational. The Contractor may assume the salvage value of the pump and motor. The well pump is a 40-HP 6" – 22-stage Grundfos Model 150 S400-22 with Franklin Motor.

12. SUBMERSIBLE WELL PUMP AND MOTOR

- A. Scope.
 - 1. This specification covers a deep well submersible turbine pump with submersible electric motor driver as specified herein.
 - 2. The pumping unit shall be designed and furnished in accordance with Hydraulic Institute and AWWA standards for submersible turbine pumps (AWWA E101).
- B. Operating Conditions.
 - 1. Capacity: 170 gpm.
 - 2. Head: 900 feet total dynamic head (TDH).
 - 3. Pump Efficiency: 65% (min).

4. Rotative Speed: 3,500 rpm (max.).

5. Well Casing Diameter: 7" O.D.

C. Pump Construction.

Submersible Pump

1. Performance and Design Requirements:

- Submersible stainless steel pumping unit with close-coupled submersible electrical motor.
- Comply with AWWA Specification E101-82.
- Maximum O.D. of Pump: 5.46" including cable.
- Discharge: 3" NPT.
- Setting Depth: Refer to drawings.

2. Materials.

- Pump Bowls: 304 stainless steel with pressed in NBR wear rings, flat bowl design.
- Impellers & Diffusers: 304 series stainless steel.
- Shaft and Coupling: 420 and 421 stainless steel.
- Bearings: NBR.
- Suction Strainer: 304 stainless steel.
- Motor Adapter and Discharge Head: 304 stainless steel.
- Shaft Sleeves, Bowl, Casing, Fasteners, Cable Guard: 304 stainless steel.
- Casing Nut: 316L Powder Metal.
- Wear Rings: NBR.
- Check Valve: Built-in positive sealing, stainless steel check valve incorporated into the discharge head.
- Manufacturer: Grundfos Model 150 S500-28.

A. Motor:

- Submersible corrosion resistant water well motor.
- Stainless steel casing and epoxy coated end bells.
- Hermetically sealed stator.
- Factory installed replaceable motor lead assembly.
- 460 V, 3 phase, 60 Hz., S.F. = 1.15, 50.0 HP.
- Motor Size: 6", maintain water velocity past motor in the range of 0.5 to 12 fps.
- Franklin Electric Motor.

B. Warranty.

1. Pump and motor assembly shall be warranted for a period of 2 years after the date of acceptance of the project by the Owner as complete and final.
2. Warranty shall cover manufacturing and material defects, as well as installation workmanship.
3. Warranty shall provide for replacement of failed equipment at no cost to Owner for equipment, material, labor or other necessary services needed to restore the pumping unit to a full and operating condition.

C. Payment Conditions.

1. Furnishing the pump and motor assembly shall be paid for on a lump sum basis under the item "Furnish Submersible Well Pump and Motor".
2. Installation shall be included in the item "Install Well Pump and Accessories".

13. INSTALL PUMP AND ACCESSORIES

Set pump within the well at the depth to intake shown on the plans or as directed by the Engineer. Locate check valves in column pipe as detailed or directed by the Engineer. Attach the power cable and ground cable to column pipe at maximum 10' spacing, using stainless steel or approved corrosion-resistant banding. Run cable straight and do not allow "spiraling" during installation. Terminate and connect pump cable at existing pitless unit to existing power supply cable. Set the air line near the pump intake and run the air line to the surface with the power cables. Run the new air line into the junction box at the well head and connect to the existing gauge and pressure system.

Payment for pump installation shall be on a lump sum basis for successful installation of the pump and accessories under the bid item "Install Well Pump and Accessories".

14. WELL DISINFECTION

Disinfect well using methods set forth in AWWA A100-97 and SDCL 74:02:04:58:01 Appendix L. Flush to ground under general observation and direction of District Water Department personnel. District personnel will test chlorine residuals, and sample and test for bacteriological safety.

The Contractor shall provide for dechlorination of heavily chlorinated water discharged from the well when flushing after the disinfecting period.

Payment for well disinfection, including dechlorination activities, shall be on a lump sum basis under the bid item "Well Disinfection".

15. PERFORMANCE TESTING

The completed pump systems shall be tested at completion of work. The Contractor and Owner will complete testing cooperatively. Testing shall include rate of flow, head, voltage and electrical current. Flow and head test will be conducted with flow directed to waste through well house piping. The Contractor shall be present and observe testing conducted by District personnel. The duration of testing will be as needed to achieve a stable drawdown in the well, but will be not less than four (4) hours of continuous pumping.

No direct payment for Contractor performance testing will be made. Include this work under the bid item for "Install Well Pump and Accessories".

16. SALVAGE EXISTING PUMP CABLE

The existing well pump installation includes approximately 670 LF of #2 copper pump cable. Salvage the pump cable and reinstall with splice and extension of new cable to a new junction box at the well head. Reconnect the pump cable at the junction box.

17. INSTALLATION RECORDS AND O&M MANUALS

The Contractor shall, as a subsidiary obligation to installing the pump and motor, provide the Owner with a written log of construction activities, as-built information showing pipe lengths, check valve locations, transducer and/or air line setting depth and all pertinent information regarding the downhole assembly. The installation record shall include performance testing results, voltage and current measurements, both running and not running. Deliver these records to the Engineer within 7 days of pump installation.

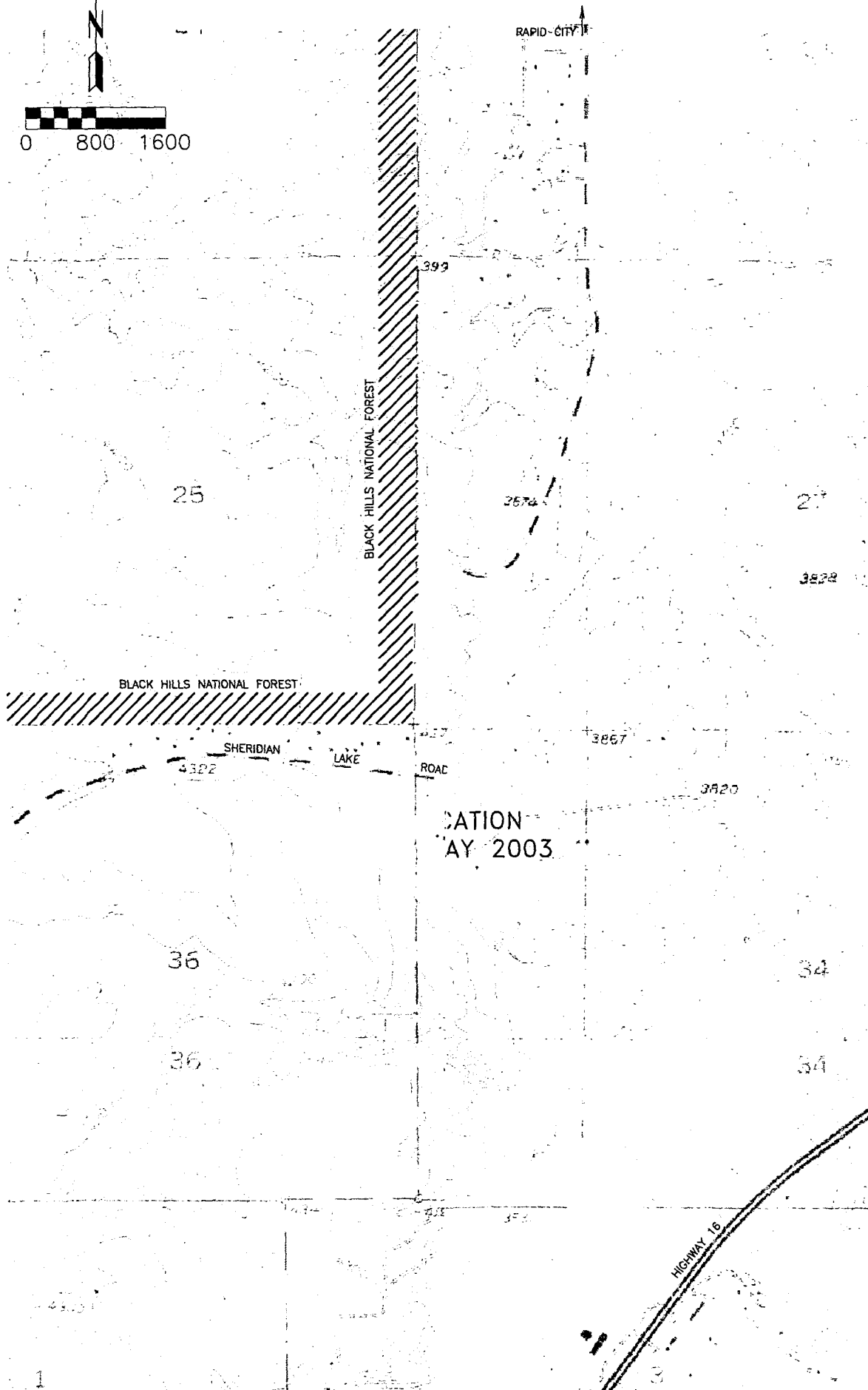
Operation and Maintenance (O&M) manuals shall be furnished in three copies to the Engineer at submittal stage. Final copies of O&M manuals shall be furnished within seven days after completion of project work. O&M manuals are required for the following items:

- Nonanna Well pump and motor.

Manuals shall include complete performance data, operating procedures, maintenance requirements, troubleshooting guide, parts listing and source of supply and similar relevant data.

18. DEWATERING PERMIT

Flushing of the Nonanna Well after disinfection is subject to compliance with the General Permit to Discharge under the Surface Water Discharge System for Temporary Dewatering Activities in South Dakota. The Contractor shall apply for and obtain coverage under the permit using the Notice of Intent and Certificate of Applicant forms. A copy of the general permit and application form is included hereinafter. The Contractor shall conform to permit conditions.



**1830 West Fulton Street
Rapid City, SD 57702
Phone: (605) 341-7800
Fax: (605) 341-7864
www.catecengineering.com**

cetec
ENGINEERING SERVICES, INC.

DESIGNED TS
 DETAILED MR
 CHECKED TS
 APPROVED _____
 DATE 1/7/08

VICINITY MAP

SHEET DESCRIPTION:

PROJECT: **NONANNA STREET WATER WELL
COLONIAL PINE HILLS SANITARY DISTRICT**

PROJECT:

SHEETS:

1

DESIGNED TS
 DETAILED RF
 CHECKED TS
 APPROVED _____
 DATE 1/7/08

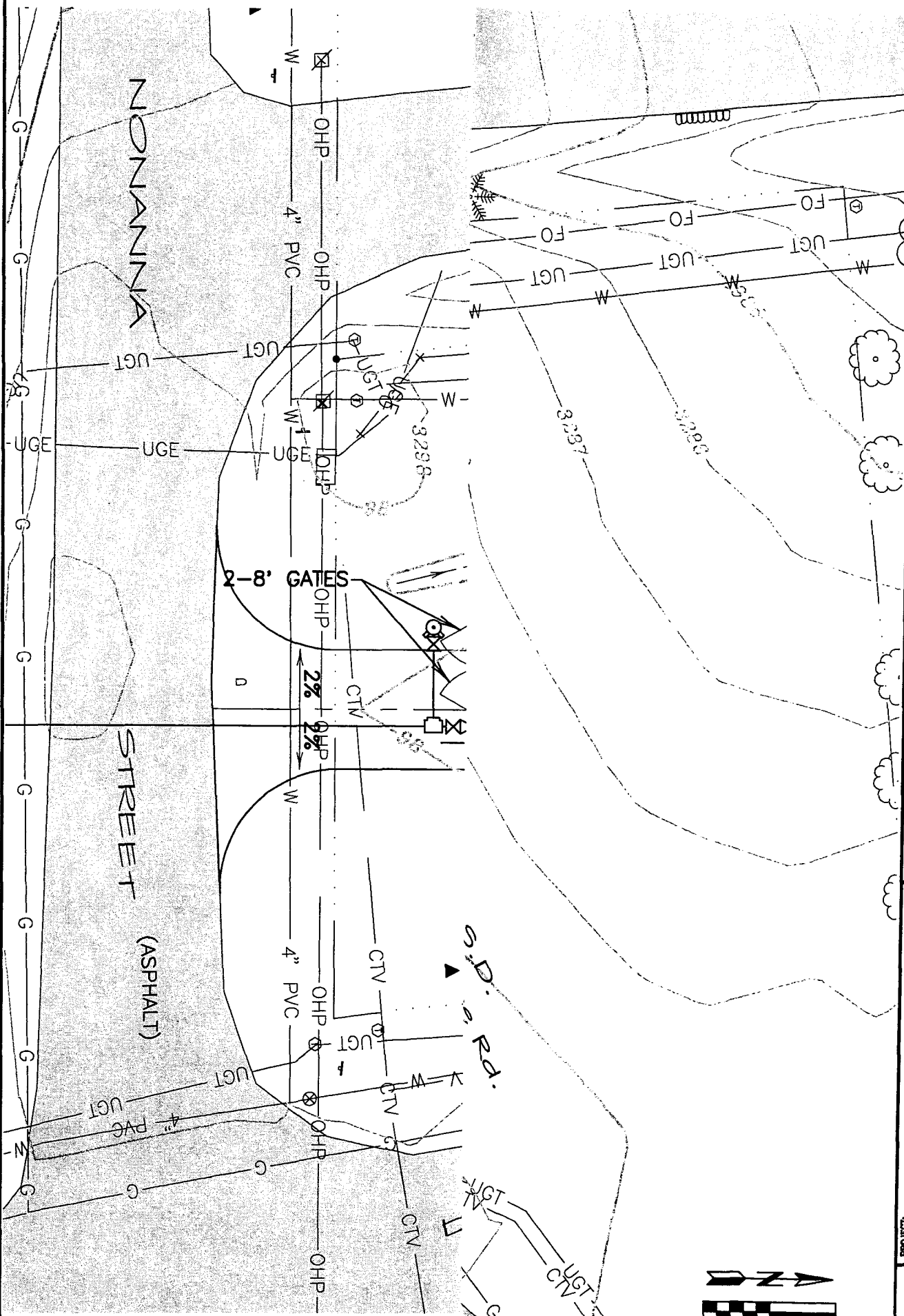
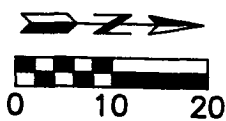
NONANNA WELL SITE

PROJECT: NONANNA WELL & WATER
COLONIAL PINE HILLS SANITARY DISTRICT
RAPID CITY, SOUTH DAKOTA

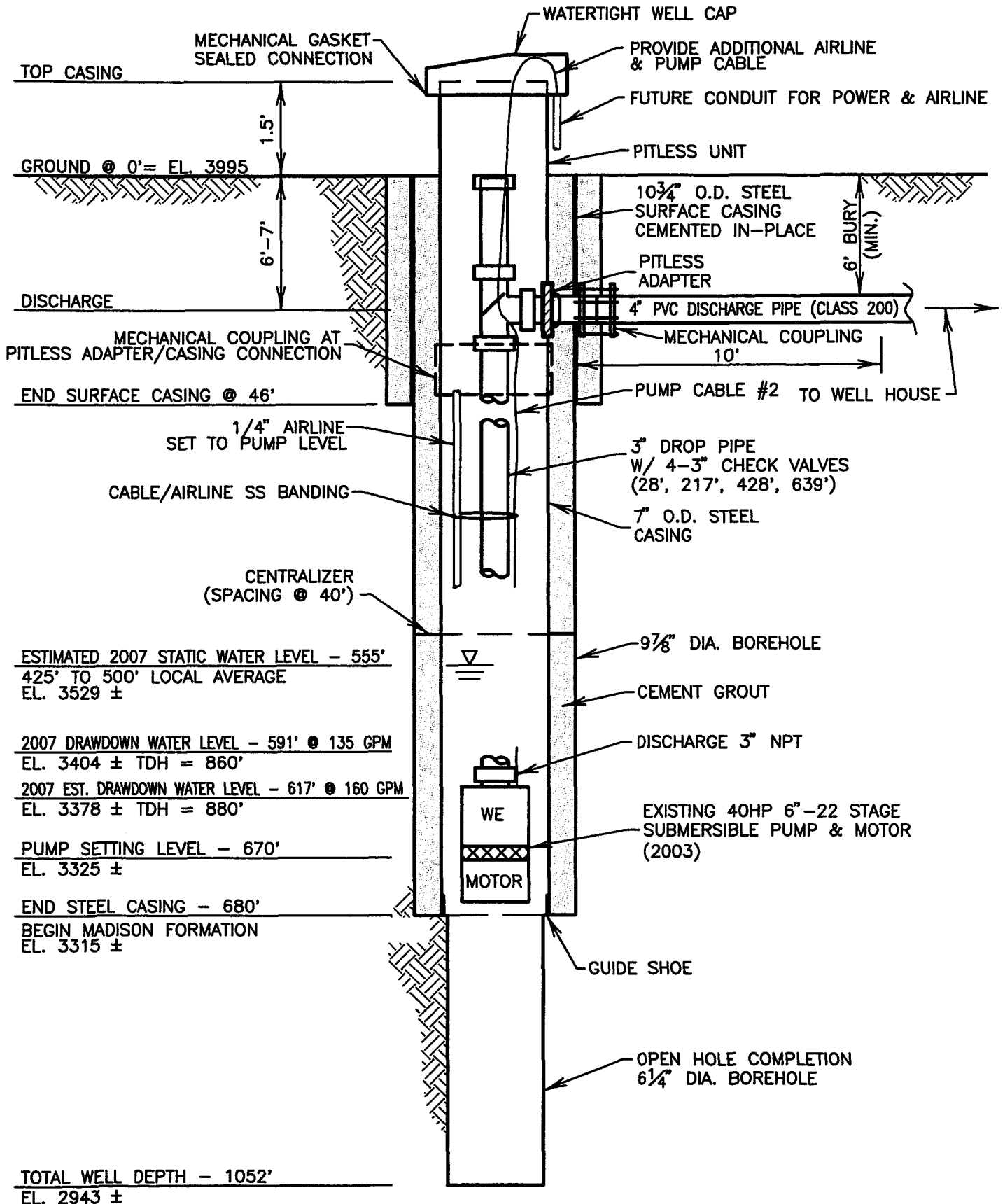
PROJECT:

QUESTIONS

2



HIGH LEVEL TANK HWL EL. 4220 (97 PSI. AT WELL HOUSE)
 AVERAGE TANK LEVEL 4208 (92 PSI. AT AT WELL HOUSE)

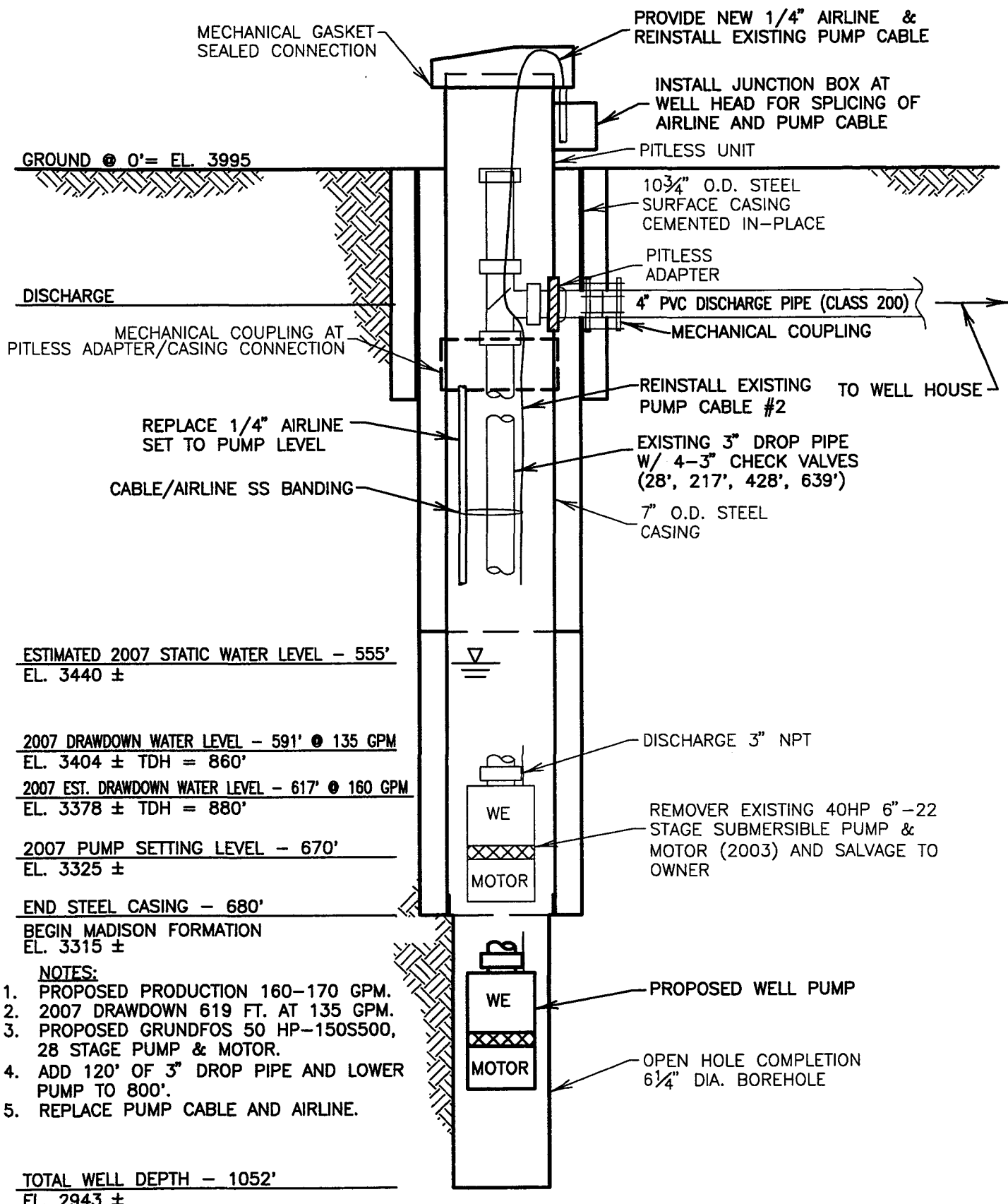


EXISTING NONANNA CPHSD WELL CONSTRUCTION
 SCHEMATIC (MAY 2003)

SHEET 3

cetec

HIGH LEVEL TANK HWL EL. 4220 (97 PSI. AT WELL HOUSE)
 AVERAGE TANK LEVEL 4208 (92 PSI. AT AT WELL HOUSE)



PROPOSED NONANNA CPHSD WELL CONSTRUCTION
 SCHEMATIC (2008)

SHEET 4

cetec

APPENDIX A

Water Rights Permit No. 2461-2

FORM 2: Application for uses other than irrigation
(type or print)

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	(office use only) No. _____ Hydrologic Unit _____
	Basin _____
	Newspaper _____

Application For Permit To Appropriate Water Within The State Of South Dakota

Check use(s) of water:

- | | | | |
|--|--|--|--|
| ☐ Municipal | ☒ Suburban Housing | ☐ Recreational | ☐ Institutional |
| ☐ Rural Water System | ☐ Commercial | ☐ Fish & Wildlife | ☐ Geothermal Heat |
| ☒ Domestic (over 18 gpm) | ☐ Industrial | ☐ Other _____ | |

Type of Application:
(check one)

- ☐ New ☐ Vested Right (Use predates Mar. 2, 1955) ☐ Future Use Reservation
☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____
☒ Amendment/Correction to Permit No. 2461-2

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.)

The Colonial Pine Hills Sanitary District proposes to increase the water right production limit to 0.4 cfs or 180 gpm to existing Nonanna water right Permit No. 2461-2. Current rate is 0.33 cfs or 150 gpm.

- Name of Applicant Colonial Pine Hills Sanitary District Phone 605-348-3113
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address 4605 Dunsmore Road, Rapid City State SD 57702
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed 0.40 *CFS or 180 **GPM **AF
(*Cubic Feet per Second) (**Gallons per Minute) (**Acre Feet - storage capacity of dam/dugout or annual use if applicable)
- Source of water supply Madison Fm.
- Location of point of diversion (example - 3 wells in SW 1/4 NE 1/4 section 12-T104N-R53W) County Pennington
Nonanna Well in SE 1/4 of the NE 1/4 of Section 32, T1N, R7E, BHM, Pennington County, SD.
Approximate well location 850 feet west and 1,600 feet south of the northeast corner
of Section 32, T1N, R7E.
- County or counties where water will be used Pennington
- Annual period during which water is to be used Yearly (Jan. 1 to Dec. 31)
- Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

The existing Nonanna well is owned by Colonial Pine Hills Sanitary District and is located at the intersection of Nonanna Street and Dunsmore Road in the eastern portion of the District. The purpose of the Nonanna Street Well upsizing is to increase supply for the District and to allow the District to be less dependent on poor quality wells.

STATE OF SOUTH DAKOTA)

SS

County of Pennington)

Attachments: Attach Form 2A if diversion is from a well or dugout, or if storage of water is proposed. Attach map and any other technical information. (see instructions)

I, Jim Martin, Manager of CPHSD, the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Applicant's signature _____

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

Notary Public signature _____

(type or print in ink)

1. Well Information - Proposed Construction - Nonanna existing well conditions - (See Schematic).

- a) Drill Hole Diameter 9- $\frac{1}{8}$ " Depth 1,052 feet
- b) Casing Type New Steel Diameter 7" O.D. Thickness 0.25"
- c) Screen Type None Diameter None Thickness None
- d) Gravel Pack None Length of Gravel Pack None
- e) Depth to Top of Water Bearing Material 680 feet
- f) Depth to Water (ground surface to water level) 466 feet
- g) Distance to nearest existing domestic well:

On applicant's property 1,100 feet ±

On property owned by others 1,300 feet ±
*Well will be used for back-up on Nikolas property.

2. Wastewater Disposal System Information

- a) Type of System (i.e. septic tank, drain field) Septic Tank with Drainfields on Individual Lots
- b) System Capacity (gallons) Varies Year Constructed Various
- c) Connected to the City of N/A Sanitary System

3. Dugout Information

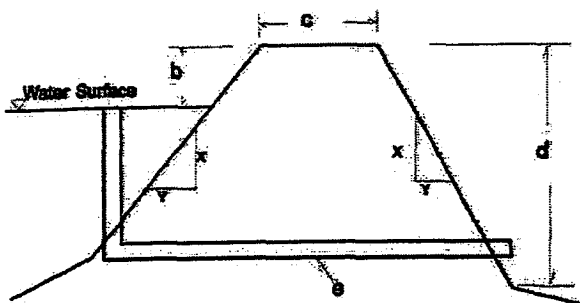
- a) Surface Dimensions N/A Depth N/A
- b) Depth to water (ground surface to water level) N/A

4. Water Storage Dams

If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to be shown on the map submitted with the application.

- a) If a private engineering firm or government agency was involved in the design of this dam, please give their name and address:

N/A



- b) Freeboard _____
- c) Crest Width _____
- d) Height _____
- e) Primary Outlet Capacity _____
- f) Secondary Spillway Capacity _____
Spillway Width _____
- g) X & Y Slope _____
Upstream _____
Downstream _____
- h) Surface Area of Impoundment _____
- i) Storage _____ Acre Feet
- j) Drainage Area Above Dam _____ Acres

APPENDIX B

Grundfos Pump Curve

Model 150S

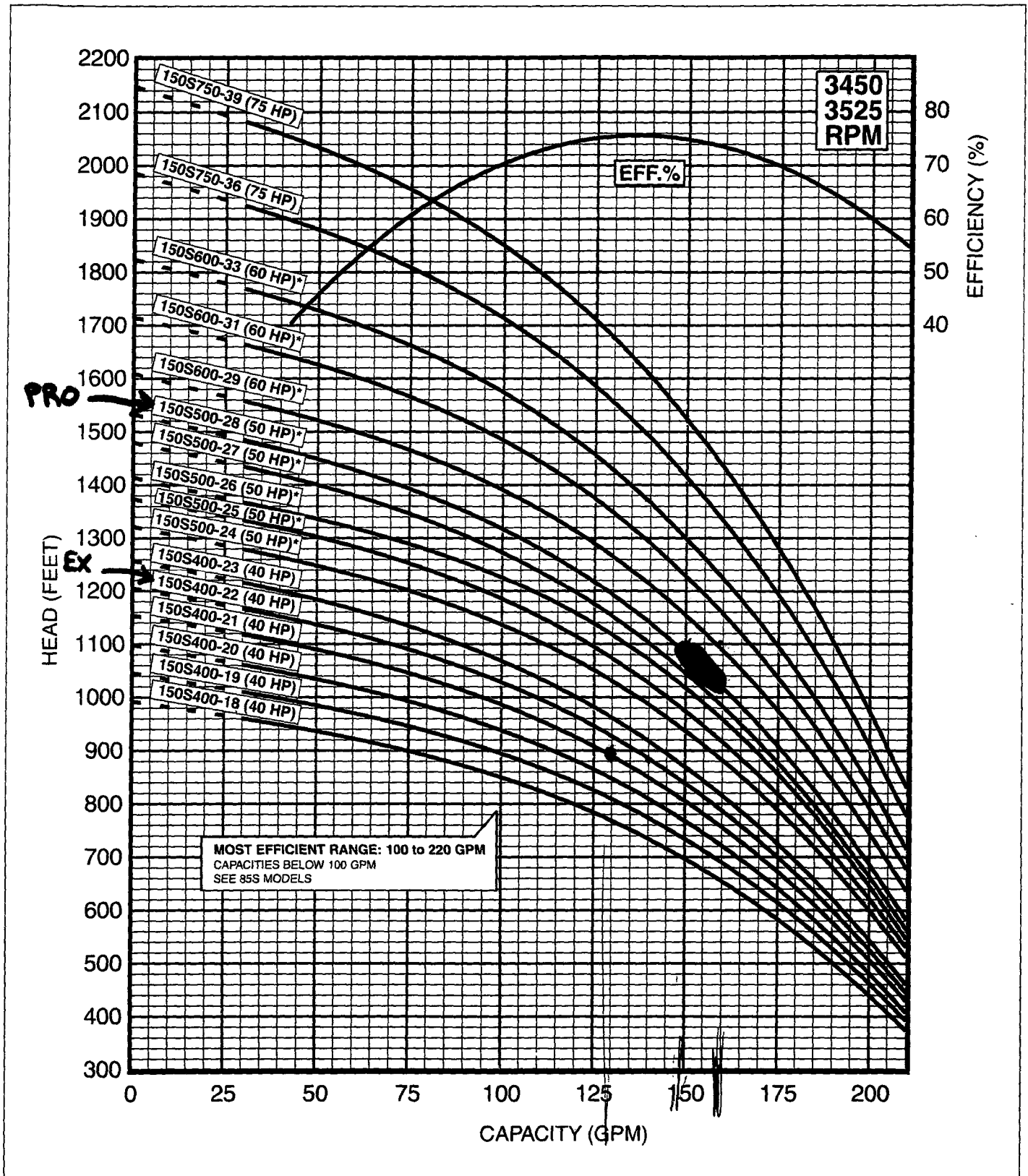
150 GPM

Performance Curves

FLOW RANGE: 30 -220 GPM

OUTLET SIZE: 3" NPT

NOMINAL DIA. 6"



SPECIFICATIONS SUBJECT TO CHANGE WITHOUT NOTICE.

6" MOTOR STANDARD, 7.5-60 HP/3450 RPM.

8" MOTOR STANDARD, 75 HP/3525 RPM.

* Alternate motor sizes available.

Performance conforms to ISO 9906 Annex A
@ 5 ft. min. submergence.

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 1/10, 20 08

RECEIVED OF CETEC Engineering Services Inc PO Box 9014 Rapid City SD 57709

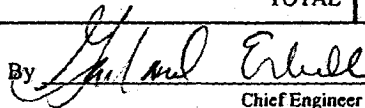
The following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	60	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	60 00

No.

03552

By


Chief Engineer

Chief Engineer

File No.

Water Rights Program - File Documentation

NAME: Colonial Pine Hills Sanitary District

ADDRESS: Rapid City SD

DATE: 1-10-08 **COUNTY:** PE **TELEPHONE:**

RE: Fee for pending application

COMMENTS:

The fee submitted with the application to increase the diversion rate on Water Permit No. 2461-2 was \$60. The fee should be \$50.

Once the permit is approved \$10 will need to be refunded.

The license fee was paid back when Water Permit No. 2461-2 was received.



Karen Schlaak
Environmental Scientist

06/16/2008

PAYMENT REQUEST FORM

PAYEE: Colonial Pine Hills Sanitary
District Jim Martin
4605 Dunsmore Rd
Rapid City SD 57702

FROM: DENR Water Rights Program
523 E. Capitol Ave
Pierre, SD 57501-3181

DESCRIPTION OF SERVICE, PRODUCE OR TRANSFER

Refund on 2623-2 (overpayment)

AMOUNT: \$10.00

FUNDING SOURCE:

GENERAL: X

FEDERAL:

COMMENTS:

AUTHORIZATION:

Barbara E. Ehl 6/16/08

I declare and affirm under the penalties of perjury that this claim is in all things, true and correct. I further agree to comply with the provisions of the Civil Rights Act of 1964 and regulations issued thereunder relating to nondiscrimination in federal assisted programs.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

February 29, 2008

Mr. and Mrs. Cregut
7800 Alberta Drive
Rapid City SD 57702

Dear Mr. and Mrs. Cregut:

Enclosed is a copy of the report, recommendation and public notice for Water Permit Application No. 2623-2 filed by Colonial Pine Hills Sanitary District. The public notice is scheduled to be published March 7 and 14, 2008 in the Rapid City Journal.

This information is being sent to inform you of this application.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures

Schlaak, Karen

From: Jacobson, Gail
Sent: Friday, March 07, 2008 3:34 PM
To: Schlaak, Karen
Subject: Colonial Pine Hills 2623-2

Patty from the RC Journal called and told me that they are running the public notice for the above on Saturday the 8th instead of today. I checked with Eric and he said it was OK (for dates). He just told me to e-mail you so you would know it's OK.

RECEIVED

MAR 24 2008

WATER RIGHTS
PROGRAM

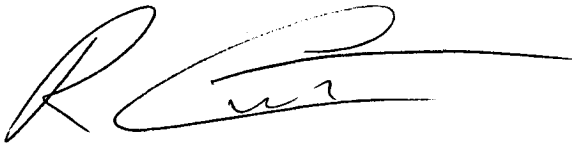
Garland Erbele, Chief Engineer
Water Rights Program
Foss Building, 523 E. Capitol
Pierre, S.D. 57501

RE: Opposition of Application No. 2623-2

I am writing to oppose application 2623-2 granting further water appropriations. My interest in this application is that I have a private well apx. 2400 feet northwest of the existing well that is to be used to supply the water referred to in the above application. The reasons for my opposition are I believe the figures used in your report dated February 28, 2008 are for 1931-1998, when there were not drought situations that compare to now or that the figures reflect the current pumping rates that are currently being used. Our well has experienced over 124 feet drop in water level and that has dramatically affected our ability to supply water. If water is continually diverted without thought and effort put in to conservation, we will soon see a lack of regeneration of the aquifer.

The Athletic Club provides a community service to this area and I feel that if you grant this application it will adversely affect my ability to supply water to our 600 + members who utilize this community facility, and it will create a significant hardship on the Athletic Club.

Respectfully,

A handwritten signature in black ink, appearing to read 'Robby Cregut', with a long horizontal flourish extending to the right.

Robby Cregut, Owner
Athletic Club
7800 Albertta Drive
Rapid City, South Dakota 57702
605-343-0744



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

March 26, 2008

NOTICE

TO: Jim Martin, Manager
Colonial Pine Hills Sanitary District
4605 Dunsmore Road
Rapid City SD 57702

Robby Cregut, Owner
Athletic Club
7800 Albertta Drive
Rapid City SD 57702

FROM: Garland Erbele, Chief Engineer
Water Rights Program *Garland Erbele*

SUBJECT: Notice of Hearing on Water Permit Application No. 2623-2

Robby Cregut, owner of the Athletic Club, has submitted a petition in opposition to issuance of Water Permit Application No. 2623-2 filed by Colonial Pine Hills Sanitary District. The petition was filed in response to the Notice of Application to appropriate water published in the Rapid City Journal printed in Rapid City SD. This notice schedules a hearing before the Water Management Board to consider this application.

Application No. 2623-2 proposes to appropriate an additional 0.07 cubic feet of water per second (cfs) by increasing the diversion rate authorized by Water Permit No. 2461-2. Water Permit No. 2461-2 appropriates 0.33 cfs (150 gallons per minute) from one well completed into the Madison Aquifer (1052 feet deep) located in the SE ¼ NE ¼ Section 32-T1N-R7E. This application proposes to increase the water appropriation from the existing well from 0.33 cfs to 0.40 cfs (an additional 30 gallons per minute). The water is for use in a suburban housing development.

The Water Management Board will conduct a hearing to consider Application No. 2623-2 at 9:00 AM (CST) on Wednesday, May 7, 2008 in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Future notice will be provided to all parties if there are changes to the hearing time. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2623-2 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application based on the evidence presented at the public hearing.

The May 7, 2008, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any party of record opposing the application. The request for an automatic delay must be filed by April 25, 2008.

This hearing may be an adversarial proceeding. Any party of record and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Enclosed is a copy of the report, recommendation and petition in the matter of Water Permit Application No. 2623-2. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. This same information will be sent to the Board members in advance of the hearing. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules". You are encouraged to review these documents prior to the hearing.

Notice is further given to persons with disabilities that this hearing is being held in a physically accessible place and that interpreter services will be provided, upon request, during the hearing. Please notify Eric Gronlund at (605) 773-3352 by April 25, 2008, if you have any questions about the hearing process or have special needs for which the department will make arrangements.

The application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-23; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-6-3, 46-6-3.1; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15.

Questions regarding the hearing process may be directed to Eric Gronlund, Water Rights Program at (605) 773-3352.

c: Diane Best, Assistant Attorney General
Ted Schultz, CETEC Engineering, PO Box 9014, Rapid City SD 57709-9014

NOTE: Since this matter does not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case need not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by April 25, 2008.

CERTIFICATION

I hereby certify that on March 26, 2008, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 26, 2008 regarding hearing for Water Right Permit No. 2623-2 addressed as stated below:

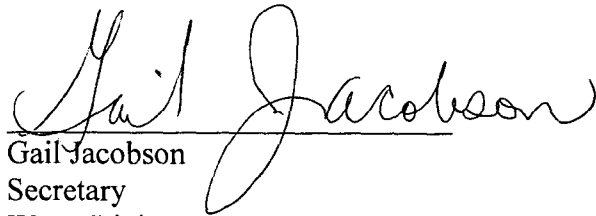
Jim Martin, Manager
Colonial Pine Hills Sanitary District
4605 Dunsmore Rd
Rapid City SD 57702

Robbie Cregut Owner
Athletic Club
7800 Albertra Drive
Rapid City SD 57702

Ted Schultz
CETEC Engineering
PO Box 9014
Rapid City SD 57709-9014

A copy of the above described Notice was sent Inter-office to:

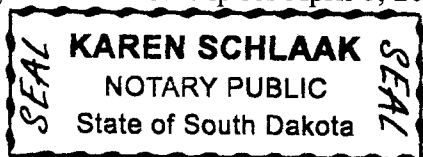
Diane Best, Assistant Attorney General, 1302 E Hwy 14, Suite 1 Mickelson Building, Pierre SD 57501


Gail Jacobson
Secretary
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 26th day of March, 20 08.


Karen Schlaak
Notary Public
My Commission expires April 1, 2013



STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMNET BOARD

IN THE MATTER OF THE	)	
APPLICATION FOR	)	FINDINGS OF FACT, CONCLUSIONS
WATER PERMIT NO. 2461-2,	)	OF LAW, AND FINAL DECISION
COLONIAL PINE HILLS	)	
SANITARY DISTRICT	)	

FINDINGS OF FACT

1. This is an application to appropriate .33 cubic feet of water per second from one well approximately 1200 feet deep in Pennington County. The water is for suburban housing development use.

2. The proposed source of the water is the Madison Aquifer. The Madison Aquifer is a massive carbonate aquifer that underlays most of western South Dakota and is estimated to contain at least 640 million acre feet of recoverable water within the state.

3. An unchallenged estimate by the State's expert indicates that the total water use from the Madison formation is considerably less than 50,000-acre feet per year. Another unchallenged estimate indicates that recharge to the Madison Aquifer amounts to 140,000 to 400,000 acre-feet per year. Further evidence of the recharge of the aquifer is found in three hydrographs admitted by the Department, each of which fails to show any long term water level decline. The Board finds that the aquifer is easily able to absorb an additional 239-acre feet per year proposed diversion.

4. The Board also considers whether there will be a localized impact. The nearest Madison appropriator is Highland

Hills Water Association Permit No. 1965-2. This permit is located approximately 1,250 feet south of the proposed well site. There is approximately 175 feet of head pressure in the Highland Hills Well; in particular, the well has static water level of 460 feet below grade and the top of the aquifer is approximately 645 feet below grade.

5. Since this case was initiated, Highland Hills lowered its pump into the Madison formation so that the pump is no longer found within the artesian pressure range.

6. Because the pump of the Highland Hills well has been placed into the aquifer, it is extremely improbable that the Highland Hills well will experience any effect from the draw down which will occur from the proposed pumping by Colonial Pine Hill Sanitary District.

7. Highland Hills opposes the permit primarily on the grounds that Colonial Pine Hills Sanitary District users presently withdraw more water than is appropriate for watering lawns and other uses. The testimony and statistics, including Brand Exhibit No. 2, indicate that Highland Hill users are, indeed, more careful stewards of the resource than those in the Colonial Pines Sanitary District.

8. The Board finds, however, that Colonial Pine Hills Sanitary District is now under new management and has taken significant steps to more carefully limit its water use. It now has an engineer and a water facilities plan. It has put water conservation into effect, allowing watering only every other day at nighttime. Moreover, it now has a new metering system with a

computer system for automatic billing. The system has made very significant progress in the last year.

9. The Board finds that the Applicant's good faith efforts to limit its water use justify the confidence this Board has that that its per capita water use will be reduced to more reasonable levels.

10. No testimony was offered to justify granting this water permit for more than a term of twenty years consistent with SDCL 46-2A-20.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter.

2. There is a reasonable probability that there is unappropriated water available for the applicants proposed use, as set forth above.

3. The proposed diversion can be developed without unlawful impairment of existing rights.

4. The proposed use in a suburban housing development is a beneficial use.

5. The proposed use is in the public interest. In making this determination, the Board considers the positive factor that the use of water in a suburban housing development is in the public interest and, furthermore, that the development's present efforts to conserve water are likely to be successful. The Board has, considered, as a factor against the public interest, the fact that the Applicant's users have withdrawn substantially more water on annual basis than its neighbors but, in light of the new direction of the Applicant, the Board has not given this fact

great weight. In balancing the factors, therefore, the grant of the Board concludes that the permit is in the public interest.

6. The Board concludes that no evidence exists to support the grant of the permit for more than a twenty-year term. The evidence in this case does, however, support granting the permit for a period of twenty years.

FINAL DECISION

The application for Water Permit No. 2461-2 is GRANTED with the following qualifications:

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2461-2 is issued for a twenty year term. Pursuant to SDCL 46-2A-21, the twenty year term may be deleted at any time during the twenty year period or following its expiration. If the twenty-year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2461-2 may also be cancelled for nonconstruction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1, and ARSD 74:02:01:37.

2. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells have prior water rights.

3. The well authorized by Permit No. 2461-2 shall be constructed by a licensed well driller and construction shall

comply with Water Management Board Well Construction Rules,
Chapter 74:02:04 with the well casing pressure grouted (bottom to
top) pursuant to Section 74:02:04:28.

4. Colonial Pine Hills Sanitary District shall report to
the Chief Engineer the amount of water withdrawn each year from
the Madison Formation. ~~C~~

Dated this 18th day of ~~November~~^{December}, 2001.

BY THE BOARD:

A handwritten signature in dark ink, consisting of a large, stylized 'D' followed by several loops and a final vertical stroke, positioned above a horizontal line.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2623-2, Colonial Pine Hills Sanitary District**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2623-2, Colonial Pine Hills Sanitary District, c/o Jim Martin, Manager, 4605 Dunsmore Road, Rapid City SD 57702.

The Chief Engineer is recommending APPROVAL of Application No. 2623-2 for a 20 year term because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use and 3) it is in the public interest with the following qualifications:

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2623-2 is issued for a 20-year term. Pursuant to SDCL 46-2A-21, the 20-year term may be deleted at any time during the 20-year period or following its expiration. If the 20-year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2623-2 may also be cancelled for nonconstruction, forfeiture, abandonment, or three permit violations pursuant to SDCL 46-1-12, 46-5-37, 46-5-37.1 and ARSD 74:02:01:37.
2. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
4. Colonial Pine Hills Sanitary District shall report to the Chief Engineer annually the amount of water withdrawn from the Madison Aquifer.

See report on application for additional information.

Garland Erbele, Chief Engineer
February 28, 2008

WATER PERMIT APPLICATION NO. 2623-2
COLONIAL PINE HILLS SANITARY DISTRICT
JANUARY 30, 2008

Water Permit Application No. 2623-2 proposes to appropriate 0.07 cubic feet of water per second (cfs) from an existing well. Water Permit No. 2461-2 currently appropriates 0.33 cfs from a well completed into the Madison aquifer (1,052 feet deep), located in the SE¼ NE¼ Section 32, T1N-R7E, Pennington County. This application proposes to increase the diversion rate authorized from the well from 0.33 cfs to 0.40 cfs (an additional 30 gallons per minute). The water is for use in a suburban housing development.

AQUIFER: MADISON AQUIFER (MDSN)

Geology and Aquifer Characteristics:

A description of the Madison aquifer in this area is included in the report for Water Permit No. 2461-2 (Water Rights, 2001). The SD Water Well Completion Report received for the well that will be used to supply water for this proposed appropriation identifies the top of the Madison aquifer at 630 feet below grade and a May 30, 2002 static water level of 466.15 feet below grade. The completion report indicates the well produced 150 gallons of water per minute when developed with air.

The Project Specifications and Contract Documents submitted with this application estimated a 2007 static water level for this well at 555 feet below grade. The engineer reports a 2007 “drawdown water level” of 591 feet below grade at a pump rate of 135 gpm. Therefore the specific capacity of the well is estimated to be 3.75 gallons per minute per foot of drawdown at 135 gpm. The engineer estimates a 2007 “drawdown water level” of 617 feet below grade at a pump rate of 160 gpm (specific capacity = 2.58 gallons per minute per foot of drawdown).

Water Availability:

Water Budget:

Recharge to the Madison aquifer occurs through streamflow losses and direct infiltration of precipitation at the outcrop area. Recharge to the Madison aquifer and the overlying Minnelusa aquifer in South Dakota has been estimated to range from 140,000 to 400,000 acre-feet per year (Woodward Clyde, 1981). Average annual recharge to the Madison aquifer from 1931-1998 was estimated to be approximately 137,000 ac-ft/yr (Carter and others, 2001a).

There are currently a total of 161 appropriations plus one deferred application from the Madison aquifer in South Dakota. These appropriations include: seven future use permits that reserve 11,072.8 acre-feet of water per year (ac-ft/yr); 129 water permits/rights for non-irrigation purposes appropriating a total of 86.03 cfs (Water Rights, 2008b); and 25 water permits/rights appropriating 7,700.36 ac-ft/yr for irrigation use (Water Rights, 2007). If it is assumed that the future use permits can be fully developed; the non-irrigation appropriations will be used at 60 percent of full time usage at their maximum diversion rate; and irrigation appropriations will use their full appropriation, the maximum (worst case scenario) amount of water that can be expected to be used with current appropriations is approximately 56,142 ac-ft/yr. If the deferred

permit is approved (1,600 ac-ft/yr), the total maximum (worst case) use would be approximately 57,742 ac-ft/yr.

The actual water usage from the Madison aquifer is expected to be considerably less than this "worst case" estimate. This is clear following an examination of actual water use compared with appropriations (see table 1 below).

MADISON AQUIFER USER	APPROPRIATION	2006 USE REPORTED	% OF APPROPRIATION USED IN 2006
Irrigation	7,700.36 ac-ft/yr	1,020.12 ac-ft	13.25
Rapid City	23.72 cfs	8,063 ac-ft	46.95
Spearfish	14.145 cfs	2,083.55 ac-ft	20.35
Countryside Homeowners Assoc	.334 cfs	56 ac-ft	23.16
Valley View Land Co., LLC	0.5 cfs	10 ac-ft	2.76
Black Hawk Water User district	2.23 cfs	470 ac-ft	29.11
Colonial Pine Hills Sanitary District (existing appropriations)	0.99 cfs	146 ac-ft	20.37

Table 1. Reported Water Use Compared to Appropriation for Selected Madison aquifer users

The additional volume of water requested by this application (50.6 ac-ft/yr) will basically have an insignificant impact on a water balance for the Madison aquifer. For all practical purposes, the availability of unappropriated water from the Madison aquifer will not be impacted if this application is approved; consequently unappropriated water is available for this appropriation.

Observation Well Data:

The Water Rights Program monitors 26 observation wells completed into the Madison aquifer in the Black Hills area (Water Rights, 2008a). Madison aquifer observation well PE-86A is located approximately one and three-fourths miles southeast of this well site. A hydrograph of the observation well is shown below in figure 1.

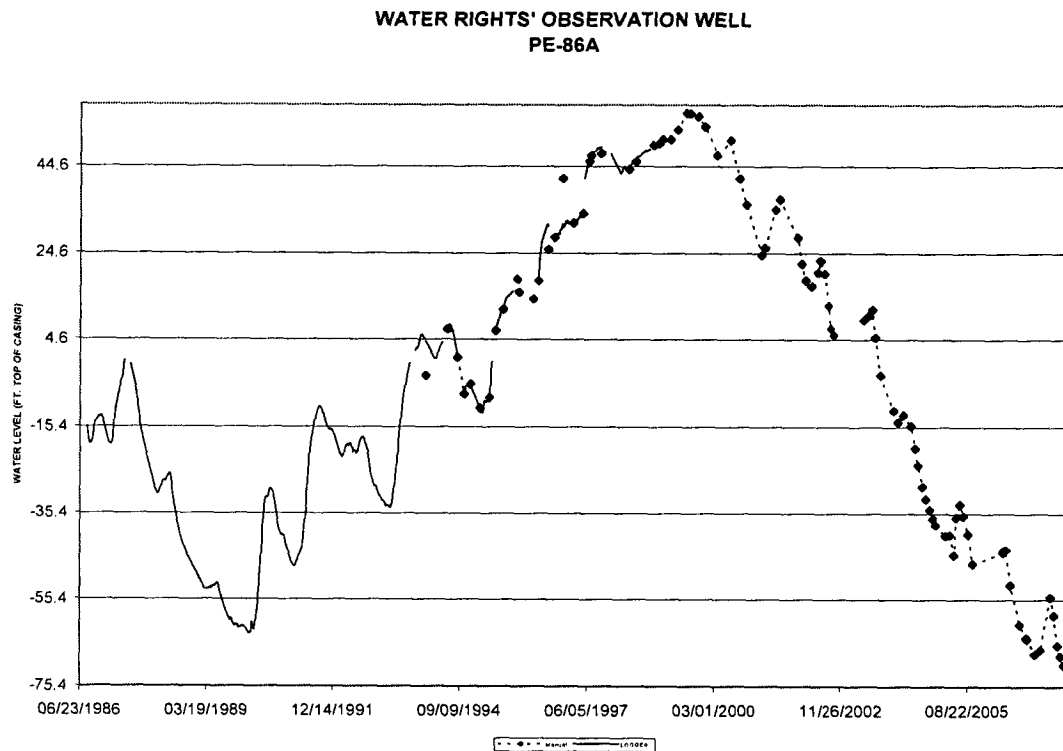


Figure 1. Hydrograph of Water Rights' Observation Well PE-86A located approximately 1.75 miles southeast of the well to be used to supply 2623-2.

The hydrograph is typical for observation wells completed into the Madison aquifer, showing the aquifer's response to climatic conditions and clearly demonstrating the system is recharged. The hydrograph documents that the potentiometric surface of the Madison aquifer fluctuates by 130 feet in this area in response to seasonal and climatic variations. The potentiometric surface rose during the 1990's in response to wet climatic conditions. The water level has decreased since 1999 in response to less recharge. Observation well data suggest that at the existing level of development, natural influences dominate the water levels of the aquifer and the effects of pumping as yet, are not obvious.

Effect on Existing Water Rights

Area wells that are not completed into the Madison aquifer are not expected to be affected by withdrawals from the Madison since the aquifer appears to be hydrologically separated from both deeper and shallower aquifers. Since the Madison aquifer is under artesian conditions in this area, drawdown from pumping a well may extend over a fairly large area. Interference between nearby wells completed into the Madison aquifer may be measurable. However, the impact of the small diversion rate requested by this application is expected to be insignificant. Information provided in The Project Specifications and Contract Documents submitted for this proposed increased appropriation was used to predict a specific capacity for this well of 2.0 gpm/ft or a drawdown of approximately 87 feet at a pump rate of 180 gpm (see figure 1).

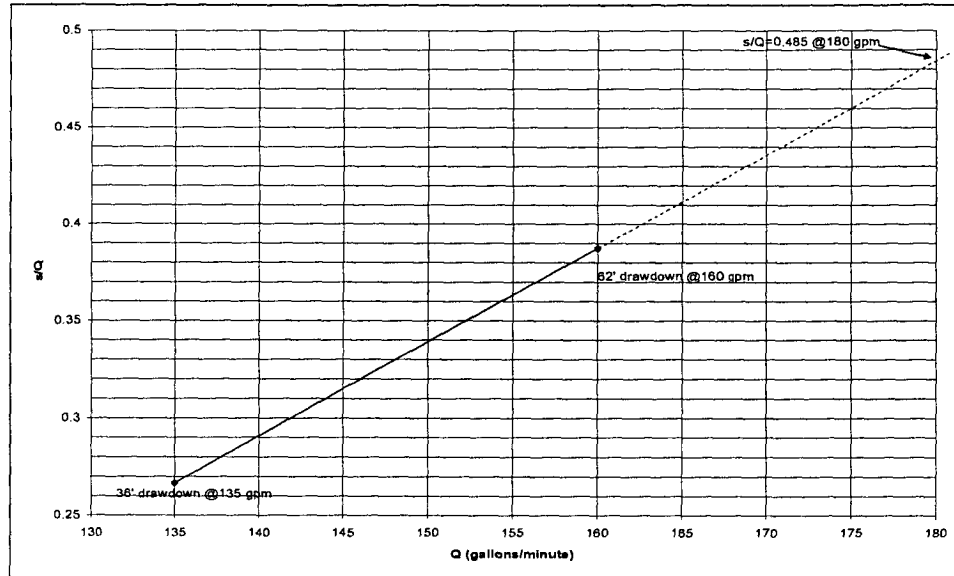


Figure 1. Drawdown divided by discharge (s/Q) plotted against discharge rate (Q) to project s/Q with $Q=180$ gallons per minute. $s/Q = 0.485$ at 180 gallons per minute, therefore the specific capacity for this well at a rate of 180 gpm should be $1/0.485$ or 2.0 gpm/ft. (from Driscoll, 1986).

The additional 30 gallons per minute diversion rate proposed by this application would therefore result in approximately 36 additional feet of drawdown at this well compared with the drawdown at the existing permitted rate (150 gallons per minute). The additional 36 feet of drawdown projected (at the production well), by the increased pumping of this well will result in insignificant drawdown in neighboring wells.

On December 27, 2007, the Water Rights Program received a telephone call from Robbie Cregut the holder of Water Right No. 2473-2, Cregut Inc. The well that supplies Water Right No. 2473-2 (Cregut well) is located approximately 2,400 feet northwest of the existing Colonial Pine Hills Sanitary District well authorized by Water Right No. 2461-2 (CPHSD well), that is also to be used to supply water to Water Permit 2632-2, if approved. The Cregut well experienced problems because of low water levels and Mr. Cregut was concerned about the effects competing users were having on the well.

When considering the Cregut complaint, the data from Water Rights' Observation Well PE-86A was extrapolated for the area. The data (see figure 1) suggests that between August 2001 and December 2007, the potentiometric surface declined around 110 feet in this area due to natural conditions. The Well Completion Report submitted for the Cregut well indicates that when the well was constructed in August, 2001, there was approximately 140 feet between the static water level and the total depth of the well. The **natural water level fluctuations** in the area would have significantly affected the storage in the Cregut well, may have dramatically impacted the "total pumping head" requirement on the well pump, and may have even caused the water level of the well to drop below the pump.

Area well owners that may have to deepen wells, lower pumps or even replace wells because of a dry cycle may make the inappropriate association that increased appropriations from the

aquifer is the cause of their problems. It is likely that there will be more well interference complaints and investigations until there is significant recharge to the aquifer.

TERM LIMITATION:

SDCL 46-2A-20 requires that "... no water permit for construction of works to withdraw water from the Madison formation in Butte, Fall River, Custer, Lawrence, Meade and Pennington counties may be issued for a term of more than twenty years, unless the water management board determines, based upon the evidence presented at the hearing that:

(1) Sufficient information is available to determine whether any significant adverse hydrologic effects on the supply of water in the Madison formation would result if the proposed withdrawal were approved; and

(2) The information, whether provided by the applicant or by other means, show that there is a reasonable probability that issuance of the proposed permit would not have a significant adverse effect on nearby Madison formation wells and springs."

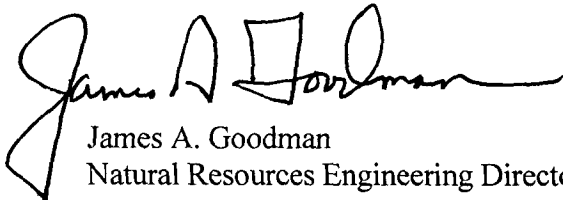
Evidence is not available to justify issuing these permits without a term limitation of 20 years.

Conclusions:

1. The Madison aquifer is a viable aquifer in this area.
2. This diversion proposed by this application will not adversely impair existing water rights.
3. Information is not available to justify issuing these permits without a term limitation of 20 years.



Ken Buhler
Natural Resources Engineering Specialist
Approved by



James A. Goodman
Natural Resources Engineering Director

References:

Driscoll, F.G., 1986, Groundwater and Wells, Johnson Division, St. Paul, MN, pg.558

Water Rights ,2001, Report for Water Permit Application No. 2461-2, South Dakota DENR-Water Rights Program, Joe Foss Building, Pierre, SD

Water Rights, 2007a, 2007 Irrigation Summary by Aquifer, South Dakota DENR-Water Rights Program, Joe Foss Building, Pierre, SD

Water Rights, 2007b, 2007 Non-Irrigation Use Reports, South Dakota DENR-Water Rights Program, Joe Foss Building, Pierre, SD

Water Rights, 2008b, Water Right/Permit Files, South Dakota DENR-Water Rights Program, Joe Foss Building, Pierre, SD

RECEIVED

MAR 18 2008

Form 8

WATER RIGHTS
PROGRAM

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Pennington) SS

I, Patricia K Van Patten

certify that the attached printed Notice was
taken

from the Rapid City Journal

printed and published in Rapid City

County of Pennington and

state of South Dakota. The notice was
published

in the newspaper on the following two dates:

March 8, 2008

March 15, 2008

Cost of Printing One hundred fourteen

dollars and eighty-four cents (\$114.84)

Patricia K Van Patten
(Signature)

Legal Advertising Rep.
(Title)

03/17/08
(Date Signed)

Mar. 8, 15 L20189917

NOTICE OF
APPLICATION NO. 2623-2
TO APPROPRIATE
WATER

Notice is given that Colonial Pine Hills Sanitary District, Jim Martin, Manager, 4605 Dunsmore Rd., Rapid City, SD 57702, has filed an application for a water permit to appropriate an additional 0.07 cubic feet of water per second (cfs) by increasing the diversion rate authorized by Water Permit No. 2461-2. Water Permit No. 2461-2 appropriates 0.33 cfs (150 gallons per minute) from one well completed into the Madison Aquifer (1052 feet deep) located in the SE 1/4 NE 1/4 Section 32, T1N-R7E. This application proposes to increase the water appropriation from the existing well from 0.33 cfs to 0.40 cfs (an additional 30 gallons per minute). The water is for use in a suburban housing development.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2623-2 for a 20-year term because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use, and 3) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on this application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendations must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is Water Rights Program, Foss Building, 523 E. Capitol, Pierre, SD 57501 (605-773-3352), and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by March 24, 2008.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel. If legal counsel is obtained, contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Pirner, Secretary Department of Environment and Natural Resources



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

February 29, 2008

Rapid City Journal
PO Box 450
Rapid City SD 57709

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application No. 2623-2 to Appropriate Water to be published twice. Please publish the first notice on March 7, 2008 with the second publication 7 days later. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

The applicant must verify to you that the notice is to be published, before you make the first publication. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Colonial Pine Hills Sanitary District, Jim Martin, 4605 Dunsmore Rd, Rapid City SD 57702 (Ph # 605-348-3113).

Please send the Water Rights Program the first publication immediately. The publication is checked for accuracy so any corrections can be made in the second publication. You may use the form below or fax a copy of the first publication. Any fax should be sent to the attention of Karen Schlaak at (605) 773-4068. Publication errors can invalidate the public notice.

After the second publication, **please send us an affidavit or use the enclosed Proof of Publication form.** The applicant pays the cost of publication, but the Water Rights Program records require an affidavit or Proof of Publication. Delays in receiving the affidavit can be costly to the applicant.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

-----CUT HERE-----

No. 2623-2

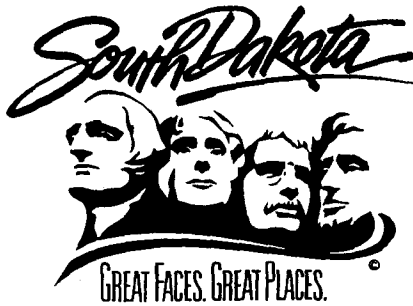
TO: Eric Gronlund
Water Rights Program
Joe Foss Building
Pierre SD 57501-3181

Date _____

We are in receipt of your letter of February 29, 2008 enclosing Notice to Appropriate Water by Application No. 2623-2 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

NOTE: TO BE SURE OF PUBLICATION ON
THE CORRECT DATES, CONTACT
THE NEWSPAPER RIGHT AWAY.

February 29, 2008

Colonial Pine Hills Sanitary District
Jim Martin
4605 Dunsmore Rd
Rapid City SD 57702

Dear Mr. Martin:

Water Permit Application No. 2623-2 for a suburban housing development has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Publisher of the Rapid City Journal printed at Rapid City SD (Ph # 605-394-8300). You will need to contact the newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your Notice and to arrange for payment. Early contact with the paper can eliminate delays. Upon receiving authorization, the publisher has been instructed to publish your notice once each week for two consecutive weeks. The newspaper has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's recommendation, you must file a petition pursuant to the procedures outlined in the attached notice of hearing. The Water Management Board will then consider your concerns during a hearing on the application.

Instruction to Newspaper - Publish first Notice on March 7, 2008 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF APPLICATION NO. 2623-2 to Appropriate Water

Notice is given that Colonial Pine Hills Sanitary District, Jim Martin, Manager, 4605 Dunsmore Rd, Rapid City SD has filed an application for a water permit to appropriate an additional 0.07 cubic feet of water per second (cfs) by increasing the diversion rate authorized by Water Permit No. 2461-2. Water Permit No. 2461-2 appropriates 0.33 cfs (150 gallons per minute) from one well completed into the Madison Aquifer (1052 feet deep) located in the SE ¼ NE ¼ Section 32-T1N-R7E. This application proposes to increase the water appropriation from the existing well from 0.33 cfs to 0.40 cfs (an additional 30 gallons per minute). The water is for use in a suburban housing development.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2623-2 for a 20-year term because 1) the proposed diversion can be developed with out unlawful impairment of existing rights, 2) the proposed use is a beneficial use and 3) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on this application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendations must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by March 24, 2008.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

JUN 16 2008

Colonial Pine Hills Sanitary District
c/o Jim Martin, Manager
4605 Dunsmore Rd
Rapid City SD 57702

Dear Mr. Martin:

Enclosed is Water Permit No. 2623-2 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

This application was submitted with a \$60.00 fee. The correct fee is \$50.00. Therefore, \$10.00 will be refunded to you. The refund check should be received within the next couple of weeks.

Form 10, *Notice of Completion of Works and Application of Water to Beneficial Use*, is enclosed. Please return this completed form after you have finished the system and have put the water to beneficial use. An investigation can then be scheduled so the water license may be issued, thus completing the acquisition of a water right.

An informational sheet ? *Common Water Right Questions?* is also enclosed. This sheet is intended to answer some of the questions associated with obtaining and keeping a water right.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

2623-2
RECEIVED

JAN - 9 2009

WATER RIGHTS
PROGRAMNOTICE OF COMPLETION OF WORKS AND
APPLICATION OF WATER TO BENEFICIAL USE

Date

1/8/09

TO: Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181

FROM:

Colonial Pine Hills Sanitary District

(name)

8251 Dunsmore Road

(address)

Rapid City, SD 57702

(city, state, zip)

605-348-3113

(phone)

I have completed the construction of the water use system and I have put the water to beneficial use to the maximum extent it is going to be used.

Water Permit No. 2623-2 states that the water use system is to be constructed by

5/7/2013

(date)

, and water is to be put to beneficial use by

5/7/2017

(date)

The water use system was completed on

6/30/08

(date)

Applying the water to beneficial use was completed on

6/30/08

(date)

You may schedule an investigation so that the water license may be issued.

Jimmy L. Martin, Manager

(signature)





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

January 15, 2009

2623-2

Jim Martin, Mgr
Colonial Pine Hills Sanitary District
8251 Dunsmore Rd
Rapid City SD 57702

Dear Mr. Martin:

I am writing to acknowledge receipt of the "Notice of Completion of Works" form for Water Permit No. 2623-2.

The system is now ready for inspection. Inspections are done on a county-by-county basis as staff time permits. You have done everything you need to do and the intervening time between the completion of your project and the staff inspection has no bearing on your water permit.

Someone from our office will contact you prior to the inspection to set up a time that is convenient for you. If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Genny McMath".

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

Permit No. 2623-2 & 2461-2
Upper Cheyenne River - Water District

Report of Examination of Works and/or Application of Water to Beneficial Use

TO: Chief Engineer, Water Rights Program, DENR, Foss Bldg., Pierre, SD 57501

I have on this day, 6/10/2010, made a thorough examination of the water use system constructed by Colonial Pine Hills Sanitary District, 4605 Dunsmore Rd, Rapid City, SD 57702 holder of Permit No. 2623-2, bearing the priority date of January 10, 2008 and May 3, 2001 (established by Permit No. 2461-2). Permit No. 2623-2 proposes to increase the diversion rate and annual volume diverted from the well authorized by Water Right No. 2461-2. Water Right No. 2461-2 appropriates 0.33 cfs (150 gallons per minute). This permit increases the water appropriation from 0.33 cfs to a total of 0.40 cfs (174 acre-feet annually) from the same well (Madison Aquifer) for suburban housing purposes, in Pennington County.

Inspection contact and relationship to
permit holder, if applicable:

Jay Chittim,
Operator

A. Works used to divert the water:

A Grundfos submersible pump - 180 gallons per minute capacity (0.40 cfs).

B. Works used to transport water to place of use:

Suburban housing distribution system.

The system is in the following condition good. The point of diversion (well) is located specifically at Lat/Lon - N44.004968/W-103.295594 which is the approximately 1,650 feet south and 880 feet west of the NE corner of Section 32, T1N, R7E. The works are capable of diverting 0.40cfs which is to be used for suburban housing purposes.

Water has been put to beneficial use to the maximum extent and the license should be issued for 0.40 cfs (174 acre feet annually).

All structures, wells and lands on map Y

Exceptions to compliance are: none.

Comments: The applicable portions of Water Permit No. 2461-2 will be incorporated into No. 2623-2.

Aaron R. Tieman

Aaron Tieman
Natural Resources Project Engineer
DENR, Water Rights Program

Date report completed: June 28, 2010

FIELD INVESTIGATION REPORT FOR PERMIT NO. 2623-2 & 2461-2

DATE OF INVESTIGATION:	June 10, 2010
NAME & ADDRESS OF PERMIT HOLDER	Colonial Pine Hills Sanitary District 4605 Dunsmore Road Rapid City, SD 57702
NAME & ADDRESS OF INVESTIGATION CONTACT/ RELATIONSHIP TO PERMIT HOLDER, IF APPLICABLE	Jay Chittim
DIVERSION POINT LEGAL LOCATION	SE¼ NE¼ Section 32, T1N-R7E
WATER SUPPLY SOURCE	Ground water, Madison Aquifer

Other permit(s) associated with the project: **This permit increases the diversion rate and annual volume diverted from the well authorized by Water Permit No. 2461-2.**

WELL INFORMATION:

- 1) Well Drilling Firm: **Taylor Drilling**
- 2) No. of Wells **One**
- 3) Depth(s) **1055** feet
- 4) Well log is available **yes**
- 5) Comment:

Casing:

- 1) Diameter: **10¾** inches Diameter: **7** inches
- 2) Length: **46** feet Length: **680** feet
- 3) Type: **Steel** Type: **Steel**

Screen:

- 1) Type: **Open-hole**
- 2) Length: **0** feet
- 3) Static water level: **466.15** feet

Pump:

- 1) Make: **Grundfos**
- 2) Model: **150 S500-27**
- 3) Capacity: **180** GPM

Motor:

- 1) Make: **Franklin**
- 2) Model No.:
- 3) Horsepower rating: **50** hp

DISTRIBUTION LINES OR CANALS:

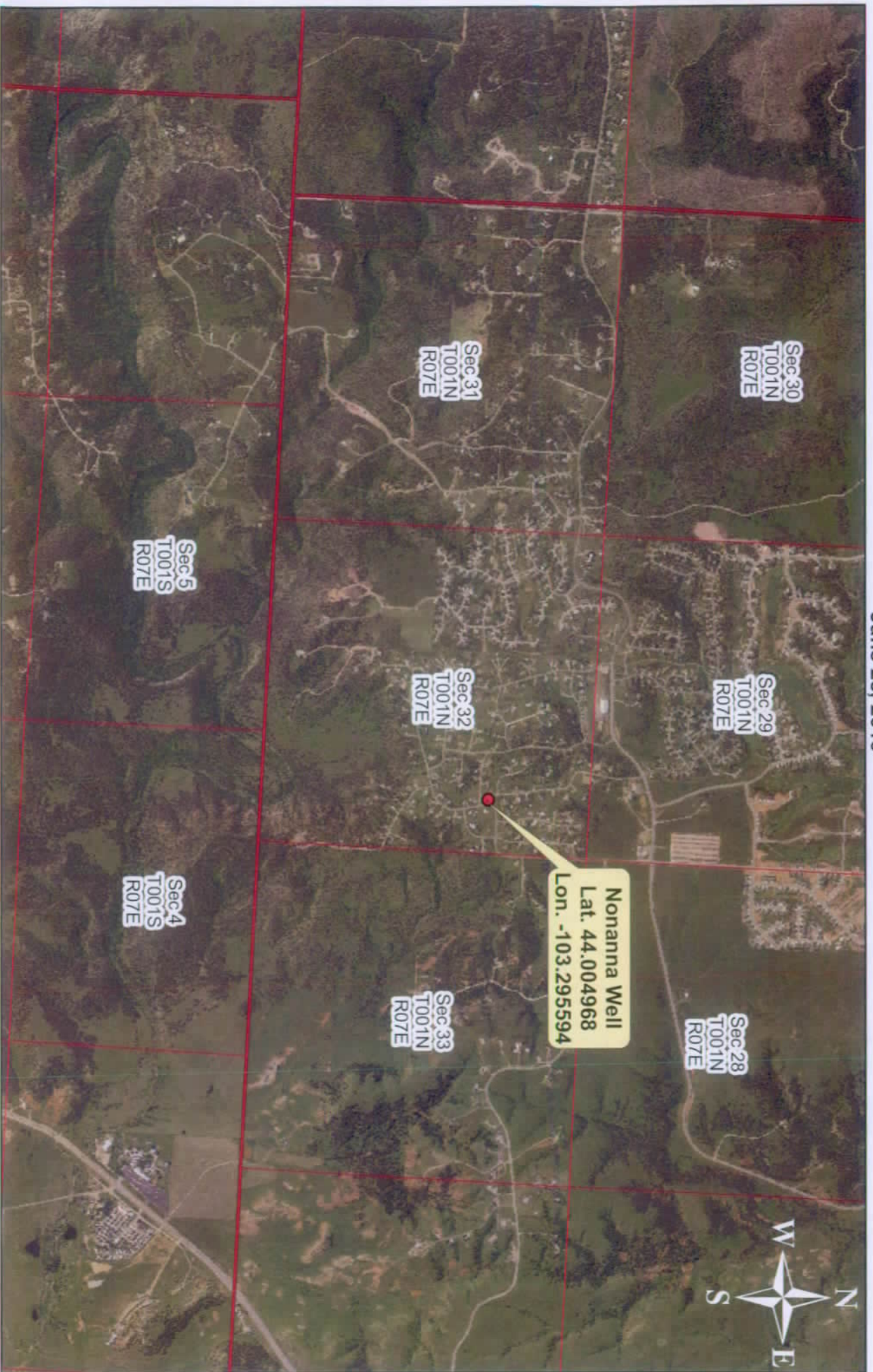
- 1) Type: **Suburban housing distribution system**

PERMIT QUALIFICATIONS:

- 1) Special qualifications to permit being abided by **Yes**
- 2) All structures, wells and lands on map **Yes**

COMMENTS:

Water Right 2623-2 & 2461-2
Colonial Pine Hills Sanitary District
June 28, 2010



Aaron R. Tieman
Aaron Tieman
Natural Resources Project Engineer
DENR Water Rights Program



0 0.25 0.5 1 Miles



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

JUL 14 2010

2461-2
2623-2

Jay Chittim
Colonial Pine Hills Sanitary District
4605 Dunsmore Rd
Rapid City SD 57702

Dear Sir:

Enclosed is Water License No. 2623-2. This is the final water right document completing your process of obtaining a Water Right. Included with your license is a map prepared by the staff engineer who conducted the field investigation.

For your information SDCL 46-6-27 requires that if the owner of an existing well, such as the well authorized by Water Right No. 2623-2, constructs a replacement well and does not plan to use the old well, the old well is considered abandoned and must be plugged. Also, any well that is being used or is not considered abandoned must be valved and controlled, if flowing, or sealed and capped so that no leaking occurs either underground or at the surface.

The applicable portions of Water Permit No. 2461-2 have been incorporated into Water License No. 2623-2. As long as you use the water beneficially, as stated in the Water License, the State Water Laws provide that you have a continuing right to use the water. If you have any questions, please contact our office.

Sincerely,

A handwritten signature in black ink, reading "Garland Erbele". The signature is written in a cursive, flowing style.

Garland Erbele, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

**STATE OF SOUTH DAKOTA
WATER LICENSE NO. 2623-2**

(1) Colonial Pine Hills Sanitary District, 4605 Dunsmore Rd, Rapid City SD 57702 made Application No. 2623-2, January 10, 2008 for a water permit to divert an additional 0.07 cubic feet of water per second (cfs) from ground water (one existing well – Madison Formation), Pennington County, South Dakota for suburban housing development purposes. Permit No. 2623-2, with a priority date of January 10, 2008 was approved May 7, 2008 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before May 7, 2013 and for the application to beneficial use of water on or before May 7, 2017.

Water Permit No. 2461-2, with a priority date of May 3, 2001, authorizes diversion of 0.33 cfs (150 gallons per minute) from the Madison well. Permit No. 2623-2 authorized an increase in the diversion rate from the existing well. The applicable portions of Water Permit No. 2461-2 have been incorporated into this water license.

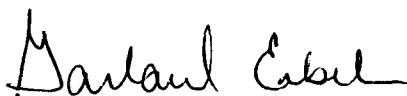
(2) It is certified that the permit holder has complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and is entitled to divert 0.40 cubic feet of water per second (180 gallons per minute) for beneficial use. The location of the diversion point is 1,650 feet south and 880 feet west of the NE corner of Section 32, T1N, R7E (SE ¼ NE ¼).

(3) The permit holder has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use.

(4) Pursuant to South Dakota Water Law 46-5-30.1 Colonial Pine Hills Sanitary District, 4605 Dunsmore Rd, Rapid City SD 57702 the holder and/or owner of Incorporated Water Right No. 2623-2 is issued a license to appropriate water, the right to use 0.40 cubic feet of water per second from ground water (one well – Madison Formation) with priority dates of May 3, 2001 (0.33 cfs) and January 10, 2008 (0.07 cfs) from the location specified in (2) of this license for suburban housing development purposes.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Right No. 2623-2 and subject to the following qualifications:

- In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2623-2 is issued for a 20-year term. Pursuant to SDCL 46-2A-21, the 20-year term may be deleted at any time during the 20-year period or following its expiration. If the 20-year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2623-2 may also be cancelled for non-construction, forfeiture, abandonment, or three permit violations pursuant to SDCL 46-1-12, 46-5-37, 46-5-37.1 and ARSD 74:02:01:37.
- The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
- Colonial Pine Hills Sanitary District shall report to the Chief Engineer annually the amount of water withdrawn from the Madison Aquifer.



Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

JUL 14 2010

date

